The original documents are located in Box 14, folder "Federal Communications Commission - Equal Time Provisions (2)" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

Copy for Mr. Buchen

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

August 4, 1975

Phil:
F.Y.I.
Abbott

Honorable Hugh Scott
United States Senate
260 Russell Senate Office Building
Washington, D.C. 20510

Dear Hugh:

I was interested in your statement in the July 30th Congressional Record headed "The Power of the Networks." Theirs is, as you say, "an awesome power." And it continues to grow as more and more people rely on the networks for more and more of their news and commentary.

The sole restraint on this power today is the Fairness Doctrine--a mild one indeed, which cautions the broadcaster: "All right now, the Government has granted you this frequency and in using it you should be careful to present both sides of important public issues."

Senator Proxmire calls the Fairness Doctrine "censorship" (which of course it is not). His bill (S.2) would abolish the Doctrine. The National Association of Broadcasters and the heads of the networks are vigorously supporting S.2. Limited though the Fairness Doctrine is, they would prefer to have total hammerlock control over everything broadcast.

Addressing the New York State Broadcasters on July 15, I gave my views on the Fairness Doctrine based on one year of observing the rule in action. (This is on pages 11 and 12 of the text attached.)

All best regards,

Sincerely,

Abbott Washburn
Commissioner

Enclosures: Congressional Record of 7/30/75, page S 14407
Speech to N.Y. State Broadcasters, 7/15/75

ADDITIONAL STATEMENTS

THE POWER OF THE NETWORKS

Mr. HUGH SCOTT. Mr. President, under the American system, no one owns the news. No single entity can decide what is the truth, or even what is worth reporting. The Government cannot dictate what the public shall read in the morning newspaper or watch at night on the television sets. Nor can Government decide what shall be excluded. And no commercial interest, or any other kind of special interest, is big enough to control the news.

This is our crowning glory, but it is also sometimes a crown of thorns. For, as a practical matter, someone has to decide what shall go over a wire service news ticker, what shall appear in a newspaper, and what shall be aired on radio and television. In the area of network television particularly, it falls to a handful of professionals to make the decision as to what is news, or what is of sufficient interest to the American people to merit a viewing.

This is an awesome power. We leave that power in the hands of a few network professionals, because we do not know of a better or more practical way for it to be exercised. But when the networks blunder, or appear to blunder, it is important that they hear our protest, loud and clear, not because we seek to control them but because if network decisions are not subject to criticism, those who make them will soon begin to add arrogance and arbitrariness to the normal human faculty for error.

On July 28, columnist Jack Anderson wrote of just such a blunder. I trust I need not point out that Mr. Anderson has never been noted for a reverent attitude toward officialdom, nor has he ever been known to be reticent in asserting the most far-reaching claims of the rights of the press. So when he writes of "arrogance" in the media, and of "the tight control a few network czars exercise over the TV channels," we may assume we are getting it straight from the horse's mouth.

Mr. Anderson recently conducted a televised interview with President Ford. It was not designed as an "adversary" interview. It had a Bicentennial motif, patriotic if you will, and the President was encouraged to discuss the strengths of America as he sees them, the values that have worked, the ideas that have endured. No scoops, just the quiet assessment by the President of what he has perceived in the Nation and the system he has been a part of for a lifetime.

The program was offered to the major networks, each in turn. It was offered free of charge to public broadcasting. And it was offered to each of the three major commercial networks not only free of charge but with a sponsor ready to pay prime time rates. That sponsor, I am pround to say, is a constituent of mine, Edward J. Piszek, of Philadelphia. Mr. Piszek, son of Polish immigrants and the founder of Mrs. Paul's Kitchens, has worked his way up from the bottom in the kind of America President Ford was talking about, and he thought the airing of the interview was important enough to back it with his own money.

It turned out that none of the networks, not one, could find a place for such a program, even in the dark days of the summer schedule.

The Public Broadcasting Service said it could not broadcast the interview because it contained no "hard news," which strikes me as rather strange. I am an interested follower of public television and, noting the time it has for reviewing delightfully obscure books, and programs about yoga, exercising, cooking, and chess playing, I was rather taken aback by its "hard news" dictum where the President of the United States is concerned. I think there is room for tax-assisted public broadcasting to broaden the definition of public interest.

All the commercial networks demurred on the grounds that they do not televise interviews unless they are conducted by their own news staff. As Anderson put it:

> Each network explained, in effect, that it doesn't carry interviews with the President unless he is buoyed up by a supporting cast of network personalities. In other words, it is not so much a President's answers that matter; it's who asks the question.

Such a policy raises a serious question that the networks, for their own bureaucratic and promotional purposes, are asserting a claim to control the news on grounds that are specious, self-serving, and unwarranted.

Certainly, there must be time on some television network for a discussion with the President of the United States about the greatness of America.

COMPROMISE ON OIL PRICING

Mr. FANNIN. Mr. President, we have only a few days remaining in which to arrive at an agreement between the President and the Congress regarding oil price controls which are to expire August 31, 1975.

President Ford has offered a reasonable compromise which would provide for an orderly and noninflationary phase out of price controls on "old" oil, ceiling prices for oil not now under controls, an opportunity in 90 days to disapprove the President's decontrol plan, and the opportunity to vote for separate legislation to establish a windfall profits tax on U.S. oil production.

What alternative does the Congress have? The alternative is to let the Emergency Petroleum Allocation Act expire on August 31, 1975, and then allow petroleum prices to rise free of any controls. The President has no alternative but to veto any extension of the Emergency Petroleum Allocation Act should the Congress disapprove his new compromise proposal.

Congress and the President are in a standoff. The President has demonstrated his willingness to go more than halfway. Now it is up to Congress to act responsibly.

Responsible action requires: First, that neither the Senate nor House of Representatives take action to disapprove the President's plan; and second, the Congress then extend the Emergency Petroleum Allocation Act so the President's plan will become effective.

Again, let me stress that the alternative is a situation which neither the Congress nor the President would want—that is, an immediate expiration of all oil price controls on August 31.

Proponents of controls should welcome this opportunity. If the President's decontrol plan is the disaster they fear, it should be quickly evident and Congress would have the opportunity to react accordingly. The only thing they have to fear is that the President's plan will be a success, and they will lose their argument that stringent price controls are necessary.

Mr. President, an editorial in Monday's Washington Star pointed out that "Congress has bickered over this issue long enough." The editorial suggests that Congress should meet the President midway and accept the latest program for an orderly decontrol rather than an abrupt end to all controls. I ask unanimous consent to have this editorial printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

COMPROMISE ON OIL PRICING

President Ford and Congress both have more to gain than to lose, politically, by meeting midway on the issue of domestic crude oil pricing. Finding that meeting point, somewhere between "free market" pricing and arbitrary legislated ceilings, has not been easy.

But if it is not found before Congress recesses—if the August 31 lapse of present ceilings sends the price of fuels zooming up—there will be plenty of blame to go around. Most of it will properly be laid to Congress, however. Congress seems remarkably complacent about the growing U.S. dependency on imported crude oil—and in some quarters, at least, is still assuming that we can have all the home-produced oil we want at bargain basement prices.

The debate over oil pricing and decontrol has largely turned on speculation over the impact of decontrol on domestic prices. Nearly everyone agrees that a sudden lapse of the $5.25 price ceiling on "old oil" would be severely inflationary. But there is a school of thought among some congressional Democrats that even if some concession must be made to the growing cost of search and drilling, domestic crude should be held to the neighborhood of $7.50 a barrel, lest the oil cartel and OPEC drain the proceeds of higher prices out of our pockets.

It shouldn't be beyond the wit of man—even of Congress—to combine incentive to increase production with a stable price index.

On Friday, President Ford sent to Congress still another "compromise" plan—the final offer, he says—for gradual decontrol. It would phase out the ceiling on old oil prices over a 39-month period. It would even carry the political boons of causing no increase in fuel prices before the 1976 election.

It may not be a dream plan from the point of view of national security. But it should be sufficiently attractive, if the claims made for it are accurate, to bring Congress to a compromising mood before all controls suddenly end next month.

The point is that someone in government has to perform the referee function. If the Commission did not exist, it would have to be invented.

Fairness Doctrine

I believe the Fairness Doctrine is an example of "good regulation." It has withstood the tests of time and the courts, including the Supreme Court. It is a set of practical guidelines. It works.

My Grandfather used to say: "Never tinker with a machine that's running well."

Proponents of Senator Proxmire's bill (S. 2) claim the Doctrine circumscribes freedom of expression, that it abridges the First Amendment. If this were so, broadcasters would be pounding on the Commissioners' doors and telling us about how much the rule is hurting you and eroding your freedom. Yet in the 12 months I have served on the Commission, not one broadcaster has dropped in to tell me he is having trouble with the rule.

During the two-year period 1973 and 1974, the Commission received some 4,300 fairness complaints. Of these, 4,150 were dismissed without the licensee having to respond in any way at all. In only 19 cases did the complaint result in either a letter of admonition (11 cases) or a forfeiture (8 cases). These 8 cases were blatant examples of one-sideness.

The fairness rule is not censorship. It does not cut out anything. On the contrary it assures that more views, and opposing views, are presented to

the public over the air. Therefore the purpose of the doctrine runs parallel to that of the First Amendment -- namely, as stated in the Red Lion decision: "to preserve an uninhibited marketplace of ideas in which truth can ultimately prevail."

Most broadcasters, I'm sure, try to be fair and objective in presenting both sides of local issues. Most of you would do so whether or not the fairness doctrine existed. But for the small percentage who would not, it's an important rule to have around.

Last evening at dinner Vince Wasilewski* said that this is about the hardest-working Commission he has seen in the past 20 years. It is also an open Commission, willing to listen to your comments. We are anxious to meet our responsibilities, and dedicated to re-regulation. So come on in when you are in Washington, and please write and phone us at any time. Tell it like it is.

Again thanks for your kindness in inviting me here, and for the pleasure of being with you.

Thank you all, and good luck!

*Vincent Wasilewski, President, National Association of Broadcasters.

THE WHITE HOUSE

WASHINGTON

filed in FCC "equal time"

August 5, 1975

MEMORANDUM FOR: DON RUMSFELD

FROM: PHILIP BUCHEN P.W.B.

SUBJECT: Status of CBS Request for Ruling on "Equal Time" Provisions of Communications Act

The FCC is scheduled to dispose of the CBS petition in September and a decision will probably be reached without a hearing, although a letter has been filed by a lawyer representing the Democractic National Committee that he intends to file a petition in the matter, presumably in opposition.

I will get a copy of the petition as soon as it is filed.

At the same time the Commission will take up a petition filed by the Aspen Institute of Communications concerning joint appearances by candidates as being within the exemption for "on-the-spot coverage of bona fide news events."

I am optimistic we will get a favorable ruling at least on the CBS petition.

Tuesday 8/5/75

1:50 Abbott Washburn dropped by with the attached memo.

In addition, he said to tell you that the sentiment on the Commission, among those where it counts, is to go along with the petition and not for application of this equal time provision to the Presidential news conferences. (He can give you more about that, if you'd like)

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

August 5, 1975

IN REPLY REFER TO:

MEMORANDUM FOR

Honorable Philip W. Buchen
Counsel to the President
The White House

FROM: Commissioner Abbott Washburn A.W.

Per our telephone conversation this morning.

The staff is planning to bring the CBS petition for declaratory ruling to the Commission for decision in September. The Commission will, at the same time, take up a petition filed by the Aspen Institute of Communications asking for a declaratory ruling on situations where joint appearances by candidates are covered by a radio or television station. Both requests concern the "on-the-spot coverage of bona fide news events" exception (315(a)(4)).

A lawyer representing the Democratic National Committee has sent over a letter notifying us that they intend to file a petition with respect to the CBS request for ruling, presumably in opposition. However, at this point the document has not yet been filed, so we don't know exactly what their position will be.

Answering your question, there is no need for a hearing.

We'll be happy to keep you informed as matters progress.

"Equal Time" text freeze

THE WHITE HOUSE

WASHINGTON

August 5, 1975

MEMORANDUM FOR: DON RUMSFELD

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I am optimistic we will get a favorable ruling at least on the CBS petition.

CBS

MR. BUCHEN:

Further to the information we sent you recently....

Richard W. Jencks

August 19, 1975

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
The Handling of Public Issues Under the Fairness Doctrine and the Public Interest Standards of the Communications Act.	)	Docket No. 19260

PETITION FOR REVISION OF
FIRST REPORT/FAIRNESS REPORT IN DOCKET NO. 19260 OR FOR
ISSUANCE OF POLICY STATEMENT OR DECLARATORY RULING

The Aspen Institute Program on Communications and Society (herein called Aspen Program) seeks revision or clarification of the Commission's policies concerning the applicability of the 1959 Amendments to Section 315 to certain joint appearances of political candidates. The two revisions sought -- explained in full in the discussion below -- will enable broadcasters more effectively and fully to inform the American people on important political races and issues.

These suggested revisions stem from a year-old project to develop a program to make the Bicentennial a model political broadcast year. As a part of that project, a conference of several experts with considerable experience in the political broadcast field was held on March 14, 1975 at the Brookings Institution, Washington, D.C. The conference considered actions that might be taken by Congress, the FCC, broadcasters, candidates and their consultants, and voluntary citizens organizations. The two matters in this petition were raised at the conference, and appear most worthy of consideration by the Commission.

The Aspen Program seeks these revisions in the context of Docket No. 19260, since that proceeding is concerned specifically with political

broadcast issues* and appears still open for further action in light of several pending petitions for reconsideration. However, we stress that the manner of proceeding is of no great moment, and that the Commission may prefer to issue a new policy statement or declaratory ruling, rather than revise the First Report or 1974 Fairness Report. What is crucial is that the Commission act promptly to resolve these important matters, so that broadcasters, candidates, and the public can be definitively informed of the ground rules well before the 1976 campaign. We therefore strongly urge final Commission action in the very near future, in order to allow for both reconsideration and possible court review.

I. The Commission should give the Section 315(a)(4) exemption for on-the-spot coverage of bona fide news events its proper broad remedial construction, and should thus overrule the *NBC (Wyckoff)* and *Goodwill Station* decisions.

The issue. In 1959 Congress amended Section 315 in order to overrule the *Lar Daly* case, in which the Commission had adopted a "rigid interpretation of [the] equal opportunity [of] Section 315" (i.e., that broadcasters could not devote ". . . 1 minute to a . . . candidate [in a newscast] without being compelled to make available a minute to every other legally qualified candidate to the same office").** This FCC action in *Lar Daly*, the Senate Committee found,

". . . could lead to a virtual blackout in the presentation of

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*See First Report, 39 Fed. Reg. 26384 (1972); Fairness Report, 39 Fed. Reg. 26372, 26384 (1974).

**See Rept. No. 562, 86th Cong., 1st Sess., p. 9 (1959) (herein called Sen. Rept.); H. Rept. No. 802, 86th Cong., 1st Sess., pp. 2-4 (herein called House Rept.).

> candidates on the news-type programs . . . [and] would not serve the public interest. An informed public is indispensable for the continuance of an alert and knowledgeable democratic society. The public should not be deprived of the benefits that flow from this dynamic form of communications during the critical times of a political campaign . . ."*

The importance of television was particularly noted:

> "Television has a tremendous potential to sharpen the public's interest in and knowledge of the Nation's political life whether it be on the National, State, or local level. It is able to present to the people in the big cities, as well as in the rural areas, a firsthand knowledge of the political candidate -- how they look, how they speak, how they think, whatever variety of man they may be . . ."**

The Congress thus decided to exempt the four news type categories set out in Section 315(a), stating

> ". . . sharp searching questioning of the interview-type show and the on-the-spot coverage of news events such as political conventions, affords every viewer with a ringside seat. No one will question that the categories of programs exempted by this legislation serve to enlighten the public and that a broadcaster who offers news, news interviews, news documentaries. [or] on-the-spot coverage of news events . . . is discharging his obligation to operate in the public interest by making such programs available."***

The Congressional purpose is thus clear -- "to make it possible to cover the political news to the fullest degree . . ." -- "to give full meaningful coverage to the significant events of the day."† The Commission, however, has not given full scope to this purpose. In a series of

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*Sen. Rept., at p. 10.

**_Ibid._

***_Ibid._

†See 105 Cong. Rec. 1445 (1959) (Sen. Pastore responding to question of Sen. Holland); 106 Cong. Rec. 13424 (1960) (Senator Pastore).

cases interpreting Section 315(a)(4) -- the exemption for on-the-spot coverage of bona fide news events -- the Commission has rendered a narrow, niggardly construction, rather than one fully promoting the broad, remedial purposes of the 1959 Amendment.

Thus, in the *NBC (Wyckoff)* decisions,* the Commission held that the California stations' coverage of a one-hour debate between two candidates for Governor, held as a part of the annual convention of the United Press International,** was not exempt as on-the-spot coverage of a bona fide news event. In the *Goodwill Station* case, the radio station WJR had for several years broadcast the dinner speakers or programs at the Detroit Economic Club because of the newsworthiness of the topic and speakers; in line with this policy, it broadcast a debate sponsored by the Club between the two major party candidates for Governor of Michigan. The Commission held that this broadcast did not constitute "on-the-spot coverage of a bona fide event",*** and thus that the Socialist Labor Party candidate was entitled to equal time.†

In the *Goodwill Station* decision, the Commission relied heavily upon the "guidelines" in the House Report, and particularly that "the principal test was 'whether the appearance of a candidate is incidental to the on-

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*_Telegram to Robert C. Wyckoff_, 40 FCC 366 (1962), reconsideration denied, *NBC*, 40 FCC 370 (1962).

**The debate was not arranged by the stations but rather was broadcast as a part of their bona fide news judgment. See 35 Fed. Reg. at 13055 (p. 26).

***See 40 FCC 362 (1962).

†In *Socialist Labor Party*, 15 FCC 2d 98 (1968) aff'd. *per curiam* by order entered October 31, 1968, sub. nom *Taft Broadcasting Co.* v. *FCC*, Case No. 22445, D.C. Cir. 1968, the Commission refused to exempt a press conference held when a presidential candidate brought his campaign to the station's community. While the decision may be correct on the ground that the press conference was arranged by the station and its personnel, the rationale is the same as in the above cases.

the-spot coverage of a news event . . .'".* It also pointed out that a debate between candidates was not intended to be exempted, as shown by the 1960 suspension, and that no distinction could be made because the debate was a news event planned entirely by non-broadcast entities (i.e., the Economic Club). In the *NBC (Wyckoff)* ruling, the Commission relied greatly on the difficulties that would arise if a broadcaster could simply deem some occurrence in a campaign "newsworthy" and on that basis exempt from the equal opportunities requirement. The result, the Commission stated, would be "large scale" relief from the requirement -- and the legislative history made clear that Congress intended no such result.**

The consequence of these rulings has been to greatly diminish the efficacy of the on-the-spot news exemption, and thus the broadcaster's coverage of political news events. If two rival candidates are invited to the League of Women Voters meeting or an AP or UPI Convention for a debate or simply to make back-to-back speeches on some important topic, the broadcasters cannot exercise their bona fide news judgment to cover this important political news in full -- because they might then have to give equal time to several fringe-party candidates. The event can be on page one of every newspaper -- can occupy half of the station's evening news presentation, but the broadcaster cannot render that most unique public service -- bringing the event live into the homes of every interested voter. Broadcasters, despite the clear Congressional intent, are still not ". . . free in their coverage of news."†

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*40 FCC at p. 364, H. Rept. at p. 7.

**40 FCC at pp. 371-372.

†106 Cong. Rec. 13424 (Statement of Senator Pastore).

The Aspen Program does not wish to quarrel over the past. Rather, we seek a new "hard" look by the Commission whether its construction is stifling full broadcast journalism and robust, wide-open debate.* We believe that the Commission's existing interpretation of Section 315(a)(4) is based on erroneous analysis, and that in any event, new policies developed by the Commission since the adoption of that interpretation require a different result. We shall discuss these points below.

The proper construction of Section 315(a)(4)

1. The Commission has wide discretion in construing the scope of news type exemptions. Thus the Senate Report states (p. 12):

> . . . It is difficult to define with precision what is a newscast, news interview, news documentary, or on-the-spot coverage of news event or panel discussion. That is why the committee in adopting the language of the proposed legislation carefully gave the Federal Communications Commission full flexibility and complete discretion to examine the facts in each complaint which may be filed with the Commission . . .

> "The Congress created the Federal Communications Commission as an expert agency to administer the Communications Act of 1934. As experts in the field of radio and television, the Commission has gained a workable knowledge of the type of programs offered by the broadcasters in the field of news, and related fields. Based on this knowledge and other information that it is in a position to develop, the Commission can set down some definite guidelines through rules and regulations and wherever possible by interpretations."

The Courts have also noted this discretion. See *Taft Broadcasting Co.* v. *FCC, supra.***

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*Cf. *NBC* v. *FCC*, ___F.2d___ (D.C. Cir. 1974); *Brandywine-Main Line Radio, Inc.* v. *FCC*, 473 F.2d 16, 52 (D.C. Cir. 1972), cert. denied, 412 U.S. 922 (1973).

**In affirming the Commission's *Socialist Labor Party* ruling, *supra*, the Court stated that it found ". . . no basis for disturbing the Commission's

2. That discretion should of course be exercised to promote the broad remedial purpose of the legislation, and we have already shown that purpose -- namely, to permit broadcasting to cover "to the fullest degree" the political news events. There is an additional crucial consideration here -- the need to adopt a construction that avoids serious constitutional issues. It is hornbook law that if there are two constructions, one of which raises serious constitutional problems and the other obviates such problems, the latter will be preferred.* That is precisely this situation: The Commission's construction of Section 315(a)(4) raises the most serious First Amendment issues; the construction urged by the Aspen Program promotes the goal of the First Amendment -- by affording the widest possible audience for robust, wide-open debate.

A simple example makes this point. Suppose in the 1960 election that there were no suspension of the equal time requirement and Mr. Kennedy and Mr. Nixon agreed to debate before the Editors or UPI Convention. There were, however, on the ballots in the several States 14 other

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exercise of discretion in issuing the order on review herein, *Philadelphia Television Broadcast Co.* v. *FCC*, 123 U.S. App. D.C. 298, 359 F.2d 282 (1966) . . .". In the latter case, the Court stated (*supra*, at pp. 299-300):

> In approaching the problem of statutory interpretation before us, we show "great deference to the interpretation given the statute by the officers or agency charged with its administration. 'To sustain the Commission's application of this statutory term, we need not find that its construction is the only reasonable one, or even that it is the result we would have reached had the question arisen in the first instance in judicial proceedings.'" [footnote citation omitted]

*See *Ashwander* v. *TVA*, 297 U.S. 288, 348 (1936) (J. Brandeis concurring), and cases cited.

candidates for the Office of President.* In view of this large group of candidates entitled to free time, the debate would not be telecast under the Commission's construction of Section 315(a)(4). The electorate would thus be deprived of the most worthwhile informational programming -- and with no offsetting gain, since *no* time is afforded the fringe party candidates.

The Commission, as the expert agency in this field, has stressed this obvious conclusion:**

> "In short, section 315 in its present form would appear, as is claimed, to inhibit broadcasters from affording free time to major presidential candidates -- and does so, we urge, without any significant practical compensating benefits. The effect of section 315 is not that the Socialist Labor or Vegetarian candidate gets free time; rather, no one gets any substantial amounts of free time for political broadcasts. Further, and most important, there would appear to be little, if any, public benefit from insuring equal treatment for candidates whose public support is insignificant . . ."

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*C. Benton Coiner, Conservative Party of Virginia; Merritt Curtis, Constitution Party; Lar Daly, Tax Cut Party; Dr. R. L. Decker, Prohibition Party; Farrell Dobbs, Socialist Workers Party, Farmer Labor Party of Iowa, Socialist Workers and Farmers Party, Utah; Orval E. Faubus, National States Rights Party; Symon Gould, American Vegetarian Party; Eric Hass, Socialist Labor Party, Industrial Government Party, Minnesota; Clennon King, Afro-American Unity Party; Henry Krajemski, American Third Party; J. Bracken Lee, Conservative Party of New Jersey; Whitney Harp Slocomb, Greenback Party; William Lloyd Smith, American Beat Consensus; Charles Sullivan, Constitution Party of Texas.

In 1964, at least eight major and minor parties qualified presidential candidates for appearance on State ballots; in 1968, the figure was nine.

**Statement of Chairman Burch on H.R. 13721, before House Subcommittee on Communications and Power, 91st Cong. 2d Sess., June 2, 1970, p. 5.

The Aspen Program's point is equally obvious: The Commission has discretion to adopt a construction of Section 315 that avoids or greatly ameliorates the above inhibiting effect, and under the law it must therefore adopt that construction.*

3. There is no question but that a common sense view of the phrase, "on-the-spot coverage of bona fide news events", includes a political news event such as the UPI debate in *Wyckoff* or the Economic Club debate in *Goodwill Station*. The event *is* news -- indeed, page one headline news in the local newspapers. The statutory language gives one example of a news event -- ". . . including but not limited to political conventions . . .". Surely the UPI debate is the same kind of political event as the acceptance speech of the candidate at the convention.

And the legislative history supports this common sense view. Thus, Senator Scott noted that the term news has a "very broad definition" -- "of current interest".** Chairman Harris stated that ". . . news events would necessarily have reference to current events of news importance" -- that the program must ". . . cover bona fide events" to be exempt.*** Finally, the House Conference Report stresses that the term bona fide means in the exercise of bona fide news judgment and "where the appearance of a candidate is not designed to serve the political advantage of that candidate".† A *joint* appearance of candidates at an event like the UPI or Economic Club debate is clearly not designed to serve the political advan-

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*See here the statement of similar import of Senator Scott in the debates on the 1959 Amendments, 105 Cong. Rec. 17831 (Because of First Amendment considerations, ". . . we ought to be exceptionally careful to provide as much freedom of expression on radio and TV as we possibly can . . .").

**105 Cong. Rec. 17831.

***105 Cong. Rec. 17830.

†H. Conf. No. 1069, 86th Cong., 1st Sess., p. 4.

tage of any one candidate -- indeed, it is a clearer case of a bona fide news event than that expressly included in the statute, the acceptance speech at the convention.

4. The reasons given by the Commission for its narrow construction do not withstand analysis. First, the Commission relies heavily upon the "incidental test", citing the House Report that ". . . the principal test was 'whether the appearance of a candidate is incidental to the on-the-spot coverage of a news event . . .'" (*Goodwill Station, supra,* 40 FCC at p. 364). And in *Wyckoff,* the Commission notes that the networks did not cover "any aspect of the UPI convention other than the joint appearance of Governor Brown and Mr. Nixon" (40 FCC at 372-72) -- again indicating that to be a "bona fide" news event within 315(a)(4), the matter cannot be the political event itself but rather must be incidental to some other news coverage (e.g., cutting a ribbon at some opening; greeting a foreign dignitary).

The Commission was simply wrong. The House version did specify the "incidental test"*, but it was dropped in conference, with the single exception of Section 315(a)(3), which exempts the bona fide news documentary "if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary". The legislative history is thus clear: The appearance of the candidate need not be incidental to some other news occurrence, but rather can be the news event itself. In this respect, the position taken by Congressman Bennett is particularly pertinent: He strongly urged in the floor debate that the incidental test was unworkable and in ". . . instance after in-

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*See 105 Cong. Rec. at p. 16231 (Chairman Harris), H. Rept., at pp. 2,7. Thus, the House version contained the following limiting phrase: ". . . where the appearance of the candidate on such newscast, interview, or in connection with such [on-the-spot] coverage [of news events] is incidental to the presentation of news . . .". H. Rept. at p. 2.

stance . . . [would leave] conscientious news directors in a quandary whether the appearance of a candidate is incidental or not to the presentation of news."* And after the conference where this "incidental" provision was dropped, he stated in the floor debate:**

> "I feel that this language -- 'incidental to the presentation of news' -- would make the task of broadcasters and the FCC an impossible one and that even with the best intentions in the world neither broadcasters nor the Commission can meet the task of distinguishing between appearances which are incidental and appearances which are not incidental.
>
> I am glad to see that the conference substitute omits this language because the majority of the conferees felt as I do, that this requirement would lead to even greater confusion than we have at present under the Lar Daly decision."

The Commission also states that to give 315(a)(4) such a broad construction would render meaningless the other three exceptions to Section 315, and the action of Congress exempting the "Great Debates" through Public Law 86-677.† But there would still be a need (i) for the 1960 suspension to facilitate the broadcast debates or (ii) for the 1959 exemptions of bona fide news interviews or documentaries. These are not *on-the-spot* coverage of news events -- they are studio matters.

Finally, the Commission points out that the liberal construction of 315(a)(4) carves a large hole into the equal time requirement since in any campaign ". . . the statement and actions of a candidate could always be deemed newsworthy and the coverage and subsequent broadcast of all his speeches and actions could [then] always be deemed on-the-spot coverage

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*105 Cong. Rec. 16241-2.

**_Id._ at p. 17778.

†_NBC, supra,_ 40 FCC at p. 3712.

of bona fide news events".* There are, however, two strong countering considerations.

First, the Commission misreads the legislative history. It is true that the Congress, in the 1959 Amendments, ". . . did not attempt to destroy the philosophy of equal time; it merely made exceptions . . ."** But Congress "surely . . . wants to permit on-the-spot news",*** and *it was willing to take risks* to make it possible for broadcasters "to cover the political news to the fullest degree".† This is stated several times during the floor debate.†† And it was set forth in the Senate Report, p. 10: "The public benefits are so great that they outweigh the risk that may result from the favoritism that may be shown by some partisan broadcasters.". The Commission has not followed this balance struck by the Congress: It has reduced the risks markedly, but at the expense of achieving the broad remedial purpose of the 1959 legislation.

Second, and equally important, the Commission's policies have changed in a way that greatly reduces any risk in giving the Amendment their common sense construction in line with Congress' remedial purpose. At the time when Congress adopted the 1959 exemptions, there was no back-up relief for the candidate if a station acted unfairly in some exempt situation. For, the Commission considered fairness issues only at renewal, and Congress

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*_NBC_, 40 FCC at p. 371. For example, if the major party candidate for President visited a city, his airport or city hall remarks and responses to questions from the press could be covered live as "on-the-spot coverage of a bona fide news event".

**Statement of Senator Magnuson in floor debate, 105 Cong. Rec. 14444.

***_Ibid._

†_Id._ at p. 14451.

††E.g., statement of Senator Pastore, 105 Cong. Rec. at pp. 14440, 14445.

understood that while that might be a deterrence, it would provide no relief in the context of the campaign.* But in 1963 the Commission changed its fairness procedures to rule promptly on fairness complaints, particularly because "a practice of waiting for renewal would be most unfair to candidates in political campaigns and would militate against the all-important goal of an informed electorate in this vital area."** On this ground alone, the Commission should re-examine its restrictive approach to 315(a)(4).

There is the additional consideration that the Commission in 1970 issued the *Zapple* ruling*** -- "a particularization of what the public interest calls for in certain political broadcast situations in light of the Congressional policies set forth in Section 315(a)".† The *Zapple* ruling states that even in non-equal time situations, the broadcaster must treat the significant political candidates (e.g., those of the major parties) in roughly comparable fashion -- that is, quasi-equal opportunities.

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*See 105 Cong. Rec. 14440, 14445, 14662. Thus, the following exchange occurred (p. 14445):

> Mr. Pastore - ". . . if an act of that kind were deliberate in an effort to discriminate to the disadvantage of the cause of one candidate, in comparison to the cause of another candidate, those doing the broadcasting would be subject to a complaint and a protest being made at the time they went before the Commission for the renewal of their license, because under the law this medium is considered to be in the public domain. That is the other safequard there would be."
>
> Mr. McCarthy - "What would happen? That would take place 2 or 3 years afterwards."
>
> Mr. Pastore - "That is correct. That is positively correct."

**_Letter to Chairman Oren Harris_, 40 FCC 582, 584 (1963). While there is controversy over the Commission's case-by-case implementation of the fairness doctrine, all parties are agreed on the need to do so in the campaign area. *NBC* v. *FCC*, ___ F.2d ___ , n. 58 (D.C. Cir. 1974).

***_Letter to Nicholas Zapple_, 23 FCC 2d 707 (1970).

†39 Fed. Reg. at p. 26387.

For, the Commission explained:*

> . . . If the DNC were sold time for a number of spots, it is difficult to conceive on what basis the licensee could then refuse to sell comparable time ot the RNC. Or, if during a campaign the latter were given a half-hour of free time to advance its cause, could a licensee fairly reject the subsequent request of the DNC that it be given a comparable opportunity? [footnote omitted] Clearly, these examples deal with exaggerated, hypothetical situations that would never arise. No licensee would try to act in such an arbitrary fashion. Thus, the *Zapple* ruling simply reflects the common sense of what the public interest, taking into account underlying Congressional policies in the political broadcast area, requires in campaign situations such as the above (and in view of its nature, the application of *Zapple*, for all practical purposes, is confined to campaign periods). . .

Again, our point here is obvious. There is no quasi-equal opportunity doctrine requiring the presentation of fringe-party candidates or rough equality on newscasts.** But there is a common sense approach applicable here: If the Democratic Presidential or Vice-Presidential candidate were invited to appear on a bona fide news interview show, the Republican candidate would undoubtedly be afforded a comparable opportunity. And, assuming the inapplicability of the equal time requirement, in the case of a news event such as the airport visit of the Republican candidate and its coverage by the TV station, common sense indicates that the station would accord some comparable treatment to his Democratic rival, if the situation were to present itself. Thus, under *Zapple*, the risk is again markedly reduced, and there is simply no basis for the Commission adhering

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*Ibid.

**See par. 32, 39 Fed. Reg. at p. 26838. In short, the licensee retains the necessary wide discretion to make journalistic judgments as to newscasts or treatment of the non-major party candidate. See *Letter to Lawrence M. C. Smith*, 25 Pike and Fischer, R. R. 291 (1963).

to a restrictive approach stifling broadcasting coverage of robust, wide-open debate.

5. The Aspen Program does not claim that the approach urged here is not without difficulties. Of course there will be problems. But just as the debate in 1959 made clear, those difficulties are the price of freeing broadcasting to make its full contribution to an informed electorate, so vital to the proper functioning of our democracy. See *CBS* v. *DNC*, 412 U.S. 94, 125 (1973) ("calculated risks of abuse are taken in order to preserve higher values."). In law and in sound policy, the Commission cannot lighten its burden by adopting a mechanical, narrow approach that is easy of administration but stifles the fullest possible coverage of bona fide political news events.

II. The Commission should clarify its position on Section 315(a)(2) -- the exemption for bona fide news interview programs -- in light of the *Chisholm* case.

There is one aspect that the Commission touched upon in its *First Report* in Docket 19260, and left in a confused, unsettled state -- the so-called *Chisholm* situation.* While the confusion is the fault of the Court (not the Commission), nevertheless the matter is important enough to warrant additional Commission effort, as the following discussion shows.

In the 1959 Amendments, Congress exempted from the equal opportunities requirement appearances of candidates on the bona fide news interview show.** Congress also made it clear that to be "bona fide," a news interview must not be designed to advance the candidacy of any individual and must be a regularly scheduled program under the licensee's control.† The issue in the *Chisholm* case involved the practice of the networks on occasion to shift their news interview shows to prime time, with a full hour devoted to joint or "back-to-back" appearances of guests, when in their judgment this was warranted. Does this expanded, prime-time "Meet the Press" type of show, still fully under the control of the licensee as to format, content, and interviewers and interviewees, remain an "exempted" program? If it does not, then the appearance of a presidential candidate could require equal opportunities for many fringe party candidates (e.g., Vegetarian, Socialist Labor, Socialist Worker) and, in

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*See paragraph 37, *First Report,* 37 Fed. Reg. 12744, 12749.

**Section 315(a)(2), 47 U.S.C. 315(a)(2).

†See House Report No. 802, 86th Cong., 1st Sess., pp. 5-7 (1959); House Report No. 1069, 86th Cong., 1st Sess., p. 4.

effect, "kill" the program.

In the *Chisholm* case,* the Commission held that such a program remained exempt. In so acting, the Commission stated that it was facilitating a larger contribution to an informed electorate by giving the 1959 exemptions a reasonable interpretation in line with the broad remedial purpose of Congress. However, Mrs. Chisholm appealed, and the validity of the FCC's construction of Section 315(a)(2) is now in doubt in view of the action of the Court of Appeals for the District of Columbia Circuit in an interim relief order of June 2, 1972. Because the case became moot before a final decision could be issued, the matter remains unresolved. As the Commission noted in its *First Report*,** until the matter is definitely settled, licensees cannot plan with any certainty.

It would be a mistake for the Commission to rest upon this confusion until the next *ad hoc* crisis in the 1976 election. The Commission continues ". . . to believe that [its] construction of the exemption in Section 315(a)(2) is sound, meets the pertinent Congressional criteria, and markedly serves the public interest by allowing broadcasting to make a fuller and more effective contribution to an informed electorate."† That being so, the Commission should act forcefully to encourage the networks to follow their prior practice in this respect, and should marshall the considerations favoring its interpretation either in a further policy statement in Docket No. 19260, a new policy statement, or a new rule adopted after appropriate proceedings. Such a policy or rule would make it clear that a program otherwise exempt remains exempt, even if it is presented

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*FCC 72-486.

**Paragraph 37, 37 Fed. Reg. at p. 12749.

†*Ibid.*

at a different time period and with a different duration and number of interviewers or interviewees, if the licensee (network) made such changes "in the exercise of its 'bona fide' news judgment and not for the political advantage of [any] candidate for public office."* The network would have had to announce previously this practice or follow a pattern of such occasional shifts with respect to the news interview show.

There are strong arguments in favor of this position. The program is clearly bona fide in that it is not designed to advance the candidacy of any person (indeed, significantly, *two* candidates have always been invited to appear on such programs); it is completely under the control of the licensee; and it is regularly scheduled -- that is, presented every week with the only variation being that on occasion, because of the licensee's judgment that there is a particularly newsworthy subject, it is broadcast in prime time, for an hour, and with more than one interviewee (all of which occurs also in nonelection periods). Since, as shown, the 1959 legislation has a broad remedial purpose of facilitating broadcast journalism to do its job of informing the electorate, surely the fact that a program such as "Meet the Press" is presented on occasion in prime time, when it can reach a larger audience, does not run counter to the legislative history or purpose, but rather further promotes that purpose.

The matter could take on increased importance if efforts to repeal, suspend, or revise the "equal opportunities" provision, at least for the offices of President and Vice President, continue to fail. For the FCC's *Chisholm* approach would mean that during the presidential elections the networks could be an effective national forum for presentation

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*House Report No. 1069, *supra*, at p. 4. Of course, the interview format should also remain essentially the same.

of the major candidates, either jointly or back-to-back in a weekly *evening* series dealing with the important issues of the campaign. Further, this method of proceeding would be equally applicable to state or local campaigns and to individual stations' news interview programs.

CONCLUSION

As stated, the Aspen Program's purpose is to assist in making 1976 -- the Bicentennial year -- a model campaign year from the standpoint of full, effective broadcast coverage. No single act will accomplish this; rather, a series of actions are called for. Thus, the Aspen Program fully supports -- along with the Commission --* the effort to repeal the equal opportunities requirement for President and Vice-President, to limit ". . . to major party candidates the applicability of the equal time provision in partisan general election campaigns"**, or to add a further ". . . exemption to Section 315(a) to cover any joint or back-to-back appearances of candidates. . .".***

We thus recognize that Congressional action in this field can obviate the need for administrative relief. But such action is by no means assured, and may be limited, for example, to the Presidential and Vice-Presidential area. It follows that the Commission should act promptly to give Section 315(a) its proper remedial construction in the two respects discussed, either in the context of Docket No. 19260 or by issuance of a new policy statement or declaratory ruling.

Even when the Commission does act along the above lines, many broadcasters may not take advantage of the opportunity thus afforded. The Commission in the past has noted that some broadcasters have used the equal time requirement of Section 315 as a shield, to avoid full effective public service in covering important political campaigns.† As a part of

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*First Report, 39 Fed. Reg. at pp. 26388-89.

**_Id._ at p. 26388.

***_Id._ at p. 26389.

†See, e.g., Statement of Chairman Burch, on H.R. 13721, before House Subcommittee on Communications and Power, 91st Cong., 2d Sess., June 2, 1970,

its action, the Commission should therefore urge all broadcasters to react generously to this opportunity for public service -- and not to rely solely upon the efforts of the national networks. Only in this way will broadcasting make its full and unique contribution to an informed electorate -- so vital to the proper functioning of our democracy in this, our Bicentennial election.

Respectfully submitted,

Douglass Cater, Director
Aspen Institute Program on
Communications and Society

April 22, 1975
Palo Alto, California

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p. 4; Hearings on S. 251, before the Senate Subcommittee on Communications, 88th Cong., 1st Sess., pp. 70-73, 78-81. The FCC there submitted an analysis to determine whether stations gave more time in races where there were two candidates than in races where there were more than two candidates. The Commission divided 36 states in which there were senatorial candidates into two groups: 28 states where there were two candidates and 8 states in which there were more than two candidates in the general elections. Its analysis showed first that only a minority of the stations gave sustaining time to senatorial candidates. Second, it found no significant differences in station participation in the senatorial races as between the two groups of states. In the 28 states with two senatorial candidates per race, 23% of the TV stations reported free time for senatorial candidates, and 9% of the AM stations. The comparable ratios for the 8 states were 26% of the TV stations and 14% of the AM stations.

Study and experience in California show that there was a decided trend in the 1974 California gubernatorial election for broadcasters to downplay political election coverage. It appears that this pattern stems, at least in part, from the advice of commercial consultants interested in developing "profitable" news programming.

THE WHITE HOUSE
WASHINGTON

From: Robert T. Hartmann RTH by Neta M.

To: Philip W. Buchen

Date: August 26, 1975 Time a.m. p.m.

For your information.

Los Angeles Times SYNDICATE Times Mirror Square / Los Angeles, California 90053 / Telephone (213) 625-2345

August 15, 1975

ROSCOE DRUMMOND COLUMN

SPECIAL NOTE TO EDITORS:

Roscoe Drummond will be on vacation for one week. As a replacement column, we will be sending you our bright, young new star on the Washington scene, RON HENDREN. We've enclosed some background.

The ROSCOE DRUMMOND COLUMN will resume with the release for Friday, August 29.

LOS ANGELES TIMES SYNDICATE

IN WASHINGTON by Ron Hendren

FOR IMMEDIATE RELEASE (Distributed 8/15/75)

CBS CHALLENGES EQUAL TIME LAW

by Ron Hendren

WASHINGTON--The Columbia Broadcasting System has filed a little-noticed request with the Federal Communications Commission that could spell disaster for the Democrats in their drive to unseat Gerald Ford next year, and could prove equally devastating to third-party and Republican challengers for the presidential nomination.

Early last month CBS quietly asked the FCC to rule that presidential press conferences are exempt from the equal time provision of the federal Communications Act which regulates the broadcast industry.

A ruling in favor of CBS would mean that President Ford could hold as many press conferences as he likes throughout the remaining 14 months of the campaign, and the networks would be free to broadcast them live with no obligation to provide equal time to his opponents, Democratic, Republican or third party.

(MORE)

Informed sources at the FCC said that a decision on the CBS request is expected in early September, and that there is an even chance the commission will rule in CBS' favor.

The Democratic National Committee has informed the FCC that it will oppose the request. "To void the equal time principle would severely hurt our chances for success in the presidential election," according to committee spokesman, attorney Robert N. Smith.

Informed of the Democrats' intentions, Richard Salant, president of CBS News, told this reporter, "Why didn't they think of that when a Democrat was in?" He was referring to a similar request made by CBS in 1964 when incumbent President Lyndon B. Johnson was running for election.

The FCC, composed at that time of a majority of Democratic appointees, did in fact oppose the request which would have been favorable to Johnson, and denied the CBS petition on the grounds that all bona fide candidates should have equal opportunity to obtain air time.

Salant said that another ruling against CBS might mean that the network would not be able to broadcast presidential news conferences live for the duration of the campaign.

(Paragraph continues)

"We'd have to take a very hard look at it," he said. "It would be tough for us to go ahead."

Salant pointed out that the equal time provisions, as they are now interpreted, force the networks to give time to any legal candidate who requests it, and who has met the minimum requirements of announcing, and of entering a primary or soliciting financial support. This includes even candidates who clearly have no realistic chance: as one broadcaster put it, "The guy who's walking down the street one day and suddenly decides he wants to run for President qualifies for equal time."

However, the FCC has attempted to ameliorate this problem by its June 10 ruling which tightens considerably its interpretation of what it means to be a presidential candidate. Experts in FCC law told me that as a result of this ruling Salant's argument no longer holds. One attorney characterized the CBS position as "a shallow threat to black out presidential news conferences, nothing short of a blackmail attempt."

LOS ANGELES TIMES SYNDICATE/Times Mirror Square,

Los Angeles, Calif. 90053

THE WHITE HOUSE

WASHINGTON

August 26, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP BUCHEN P.W.B

SUBJECT: Status of Equal Time Provisions of Communications Act as they Affect Coverage of your Press Conferences or Speeches

Pending before the Federal Communications Commission since July 16 has been a request by CBS for an FCC rule that Presidential press conferences are exempt from the "equal opportunities" provisions of Section 315 of the Communications Act of 1934 as amended. There is also pending an earlier petitition by the Aspen Institute of Communications concerning joint appearances by political candidates.

I have been informed that the FCC is scheduled to dispose of the CBS petition in September.

In the meantime, as a result of the PBS national showing of the Agronsky-Duke interview with you, a John Gordon of Massachusetts has written PBS (with copy to the Commission) for equal time on its network. Gordon claims he is a bona fide candidate to be nominated by the Republican convention as President. The provisions of Section 315 as last amended by Congress in 1959 afford equal opportunities for each "legally qualified candidate" for a particular public office but exempts appearances on any of the following:

1. Bona fide newscast
2. Bona fide news interview
3. Bona fide news documentary
4. On-the-spot coverage of bona fide news events

I doubt that Gordon is a legally qualified candidate within the meaning of the law and I would think that the PBS interview show represented a bona fide news interview on the occasion of your completing one year in the office of the Presidency.

I am informally advised by Bob Hynes of NBC that his network is uncertain as to whether they would cover either a press conference by you or a speech until such time as there is clarification from the Commission which would clearly excuse the stations involved from offering equal opportunities to others if they carried your press conference or speech. One added factor in their concern is that anyone who qualifies as a candidate within seven days of the original broadcast can demand equal time, and the possibility of a declared candidacy by Ronald Reagan provides a somewhat more serious threat than that provided by John Gordon.

I am optimistic that we will get a favorable ruling from the FCC on the CBS petition, and I will do what I can to expedite the consideration of that petition. I will also see what more can be done in regard to speeches as distinguished from press conferences.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 27, 1975

MEMORANDUM FOR: PHIL BUCHEN

FROM: DON RUMSFELD

Thanks for the memo to the President on Status of Equal Time provisions. The President saw it and appreciated it.

Tuesday 9/2/75

11:50 Abbott Washburn said you had called him about the press conferences matter and when they would be taking action. He said it now appears that they definitely will do it this month and he hopes to pinpoint that for you by the end of this week. The staff is working at it and he thinks it should be around the 15th of September.

FCC

Friday 8/29/75

11:40 Bob Hynes asked me to give you this message -- 860-0268
is leaving his office shortly but will be at home the whole weekend if you need to talk with him.

The Democratic National Committee has formally told the Chairman of the FCC that they are going to file a formal pleading in opposition to the CBS request for reversal of the current FCC rule. That reversal would exempt from the restrictions of the Communications Act news conferences. Because of what the DNC is doing, there is no reasonable hope for a quick resolution of the problem by the FCC and it may be necessary to hold a formal hearing before the Commission can go forward.

It is my personal opinion that this is strictly a political ploy by the DNC to stop the Commission from changing its rules.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

September 2, 1975

MEMORANDUM FOR: PHIL BUCHEN

FROM: DON RUMSFELD

Phil, it is my understanding that the FCC is going to give an advisory ruling to CBS on Section 315 this week. Is that correct?

THE WHITE HOUSE

WASHINGTON

FCC

September 9, 1975

MEMORANDUM FOR: DON RUMSFELD

FROM: PHILIP BUCHEN P.W.B.

Assurances have come to me that the FCC will rule on September 17 on the CBS petition under Section 315 of the Communications Act.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

September 2, 1975

MEMORANDUM FOR: PHIL BUCHEN

FROM: DON RUMSFELD

Phil, it is my understanding that the FCC is going to give an advisory ruling to CBS on Section 315 this week. Is that correct?

Don:
Latest word I got on 9/2 is that FCC staff is working on matter and that FCC will act "around Sept. 15."

P.

THE WHITE HOUSE

WASHINGTON

September 16, 1975

MEMORANDUM FOR: DON RUMSFELD

FROM: PHIL BUCHEN P.W.B

Attached is a copy of the Democratic National Committee's letter to the Federal Communications Commission concerning the CBS request to exempt Presidential news conferences from Section 315.

This is the matter in which the Commission is scheduled to take up tomorrow.

Attachment

FCC

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

September 9, 1975

Honorable Philip W. Buchen
Counsel to the President
The White House
Washington, D.C. 20500

Dear Phil:

Attached is a copy of the DNC letter of September 2.

Per the attached schedule, the Commission will take up the matter on Wednesday, September 17.

Yours,

Abbott Washburn
Commissioner

Enclosures

DEMOCRATIC
NATIONAL COMMITTEE 1625 Massachusetts Ave., N.W. Washington, D.C. 20036 (202) 797-5900

Rec'd - FYI

September 2, 1975

Federal Communications Commission
Complaints and Compliance Division
1919 M Street, N.W.
Washington, D.C. 20554

Gentlemen:

President Ford, on July 8, 1975, formally announced his intention to seek the Republican nomination for the office of President of the United States. Mr. Ford's public announcement coupled with his recent campaign activities have made Mr. Ford a legally qualified candidate for the nomination of his party to the office of the President within the meaning of Section 315.[1]

As a result of Mr. Ford's announcement, the Columbia Broadcasting System (hereinafter CBS), on July 16, 1975, petitioned the Federal Communications Commission for a declaratory ruling requesting that

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[1]The FCC in a June 10, 1975 Public Notice reiterated the standards necessary for a person to be considered a legally qualified candidate for nomination by convention for the office of President of the United States. The Commission states the factors which must be present are:

(1) The individual in question has publicly announced his candidacy for the office of President of the United States;
(2) The individual is seeking the nomination of his political party for that office at the party's convention;
(3) There is no legal impediment to the individual's candidacy;
(4) The individual is a bona fide candidate, within the meaning of the Commission's Rules, as evidenced by such indicia as: (a) entry, by the individual, in any of the Presidential preferential primary elections, or (b) any other active solicitation of support, by the individual, for his candidacy.

the FCC reverse its 1964 ruling in Columbia Broadcasting Systems, 40 FCC 394 (1964)[2] and hold that "Presidential press conferences are exempt from the 'equal opportunities' provision of Section 315 and that broadcasters who in their bona fide news judgment carry Presidential press conferences will not incur 'equal opportunities obligations.'" CBS in its petition argues that if the 1964 FCC decision of Columbia Broadcasting Systems, is allowed to stand, it would be impractical for any of the networks to broadcast live coverage of any Presidential press conference for the next fifteen months. CBS states:

> Because we do not believe that broadcasts of Presidential press conferences are "uses" under Section 315 and because we do not believe that the public interest would be served by a 15-month blackout of live coverage of Presidential press conferences--an important means of communicating information to the American people--we urge the Commission to reexamine its 1964 ruling.

The Democratic National Committee, on July 18, 1975, requested an opportunity to submit comments in this matter. The Democratic National Committee is greatly concerned over the potential harmful impact of a ruling in favor of the CBS position. The Committee strongly believes that if the CBS position is adopted and Presidential press conferences are held to be exempt from the equal opportunities provision, that would in effect nullify the objectives of Section 315 and render it meaningless as it applies to Presidential elections. Further, the

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[2]The FCC held in Columbia Broadcasting Systems v. FCC, that Presidential news conferences did not constitute either a bona fide news interview or on-the-spot coverage of a bona fide news event within the meaning of Sections 315 (a)(2) and (4) and thus were not exempt from the equal opportunities provision of Section 315.

Democratic National Committee believes that irreparable damage could incur to its 1976 Democratic Party's Presidential nominee and all future presidential candidates who oppose incumbent Presidents if the CBS position is adopted. Because of this potentially dangerous situation and because the Democratic National Committee does not believe the CBS position can be supported in law, the Committee submits the following comments in opposition to CBS' request and urges the FCC to reject their petition.

The CBS petition, in summary, urges the FCC to reexamine its 1964 decision in light of the fact that new federal campaign laws have recently been passed; the fact that numerous recent decisions have stressed the importance and unique status of Presidential communications with the public; and that the closeness of the 1964 decision demonstrates the lack of consensus with the holding. CBS requests the FCC to hold that Presidential press conferences be considered a "bona fide news interview" and "on-the-spot coverage of a bona fide news event" within the meaning of Section 315 (a)(2) and (4).

CBS initially argues in its petition that the 1964 Commission ruling in Columbia Broadcasting System should now be reexamined on the basis that new federal laws now exist which provide significant impetus for candidates to declare their candidacy earlier than has heretofore been the case. CBS specifically points to the 1974 amendments to the Federal Election Campaign Act of 1971 as encouraging potential candidates to declare as early as possible in order to take advantage of matching public funds. CBS notes that the 1964 decision was

rendered 34 days before the election and the "cut-off coverage of press conferences" was for a significantly shorter period than would now be the case if the Commission should rule against CBS. Thus, CBS in its petition suggests that the Commission should now reach a different conclusion from the one it reached 11 years ago because there were only 34 days left in the campaign in 1964 when its holding was announced, versus a 15-month period now before it in which the networks would be "precluded" from carrying a live broadcast of Mr. Ford's news conference.

The CBS position on the above point cannot be supported in law. The fact that the holding was rendered 34 days prior to the Presidential election had no effect on the resolution of the issues in the 1964 decision. Nor is there any suggestion in the 1964 case that the point in time when an incumbent President becomes "legally qualified for public office" within the meaning of Section 315 should be a consideration in determining whether Presidential press conferences should be exempt under Section 315. Rather, the 1964 decision was based solely on the issue of whether a Presidential press conference fell within the "bona fide news interview" or "on-the-spot coverage of a news event" exemptions of Section 315. Furthermore, there is no evidence in the legislative history to demonstrate that Congress, in enacting the 1974 campaign finance laws, intended to change Sections 315's exemptions; the effect of the exemptions; or prior Agency interpretations of those exemptions. It should also be noted that the FCC did not limit its holding to just the 1964 Presidential race. The FCC meant for it to apply to all future Presidential elections no

matter when an incumbent President became a legally qualified candidate for public office.[3] Thus, any suggestion by CBS that the 1964 decision should be reexamined on the basis of new federal campaign laws or Mr. Ford's long candidacy period is without justification.

CBS, in its petition, states that unless the 1964 decision is reversed, networks will be precluded from broadcasting live Presidential press conferences for the next 15 months. But, CBS's position is a self-serving threat without merit. There is nothing in Section 315 which prevents a network from broadcasting any appearance by a candidate. Section 315 merely manifests Congressional intent that, if a broadcast appearance of a candidate constitutes a "use" within the meaning of the statute, then the public interest requires that his or her opponents are entitled, upon proper request, to equal opportunities. Further, Section 315 itself recognizes the need to provide for the dissemination of news by a broadcaster without incurring equal opportunities obligations. In fact, it was the purpose of the 1959 amendments (which created the four exemptions under Section 315), to provide enough leeway to broadcasters to disseminate the news without incurring equal time obligations. CBS is free to broadcast portions of the Presidential press conference on bona fide news shows or bona fide news documentaries without having to provide equal opportunities to opposing legally qualified candidates. The only thing that CBS cannot do is to allow its facilities to be used by a political candidate in a manner which would

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[3] It should be noted that the 1964 ruling was in effect for the entire 1972 Presidential campaign when the incumbent President was a candidate for the office of President.

deprive opposing candidates of equal opportunities.

CBS seems to suggest that the penalty of having to provide equal time to opposing candidates is so unthinkable that it would rather not broadcast an important Presidential press conference at all, and that this would be to the detriment of the public interest. If this is true, we think such an attitude is in derogation of CBS' public service responsibility. CBS' acceptance of its license is an acceptance of the FCC's Rules and Regulations. As a condition to receiving its license, it accepted Section 315 and all the responsibilities which attach to it. CBS should not be allowed to threaten the FCC by stating it will be precluded from broadcasting Presidential news conferences, no matter how important or vital a particular press conference might be to the public interest, if the FCC fails to overturn its 1964 ruling. CBS, it seems, needs to be reminded that the purpose of Section 315 is "to give the public the advantage of a full, complete, and exhaustive discussion, on a fair opportunity basis, to all legally qualified candidates and for the benefit of the public at large."[4] Thus, the threat of a blackout of Presidential press conferences over the next 15 months, if the 1964 ruling is not reversed, is not proscribed by law--but rather is a self-imposed blackout by CBS. CBS' argument on this point lies not with the Commission's interpretation of Section 315, but with the very purpose of the Act itself.

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[4]Statement of Senator Pastore on the Senate floor in discussing the Conference report on the 1959 amendment, 105 Congressional Record 16346, 86th Congress, 1st Session.

CBS also argues for reconsideration of the 1964 ruling on the basis that numerous recent decisions have stressed the importance and unique status of the Presidency and Presidential communications with the public. Specifically, CBS cites the FCC's First Report on Part V of the Fairness Doctrine, 36 FCC 2d 40 (1972) and the Democratic National Committee v. FCC 460 F. 2d 891 (1972) in support of its view that the courts' new recognition of the President's special role and his need to communicate to the public demands a reversal of the 1964 decision.

There is no question that the courts and the FCC in recent fairness doctrine cases have recognized the unique role of the President and his need to inform the public on important matters. However, at the same time, CBS fails to state that the courts and the FCC have recognized that this special status only applies to the President as long as he is not a candidate for office. While CBS attempts to rely on fairness doctrine cases to support its view that the President must be treated differently than other public officials, it is unable to cite any court or FCC decision which holds that because of the President's unique status and need to communicate to the public, that he should be treated differently from other candidates under the equal opportunities provision of Section 315. In fact, all the equal time and fairness cases are to the contrary. The FCC and the courts have always held that once a President becomes a legally qualified candidate for public office, he must be treated like all other candidates.

Democratic National Committee v. FCC (460 F. 2d at 905), cited by

CBS in support of its view, clearly reiterates the concept that once a President becomes a candidate, he loses his special status and must be treated like all other candidates. The court in that case stated:

> In matters which are non-political the President's status differs from that of other Americans and is of a superior nature. Of course, as a candidate, the President is subject to the same terms of 315 as apply to other candidates.

One final point should be made before consideration of CBS' two major arguments. CBS, in its petition, states that a reexamination of the 1964 ruling is "particularly appropriate in view of the fact that even in 1964, the Commission was split 4-3 on this important issue." The Democratic National Committee rejects the fact of the closeness of the decision should have some bearing on the reexamination of the merits of the holding. A 4-3 decision is not proper cause to reexamine a holding. A past decision should be reexamined in light of new facts, new laws or new interpretations of past laws and facts and not the closeness of the previous decision.

We have shown above that the reasons advanced by CBS to support a reexamination of the Commission's 1964 decision are without merit. But even if the decision were to be reexamined, CBS' suggested interpretation of Section 315 cannot be adopted.

CBS, in its petition, cites two reasons to effectively withdraw Presidential press conferences from the equal opportunities provisions of Section 315. The first reason is based on CBS' belief that live broadcasts of Presidential press conferences virtually per se

constitute "on-the-spot coverage of bona fide news events" within the meaning of Section 315(a)(4), and that broadcasters should be the ones to determine whether a press conference is a bona fide news event on a case by case basis, with the Commission left to determine only if the licensee was unreasonable. CBS urges that the alleged error in the 1964 decision is that it held press conferences non-exempt per se, within the meaning of Section 315(a)(4). In essence, CBS is urging that the Commission abandon the Commission's traditional test and replace it with a "discretionary" test. The difficulty with CBS' argument, however, is that it would effectively render live broadcasts of Presidential press conferences per se exempt and would place a tool in the hands of an incumbent President in a manner quite opposite to the spirit and purpose of Section 315.

CBS notes that the traditional test which has been used in determining if an event falls within the "on-the-spot coverage of a bona fide news event" exemption is whether the appearance of the candidate is designed to serve the political advantage of that candidate. Further, the FCC has historically held that the news event exemption must turn on whether the President's appearance at the press conference is incidental to the on-the-spot coverage of the news event and not for the purpose of advancing his candidacy.

But, it is hard to imagine any forum in which the President is so primary as a Presidential press conference. While the President is always an important figure wherever he goes, the Presidential press conference is a vehicle for the President to achieve primary and sole importance. The Presidential press conference is unlike a treaty signing where the President, although important, is secondary to the event, and is but one of the participants. The Presidential press conference is totally

is the central figure in a question and answer game. The President can control much of what happens at a press conference. The President can control the timing of the event. The President makes an opening statement which can direct the focus of many questions. The President is free to call on selected questioners and can expand a simple question into an oration on many related or unrelated points. The President can end the press conference when he chooses and can wait for a dramatic moment to exit in order to achieve maximum public opinion results. Thus, the President is center stage. He can use the event to serve his political advantage. While there is no question that he cannot control all of what happens at the press conference, there is no doubt that he can control many important elements of it. While there is no question that major news stories break at press conferences, there is also no doubt that the President is not incidental to the event, but the primary focus of the event. It is for this reason that the Commission correctly held that when a President is a candidate, his appearance must necessarily be so closely related to his candidacy that any appearance by him at a press conference should be per se a use under Section 315. There is no discretion in the licensee to decide otherwise. And, properly so, because to do otherwise would nullify the objectives of Section 315.

As noted above, the FCC has long used the "incidental to" test in determining whether a news event is bona fided and should fall within the Section 315(a)(4) exemption. However, recently this test has been challenged in a case now before the Commission. The brief in Aspen Institute Program on Communications and Society, filed on April 22, 1975 states that the "incidental to" test is invalid in determining whether a news event should be exempt from the equal opportunities provisions of Section 315, in that it was based on language contained in a House Report, accompanying a bill which was not enacted into law.

If the "incidental to" test is discarded, the FCC will be left with no rational test for determining the bona fide nature of a broadcast news event. The broadcaster would be free to broadcast any on-the-spot coverage of an event it feels is newsworthy and the FCC would be left to judge only whether the licensee was reasonable in its judgment. This would embroil the FCC in the type of political judgments it has refused to make. As the FCC stated in the First Report:

> "For obvious reasons already developed, we strongly decline to make evaluations whether a report by an official is 'partisan or political' and thus require rebuttal by a spokesman for the other party or the contending factor, or whatever. This would drag us into a wholly inadministratable quagmire."

The value of equal time versus the fairness doctrine is that equal time works with some mathematical precision while the fairness doctrine is open to much more interpretation. This fact has caused great problems in the resolution of fairness doctrine cases while Section 315 cases have been relatively easier to resolve.

If the "incidental to" test is struck down, the Commission would be dragged into the situation time and time again of having to evaluate if in fact the President was acting more as chief of state or as the political head of his party. This situation cannot be allowed to exist.

Further, if the "incidental to" test were abandoned, it would in fact nullify the objectives of Section 315. It would mean in effect, that the licensee in the exercise of his good faith news judgment could cover any appearance by a candidate without bringing into play the equal opportunities requirement.

As the FCC stated in 1962 and reiterated in 1964:

> "... if the sole test of the on-the-spot coverage exemption is simply whether or not the station's decision to cover the event and to put it on a broadcast program constitutes a bona fide news judgment, there would be no meaning to the other three exemptions in Section 315(a) since these, too, all involve a bona fide news judgment by the broadcaster. Carried out to its logical conclusion, this approach would also nullify the objectives of Section 315."

> "In any campaign for political office which attracts the interest of the electorate, the statement and actions of a candidate for that office could always be deemed 'on-the-spot coverage of bona fide news events.'

Therefore, the only remaining question to ask is whether there is some other standard which could be applied in determining whether an event should be considered a bona fide news event within Section 315 and still satisfy the objectives of Section 315. The National Committee is unable to think of a better test. You can change words and phrases, but the concept that the exemption should turn on whether the appearance is "incidental to" the event or the primary asset of the event and for the purpose of advancing the candidacy of a candidate is still the only test which makes sense. There is nothing in the legislative history which prevents the FCC from adopting such a test. Thus, we think that the FCC must continue to use the "incidental to" test in determining whether a Presidential press conference falls within the exemption of Section 315(a)(4). As argued above, we think that only one conclusion can result from this process, and that is that CBS' contention that Presidential press conferences should be exempt as bona fide news events must be rejected.

CBS also argues that Presidential press conferences should be exempted from Section 315 as a bona fide news event because they are, in fact, major sources of news stories about important domestic and international events. CBS in support of its contention states that President Ford in his eight Washington press conferences since taking office has discussed topics ranging from "U.S. involvement in the affairs of Vietnam, Cambodia, South Korea, and mid-east countries to the activities of the CIA at home and abroad." CBS also notes that the press conferences are of such major news value that the New York Times has had front page reports on all of the press conferences broadcast by CBS and in fact prints the text of each press conference in its entirety. Thus, CBS argues that because they are almost always a source of important news, they must be exempt or the networks are deprived of the opportunity of broadcasting a major news event.

The Democratic National Committee agrees with CBS that Presidential press conferences are an important source of obtaining news. The Committee believes that CBS has an obligation to cover the event and report the newsworthy facts disseminated by the President. In fact, earlier we noted the ways in which CBS could report on the information disseminated by a Presidential press conference without incurring equal opportunities obligations. We also strongly argued that CBS has a duty to broadcast crucial news conference live even though it might mean incurring equal opportunities obligations, when in CBS' opinion the public interest demands it.

But, it must be remembered that Section 315 was enacted, as we have

stated, to provide all legally qualified candidates with a fair opportunity for complete and full discussion of the issues, and to promote fair practices in the conduct of election campaigns for federal political offices. (See Federal Election Campaign Act of 1971, Conference Report, 92nd Congress, 1st Session, December 14, 1971, p. 21; see also footnote 4.) The Democratic National Committee believes this can only be accomplished by not in effect exempting the President from Section 315. The Committee believes that Section 315 does not inhibit the broadcast of news but rather guarantees the public that one candidate shall not so monopolize the airways so as to drown out the other candidates' views. All the National Committee requests is that in non-exempt broadcasts, its Presidential nominee be given an equal opportunity to respond to the Republican Presidential nominee when the Republican candidate's appearance on the broadcast program is determined to be a "use" under Section 315. To exempt Presidential press conferences from Section 315 solely because of the news value of such conferences would weaken Section 315 to the degree of rendering it meaningless as it applies to Presidential elections. The impact could be disastrous on all future Presidential elections which have an incumbent President running for reelection.

CBS states that the 1964 FCC decision in Columbia Broadcasting System can not be justified in light of the FCC holdings in Letter to the Republican National Committee, 40 FCC 408 (1964) and in Letter to Thomas R. Fadell, Esq. 40 FCC 380 (1963).

The FCC in the Letter to the Republican National Committee, held that a report by President Johnson on specific international events affecting

the country's security falls within the "bona fide news event" exemption of Section 315(a)(4). The report at issue in this case was the October 18, 1964 report to the people which discussed the Soviet Government's change in leadership, and Communist China's exploding of a nuclear device. It should be noted that the only other time an incumbent President running for reelection broadcast an extraordinary report to the people was in 1956 when President Eisenhower addressed the nation on the "Suez Crisis." The FCC held that equal opportunities did not apply because when Congress enacted Section 315, it did not intend "to grant equal time to all Presidential candidates when the President uses the air lanes in reporting to the nation on an international crisis."[5]

The National Committee believes the Columbia Broadcasting System case can be distinguished from the 1964 case involving President Johnson. A Presidential press conference is a means of disseminating the President's views on a variety of topics. The press conference has not been the format Presidents have chosen to use in order to address the nation on a national or international emergency crisis of immediate importance. Neither President Johnson's 1964 address, nor President Kennedy's 1962 Cuban missle address, nor President Nixon's 1970 Cambodian invasion address were done in news conference formats. They were speeches to the American public on crisis situations of urgent importance affecting the national welfare. These type of broadcasts can surely be distinguished from the press conference situation.

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[5]It should also be noted that in 1956 the four exemptions to Section 315 had not been enacted by Congress.

The National Committee believes that if such a national crisis of extraordinary importance were to occur during a Presidential campaign, the President's address to the public would again be exempted from Section 315 if in fact it were a "bona fide news event."[6] Thus, the National Committee believes that the Republican National Committee case and the CBS case handed down in 1964 can and should be distinguished.

The Thomas R. Faddell case can also be distinguished from the 1964 CBS case. The FCC in the Thomas R. Faddell case held that the appearance of a candidate on the broadcast of the Gary County Court proceedings was incidental to the on-the-spot coverage of a news event and was not for the purpose of advancing the individual's candidacy. As we previously stated, we believe the "incidental to" test is a rationale test for determining whether an event should be considered a bona fide news event within Section 315 (a) (4). We have also stated that the President is not incidental to a Presidential press conference but is the primary focus of it. Thus, we believe the Faddell case and the CBS case can be distinguished. We find the CBS statement which asks if the present FCC Commission is not prepared to state that the broadcast of traffic court proceedings should be exempted as "on-the-spot coverage of a news event" while denying exemptions to Presidential press conferences covering important national and international matters, is an attempt to confuse the real issue. As we have stated before, the courts and the FCC treat all candidates the same. Neither the courts nor

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6 See Commissioner Ford's statement on S. 1585, S. 1604, S. 1858 and S. 1929 hearings before the Communications Subcommittee of the Senate Committee on Interstate and Foreign Commerce, 86th Congress, 1st Session, p. 298.

the FCC have recognized special treatment under Section 315 for the incumbent Presidential candidate, CBS keeps forgetting this fact. The real issue is not the news value of each event but whether a President is incidental to the press conference as the judge was incidental to the court proceedings. Thus, CBS' argument that the Faddell case and the 1964 CBS case can not be distinguished must be rejected.

CBS second reason for exempting Presidential press conferences from equal time opportunities is based on its belief that they are "news interviews" within the meaning of Section 315 (a) (4). CBS states that press conferences are in essence the interrogation of the President by various representatives of the broadcast media and Congress' major concern in limiting this exemption was focused on possible misuse by local broadcasters; that Presidential news conferences are held on a periodic basis and that the word "regular" as used in Section 315 should be broadly interpreted to include recurrent Presidential news conferences; and that the crux of the press conference is not under the control of the candidate but rather is in the control of reporters who ask the questions.

CBS argues that the Commission in reexamining the applicability of the "bona fide news interview" exemption to Presidential press conferences should note that Congress' principal concern in passing the exemption was focused on "possible attempts by local broadcasters to further the candidacy of local candidates."

Again, CBS has speculated upon an interpretation without being able to support its views with any FCC holding, court interpretations or any legislative statement specifically stating that news interviews were not meant to apply to Presidential press conferences. CBS has taken statements and interpreted them to meet their ends without any real basis in law. While it might be true that a major concern was the possible abuse of local broadcasters in using the news interview exemption, that in no way supports an argument that the legislation was not meant to apply to other situations. The National Committee notes that Congress did not limit the exemption to local situations. In fact, Congress, the courts and the FCC have gone to great lengths to reiterate the idea that federal candidates as well as local candidates are to be treated equally under Section 315. The National Committee believes that if Congress wanted the news interview exemption only to apply to local situations, it would have said just that in the legislation. Rather, Congress wrote the legislation to apply to all elections from the local elections to the Presidential elections. Further, Congress has had many opportunities after the 1964 FCC decision in the CBS case to rectify a misinterpretation of its intent in passing the bona fide news interview exemption. However, Congress has failed to do so and has left the 1964 decision stand. Therefore, CBS' argument that the news interview exemption was meant to apply primarily to local broadcasters and local candidates and thus should not be applied to Presidential elections must be rejected.

CBS notes that the criteria that has traditionally been used by the FCC to judge whether a "news interview" should be exempted under Section 315 (a) (2) is whether that interview is regularly scheduled and whether

the content and format of the press conference is under the exclusive control of the network or station. With regard to the issue of whether a "news interview" is regularly scheduled, CBS argues that the FCC has been too strict and mechanical in its definition of the work "regular." CBS states that the word regular has a wide variety of meanings and that it seems most reasonable to construe it to mean "recurrent in the normal and usual course of events, rather than recurrent at fixed and uniform time intervals." CBS notes that Presidential press conferences have been held many times over the years and are in fact regular in the broad sense of the word.

The National Committee again notes that the value of Section 315 has been the relatively automatic and mechanical way the doctrine operates. The FCC has historically viewed the word regular to mean recurrent at fixed intervals. To do otherwise would lead the Commission into an administratively undesirable quagmire. Once the word "regular" is left open to interpretation, the result could make a farce out of a determination as to what is a regularly scheduled news interview. One broadcaster would argue that an interview with a candidate every two years should fall within the exemption. Another broadcaster would argue that five sporadic interviews taking place sometime within the last four months of an election is also a regularly scheduled interview. That would destroy the precision of the news interview exemption.

Section 315 interpretations should be as narrow as possible to avoid misuse of its exemptions. Further, it is clear that Presidential press conferences are called on the whim of the President. They are planned to be timed to his schedule in order to maximize his political ends. Further, there is no legislative history which CBS can cite to support its view that "regular" should be interpreted to mean recurrent in the normal course of events. As the FCC stated in the 1964 CBS decisions:

> "It is no answer, we think, to state that such conferences are called at some time, even if not at definite intervals. So also are press conferences called at some time by all major candidates for important office during political campaigns; yet there is not the slighest reference or implication in the lengthy Congressional consideration of the subject that such press conferences were to be considered "regularly scheduled news interviews" within the scope of 315 (a) (2). Congress clearly knew how to exempt as a news interview such an important and significant aspect of a political campaign -- the candidate's press conference -- had it intended to do so."

Thus, the National Committee urges the FCC to reject any argument which claims that Presidential press conferences are "regularly scheduled" within the meaning of Section 315 (a) (2).

CBS in conclusion states that Presidential press conferences are basically out of the hands of the President and that the crux of the conferences is the question and answer period which is controlled by the reporters. Therefore CBS argues that because the content and format are in the broad sense of the term under the control of the network or station, Presidential press conferences should be exempt from Section 315. As we previously stated, the National Committee believes that many of the significant factors associated with Presidential press conferences are under the control of the President. We noted that the timing of the event, the opening statements, the choice of reporters to ask the questions, the length and the timing of the conclusion are

all under the control of the President. As the FCC stated in the 1964 CBS case:

> "In any event, there is no doubt but that a press conference of the nature here involved can not qualify for exemption in view of the second requirement -- that the content, format, and participants thereof be under the control of the licensee. Here not only the scheduling, but in significant part, the content and format of the press conference is not under the control of the network. Thus, the candidate determines what portion of the conference is to be devoted to announcements and when the conference is to be thrown open to questions."

Again, there is a reason for a strict interpretation of the "control" requirement. If a candidate can manipulate significant elements of an exempt program, the purposes of that exemption would be meaningless. The reasons for the control of format and content by the station or network is to insure that the program does not become the tool of a candidate to use against another candidate. Thus, the FCC and the courts have strictly interpreted this provision.

Therefore, the Democratic National Committee believes that all of CBS' arguments in support of its contention that Presidential press conferences should be considered news interviews within the meaning of Section 315 (a) (2) can not be supported in law and must be rejected by the FCC.

In conclusion, the Democratic National Committee would like to stress four points the FCC should take into consideration when reviewing the CBS brief.

First, CBS in its petition seems to be asking the FCC to inject the flexibility of the fairness doctrine into the equal opportunities provision of Section 315. CBS continually calls on the FCC to allow licensees the discretion of determining on a case by case basis whether a Presidential news conference should be exempt from Section 315 and asks that the FCC limit its role to the determination as to whether a licensee was reasonable in its decision. The National Committee believes that if 315 is to continue to work effectively, it must continue to work with the automatic and mathematical precision it has exhibited in the past. If the equal opportunities providion of 315 were subject to wide interpretation, it would nullify the objectives for which it was passed.

It is important to remember when dealing with equal opportunities that we are not in the fairness doctrine area where the Commission is forced to balance the public's right to be informed with the preservation of licensee discretion. Rather, the purpose of equal time is to vest a particular right in a candidate in order to ensure that that candidate receives an equal opportunity of access to the air waves, in order to discuss campaign issues. We must remember, Section 315 rights are particular to a candidate and should not be left up to the whim of a station or network based upon its own interpretation of what is newsworthy. CBS in its brief tries to confuse the purpose of the equal opportunities provision of Section 315 by inserting the discretion given the licensee under the fairness doctrine. The FCC must reject all CBS' attempts to do that.

Second, the impact of a ruling favorable to CBS would severely damage the chances of any future Presidential candidate's bid to unseat an incumbent President running for reelection and would nullify the purposes of Section 315 as they apply to Presidential elections. It is clear that the party out of power has a very difficult task waging a battle against an incumbent President with all the built-in advantages of that office, and that to further weaken the status of the non-incumbent candidate by weakening Section 315 would even further diminish a challenger's chance of waging a fair battle. As previously noted, Section 315 was enacted to ensure a fair opportunity for the discussion of important issues between competing candidates for the same office. It is our belief that if an incumbent President is able to go on a televised press conference in July, August, September and October before the Presidential election without having to provide the opposing candidate with equal time, the effect could result in an important change of public opinion based solely on the identifiable image of the candidate on prime time television. If it is a close election this prime time coverage could be disastrous--in fact, could be the vital difference between victory and defeat. Thus, the equal time exemptions should be construed narrowly by the FCC, and the FCC should do all in its power to prevent interpretations of Section 315 which would in fact nullify the purposes for which it was passed.

Thirdly, the CBS brief bases much of its argument on the fact that the President is a newsworthy person and so unique in his status that there is a justification for broadly interpreting the Section 315 exemptions as it applies to Presidential news conferences. We think this argument

is best answered by Justice Wright in the majority opinion of CBS vs FCC:

> "Moreover, there is an inherent newsworthiness in anything the President says. In addition to his huge direct audiences, in most cases over all nationwide commercial television and radio networks simultaneously, all of what he says is later reported somewhere and something of what he says is reported almost everywhere. In the case of the incumbent administration, [President Nixon] these built-in advantages of the Presidency in forging public opinion have been used to an unprecedented degree. . . The President's extensive use of the media cannot, of course, be faulted, for there can be no doubt that in the distillation of an informed public opinion, such appearances play a very basic role. But if the words and views of the President become a monolithic force, if they constitute not just the most powerful voice in the land but the only voice, then the delicate mechanism through which an enlightened public opinion is distilled, far from being strengthened, is thrown dangerously off balance. Public opinion becomes not informed and enlightened, but instructed and dominated."

Thus, while we agree with CBS that the President is newsworthy, we believe that we should not interpret Section 315 exemptions to the degree which would help make the incumbent President a monolithic force in a Presidential campaign.

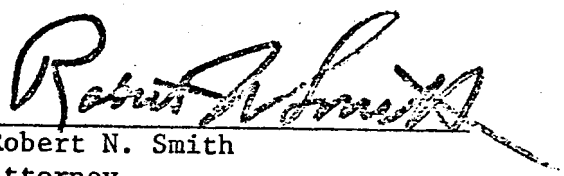
Finally, it is clear that CBS finds Section 315 an impediment to its news discretion and an infringement on its First Amendment rights. However, nowhere in court decisions, FCC decisions or Congressional history, could CBS find solid support for its views. (See Farmer's Union vs. WDAY, Inc. 360 v.s. 525 (1959) and Red Lion Broadcasting Co. vs. FCC, 895 G. 1794 (1969)). Section 315 has constitutionally been upheld by the Supreme Court as a proper exercise of Congressional authority not violative of the First Amendment. CBS' attempts in this case to weaken Section 315--in fact tries to nullify its objectives

through a misreading of current law and a misinterpretation of past court and FCC decisions and Congressional history. CBS' real remedy is in Congress not the FCC. The FCC has long held on to the traditions of Section 315. If CBS wants Presidential press conferences exempted from Section 315--it should go to Congress and request that change.

Therefore, for the above reasons cited in this brief, we believe CBS's request for a declarory ruling holding that Presidential press conferences must be exempted from the equal opportunities provision of Section 315, must be denied by the Commission.

Respectfully submitted,

DEMOCRATIC NATIONAL COMMITTEE

by 
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