The original documents are located in Box 14, folder "Federal Communications Commission - Equal Time Provisions (1)" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

Equal Time

one aspect of it. Federal Communications Commission v. R. C. A. Communications, D.C.1953, 73 S.Ct. 998, 346 U.S. 86, 97 L.Ed. 1470.

Where there was only one direct public radio telegraph service between United States and Norway, the Commission did not commit an error of law in failing to interpret "public convenience, interest or necessity" as necessarily requiring the licensing of a competing direct radio telegraph service between United States and Norway. Mackay Radio & Telegraph Co. v. Federal Communications Commission, 1938, 97 F.2d 641, 68 App. D.C. 336.

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§ 315. Candidates for public office; facilities; rules

(a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: *Provided*, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is imposed upon any licensee to allow the use of its station by any such candidate. Appearance by a legally qualified candidate on any—

(1) bona fide newscast,

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shall not be deemed to be use of a broadcasting station within the meaning of this subsection. Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this chapter to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

(b) The charges made for the use of any broadcasting station for any of the purposes set forth in this section shall not exceed the charges made for comparable use of such station for other purposes.

(c) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section. June 19, 1934, c. 652,

8. Cease and desist orders

Order of Commission restricting expansion of service of community antenna television systems in areas in which they had not operated on February 15, 1966, pending hearings to be conducted on merits of complaints of licensee of television station was not a "cease-and-desist order" within meaning of provision of this chapter that "cease-and-desist orders" by Commission are proper only after hearing or waiver of right to hearing. U. S. v. Southwestern Cable Co., Cal.1968, 88 S.Ct. 1994, 392 U.S. 157, 20 L.Ed.2d 1001.

Legislative history of provision of this chapter empowering Federal Commission to issue cease-and-desist orders does not deprive Commission of its authority, granted elsewhere in this chapter to issue orders necessary in the execution of its functions. Id.

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Broadcast media rates

(b) The charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election, to such office shall not exceed—

(1) during the forty-five days preceding the date of a primary or primary runoff election and during the sixty days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period; and

(2) at any other time, the charges made for comparable use of such station by other users thereof.

Station use charges upon certification of nonviolation of Federal limitations of expenditures for use of communications media

(c) No station licensee may make any charge for the use of such station by or on behalf of any legally qualified candidate for Federal elective office (or for nomination to such office) unless such candidate (or a person specifically authorized by such candidate in writing to do so) certifies to such licensee in writing that the payment of such charge will

not violate any limitation specified in paragraph (1), (2), or (3) of section 803(a) of this title, whichever paragraph is applicable.

Station use charges upon certification of nonviolation of State limitations of expenditures for use of communications media; conditions for application of State limitations

(d) If a State by law and expressly—

(1) has provided that a primary or other election for any office of such State or of a political subdivision thereof is subject to this subsection,

(2) has specified a limitation upon total expenditures for the use of broadcasting stations on behalf of the candidacy of each legally qualified candidate in such election,

(3) has provided in any such law an unequivocal expression of intent to be bound by the provisions of this subsection, and

(4) has stipulated that the amount of such limitation shall not exceed the amount which would be determined for such election under section 803(a) (1) (B) or (a) (2) (B) of this title (whichever is applicable) had such election been an election for a Federal elective office or nomination thereto;

then no station licensee may make any charge for the use of such station by or on behalf of any legally qualified candidate in such election unless such candidate (or a person specifically authorized by such candidate in writing to do so) certifies to such licensee in writing that the payment of such charge will not violate such State limitation.

Penalties for violations; provisions of sections 501 through 503 of this title inapplicable

(e) Whoever willfully and knowingly violates the provisions of subsection (c) or (d) of this section shall be punished by a fine not to exceed $5,000 or imprisonment for a period not to exceed five years, or both. The provisions of sections 501 through 503 of this title shall not apply to violations of either such subsection.

Definitions

(f) (1) For the purposes of this section:

(A) The term "broadcasting station" includes a community antenna television system.

(B) The terms "licensee" and "station licensee" when used with respect to a community antenna television system, means the operator of such system.

(C) The term "Federal elective office" means the office of President of the United States, or of Senator or Representative in, or Resident Commissioner or Delegate to, the Congress of the United States.

(2) For purposes of subsections (c) and (d) of this section, the term "legally qualified candidate" means any person who (A) meets the qualifications prescribed by the applicable laws to hold the office for which he is a candidate and (B) is eligible under applicable State law to be voted for by the electorate directly or by means of delegates or electors.

Rules and regulations

(g) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.

As amended Feb. 7, 1972, Pub.L. 92–225, Title I, §§ 103(a) (1), (2) (B), 104(c), 86 Stat. 4, 7.

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UNITED STATES CODE ANNOTATED

Title 47

Telegraphs, Telephones, and Radiotelegraphs

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See Q & A VII A 13, PAGE 13061

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PART II

FEDERAL COMMUNICATIONS COMMISSION

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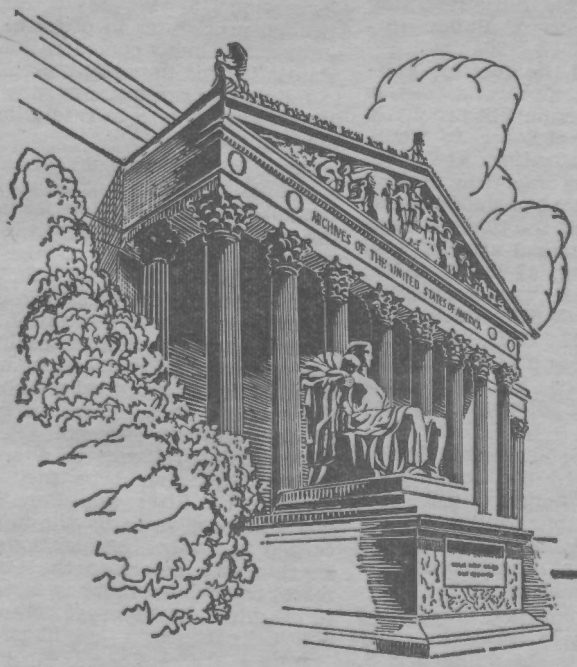
Use of Broadcast Facilities by Candidates for Public Office



[Public Notice of August 7, 1970]

FEDERAL COMMUNICATIONS COMMISSION

[FCC 70-871]

USE OF BROADCAST FACILITIES BY CANDIDATES FOR PUBLIC OFFICE

APRIL 27, 1966.

This Public Notice is a compilation of the Commission's interpretive rulings under section 315 of the Communications Act of 1934, as amended, and the Commission's rules implementing that section of the Act and brings up-to-date and supersedes all prior Public Notices issued by the Commission entitled "Use of Broadcast Facilities by Candidates for Public Office." The Commission has reviewed its Public Notice of April 27, 1966, 3 F.C.C. 2d 463 2d (1966), which contained section 315, as amended, the Commission's rules, additional rulings, and recommended complaint procedures. Significant rulings made subsequent to the 1966 Public Notice have been added, and editorial and other revisions have been made with respect to some of the interpretations previously published. Where appropriate, cumulative rulings have been cited.

In preparing this revision of the section 15 Primer, an attempt has been made not only to give a concise statement of prevailing law and policy in this area but to provide the user with the citations necessary to reconstruct the evolution and/or modification of particular 315 questions. For this reason, prior interpretations of particular questions have been cross-referenced and appear in the relevant sections. We stress that we have included these cross-referenced cases as a research aid rather than as an implication that action should be taken in reliance thereon. Included herein are the determinations of the Commission with respect to problems which have been presented to it and which appear likely [1] to be involved in future campaigns. While the information contained herein does not purport to be a discussion of every problem that may arise in the political broadcast field, experience has shown that these documents have been of assistance to candidates and broadcasters in understanding their rights and obligations under section 315.

In its first report and order in Docket No. 18397 (20 F.C.C. 2d 201 (1969)) the Commission adopted rules, essentially the same as those applicable to broadcast licensees, making the provisions of section 315 applicable to programs originated on Community Antenna Television (CATV) Systems (§ 74.1101 of the Commission's rules). All rulings, interpretations and complaint procedures contained herein are thus fully applicable to political programs originated by CATV Systems, and references to "stations" and "licensees" throughout this primer include "CATV systems" and "CATV operators."

The purpose of this notice is to apprise licensees, candidates, and other interested persons of their respective responsibilities and rights under section 315, and the Commission's rules, when situations similar to those discussed herein are encountered. In this way, resort to the Commission may be obviated in many instances and time—which is of great importance in political campaigns—will be saved. We do not mean to preclude inquiry to the Commission when there is a genuine doubt as to licensee obligations and responsibilities to the public interest under section 315. Procedures for filing complaints are set out below. But it is believed that the following document will, in many instances, remove the need for inquiries, and that licensees will be able to take the necessary prompt action in accordance with the interpretations and positions set forth below.

This discussion relates solely to obligations of broadcast licensees towards candidates for public office under section 315 of the Act. It is not intended to include the question of the treatment by broadcast licensees of political or other controversial programs not governed by the "equal opportunities" provisions of that section. As to the responsibilities of broadcast licensees with respect to controversial issues of public importance included in political broadcasts, licensees are referred to the Commission's "fairness doctrine," and the current Public Notice entitled "Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance." (40 F.C.C. 598 (1964).)

We have continued the question-and-answer format as an appropriate means of delineating the section 315 problems. Wherever possible, reference to Commission's decisions or rulings are made so that the researcher may, if he desires, review the complete text of the Commission's ruling. (See also the Commission's rules relating to "personal attacks" and political editorializing, §§ 73.123 (AM), 73.300 (FM), 73.598 (noncommercial educational FM), 73.679 (TV) and 74.1115 (CATV), 47 CFR, §§ 73.123, 73.300, 73.598, 73.679, and 74.1115 (1970). Citations are to the F.C.C. Reports (F.C.C.) and F.C.C. Reports, Second Series (F.C.C. 2d).) [2]

This Public Notice summarizes significant rulings issued by the Commission including those promulgated since the date of the 1966 Public Notice. In the interval, the Commission has reemphasized the importance of licensee presentation of political broadcasting.

In short, the presentation of political broadcasting, while only one of the many elements of service to the public * * *, is an important facet, deserving the licensee's closest attention, because of the contribution broadcasting can thus make to an informed electorate—in turn so vital to the proper functioning of our Republic, In re Licensee Responsibility as to Political Broadcasts, 15 F.C.C. 2d 94 (1968).

The Supreme Court had previously stated:

> Instead the thrust of section 315 is to facilitate political debate over radio and television. Recognizing this, the Communications Commission considers the carrying of political broadcasts a public service criterion to be considered both in licensee renewal proceeding, and in comparative contests for a radio or television construction permit [footnote omitted]. Certainly Congress knew the obvious—that if a licensee could protect himself from liability in no other way but by refusing to broadcast candidates' speeches, the necessary effect would be to hamper the congressional plan to develop broadcasting as a political outlet, rather than to foster it. [footnote omitted] Farmers Educational and Cooperative Union of America, North Dakota Division v. WDAY, Inc., 360 U.S. 525 (1959). (See Red Lion Broadcasting Co., Inc. v. Federal Communications Commission, 395 U.S. 367, 393–94 (1969).)

Recommended Complaint Procedures

Complaints relating to 315 matters are given priority consideration by the Commission. Compliance with the following recommended procedures will further greatly assist in the orderly and expeditious disposition of such complaints. However, we do not mean, of course, to preclude in any way inquiry to the Commission when there is a genuine question as to licensee rights and obligations under section 315. We set out these recommended procedures in order to expedite and permit timely consideration of complaints in this important area. Failure to follow these procedures may result in unnecessary delays in resolution of section 315 complaints.

First, barring unusual circumstances, a complaint should not be made to the Commission until the licensee has denied the candidate's request for time after opportunity for passing on the essential claims raised by the candidate. Further, it has been the Commission's consistent policy to encourage negotiations between licensees and candidates seeking broadcast time or having questions under section 315, looking toward a disposition of the request or questions in a manner which is mutually agreeable to all parties. A complaint relating to a section 315 matter thus should be filed with the Commission after an effort has been made in good faith by the parties concerned to resolve the questions at issue. In this way, resort to the Commission might be obviated in many instances and time—which is of great importance in political campaigns—might be saved.

Where a complaint is filed with the Commission, (i) the complainant should simultaneously send a copy to the licensee, (ii) the licensee should respond, as promptly as possible, and not await Commission inquiry regarding the complaint, and (iii) the complainant and licensee should furnish each other with copies of all correspondence sent to the Commission.

A complaint filed with the Commission should be in written form and should contain: (i) The name and address of the complainant, (ii) the call letters (but in the case of a CATV system, the name of the person, company or corporation operating the system) and location (city and State) of the station against whom the complaint is made, and (iii) a detailed statement of the factual basis of the complaint which shall include, but not necessarily be limited to: the public office involved, the date and nature of the election to be held, whether the complainant and his opponent(s) are legally qualified candidates for public office, the date(s) of prior appearances by opponents if any, the time of request for equal opportunities submitted to the licensee, and the licensee's stated reasons for refusing to satisfy the complaint.

If at any time the licensee satisfies the complaint, the licensee should so notify the Commission, setting forth when and how the complaint has been satisfied and furnish a copy of such notification to complainant.

I. The Statute

Section 315 of the Communications Act of 1934, as amended, provides as follows:

> SEC. 315. (a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting stations: *Provided*, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is hereby imposed upon any licensee to allow the use of its station by any such candidate. Appearance by a legally qualified candidate on any—
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> (1) Bona fide newscast,
>
> (2) Bona fide news interview,
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> (3) 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), or
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> (4) On-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto), shall not be deemed to be use of a broadcasting station within the meaning of this subsection. Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.
>
> (b) The charges made for the use of any broadcasting station for any of the purposes set forth in this section shall not exceed the charges made for comparable use of such station for other purposes.
>
> (c) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.
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> (48 Stat. 1088 (1934), 66 Stat. 717 (1952), 73 Stat. 557 (1959), 47 U.S.C. § 315 (1964))

II. The Commission's Rules and Regulations With Respect to Political Broadcasts

The Commission's rules and regulations with respect to political broadcasts coming within section 315 of the Communications Act are set forth in §§ 73.120 (AM), 73.290 (FM), 73.590 (noncommercial Educational FM), and 73.657 (TV), respectively. These provisions are identical (except for elimination of any discussion of charges in § 73.590 relating to noncommercial educational FM stations) and read as follows:

> *Broadcasts by candidates for public office*—(a) *Definitions:* A "legally qualified candidate" means any person who has publicly announced that he is a candidate for nomination by a convention of a political party or for nomination or election in a primary, special, or general election, municipal, county, State or national, and who meets the qualifications prescribed by the applicable laws to hold the office for which he is a candidate, so that he may be voted for by the electorate directly or by means of delegates or electors, and who:
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> (1) Has qualified for a place on the ballot or
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> (2) Is eligible under the applicable law to be voted for by sticker, by writing in his name on the ballot, or other method, and (i) has been duly nominated by a political party which is commonly known and regarded as such, or (ii) makes a substantial showing that he is a bona fide candidate for nomination or office, as the case may be.
>
> (b) *General requirements.* No station licensee is required to permit the use of its facilities by any legally qualified candidate for public office, but if any licensee shall permit any such candidate to use its facilities, it shall afford equal opportunities to all such other candidates for that office to use such facilities: *Provided*, That such licensee shall have no power of censorship over the material broadcast by any such candidate.
>
> (c) *Rates and practices.* (1) The rates, if any, charged all such candidates for the same office shall be uniform and shall not be rebated by any means direct or indirect. A candidate shall, in each case, be charged no more than the rate the station would charge if the candidate were a commercial advertiser whose advertising was directed to promoting its business within the same area as that encompassed by the particular office for which such person is a candidate. All discount privileges otherwise offered by a station to commercial advertisers shall be available upon equal terms to all candidates for public office.
>
> (2) In making time available to candidates for public office no licensee shall make any discrimination between candidates in charges, practices, regulations, facilities, or services for or in connection with the service rendered pursuant to this part, or make or give any preference to any candidate for public office or subject any such candidate to any prejudice or disadvantage; nor shall any licensee make any contract or other agreement which shall have the effect of permitting any legally qualified candidate for any public office to broadcast to the exclusion of other legally qualified candidates for the same public office.
>
> (d) *Records; inspection.* Every licensee shall keep and permit public inspection of a complete record of all requests for broadcast time made by or on behalf of candidates for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if request is granted. Such records shall be retained for a period of 2 years.
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> NOTE: See § 1.526 of this chapter.
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> (e) *Time of request.* A request for equal opportunities must be submitted to the licensee within 1 week of the day on which the first prior use, giving rise to the right of equal opportunities, occurred: *Provided, however*, That where the person was not a candidate at the time of such first prior use, he shall submit his request within 1 week of the first subsequent use after he has become a legally qualified candidate for the office in question.[3]
>
> (f) *Burden of proof.* A candidate requesting such equal opportunities of the licensee, or complaining of noncompliance to the Commission shall have the burden of proving that he and his opponent are legally qualified candidates for the same public office.
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> (47 CFR §§ 73.120, 73.290, 73.590, 73.657 (1970).)

In addition, the attention of the licensees is directed to the following provisions of §§ 73.119, 73.289, and 73.654, relating to sponsorship identification which provide in pertinent part:

> (a) When a * * * broadcast station transmits any matter for which money, services, or other valuable consideration is either directly or indirectly paid or promised to, or charged or received by, such station, the station shall broadcast an announcement that such matter is sponsored, paid for, or furnished, either in whole or in part, and by whom or on whose behalf such consideration was supplied: *Provided, however*, That "service or other valuable consideration" shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification in a broadcast of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast.
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> (b) The licensee of each television broadcast station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program matter for broadcast, information to enable such licensee to make the announcement required by this section.
>
> (c) In any case where a report (concerning the providing or accepting of valuable consideration by any person for inclusion of any matter in a program intended for broadcasting) has been made to a television broadcast station, as required by section 508 of the Communications Act of 1934, as amended, of circumstances which would have required an announcement under this section had the consideration been received by such television broadcast station, an appropriate announcement shall be made by such station.
>
> (d) In the case of any political program or any program involving the discussion of public controversial issues for which any records, transcriptions, talent, scripts, or other material or services of any kind are furnished, either directly or indirectly, to a station as an inducement to the broadcasting of such program, an announcement shall be made both at the beginning and

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[1] A few of the questions taken up within have been presented to the Commission informally—that is, through telephone conversations or conferences with station representatives. They are set out in this Public Notice because of the likelihood of their recurrence and the fact that no extended Commission discussion is necessary to dispose of them; the answer in each case is clear from the language of section 315.

[2] Volume 40 of the F.C.C. Reports is currently being printed.

[3] Paragraph (e) was amended May 6, 1970; 35 F.R. 7118 (1970). Analogous political broadcasting rules have been promulgated with respect to CATV systems, 47 CFR § 74.1113 (1970); 34 F.R. 17651, 17660 (1969); 20 F.C.C. 2d 201, 223 (1969); See section IX, infra.

conclusion of such program on which such material or services are used that such records, transcriptions, talent, scripts, or other material or services have been furnished to such station in connection with the broadcasting of such program: *Provided, however,* That only one such announcement need be made in the case of any such program of 5 minutes' duration or less, which announcement may be made either at the beginning or conclusion of the program.

* * * * *

(f) In the case of any program, other than a program advertising commercial products or services, which is sponsored, paid for, or furnished, either in whole or in part, or for which material or services referred to in paragraph (d) of this section are furnished, by a corporation, committee, association, or other unincorporated group, the announcement required by this section shall disclose the name of such corporation, committee, association, or other unincorporated group. In each such case the station shall require that a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association, or other unincorporated group shall be made available for public inspection at the studios or general offices of one of the standard broadcast stations carrying the program in each community in which the program is broadcast. Such lists shall be kept and made available for a period of 2 years.

(g) In the case of broadcast matter advertising commercial products or services, an announcement stating the sponsor's corporate or trade name, or the name of the sponsor's product, when it is clear that the mention of the name of the product constitutes a sponsorship identification, shall be deemed sufficient for the purposes of this section and only one such announcement need be made at any time during the course of the program.

* * * * *

(i) Commission interpretations in connection with the provisions of this section may be found in the Commission's Public Notice entitled "Applicability of Sponsorship Identification Rules" (FCC 63-409; 28 F.R. 4732, May 10, 1963) and such supplements thereto as are issued from time to time.

(47 CFR §§ 73.119, 73.289, 73.654 (1970).)[4]

III. "Uses," in General

In general, any use of broadcast facilities by a legally qualified candidate for public office imposes an obligation on licensees to afford "equal opportunities" to all other such candidates for the same office.

Section 315 of the Act was amended by the Congress in 1959 to provide that appearances by legally qualified candidates on specified news-type programs are deemed not to be a "use" of broadcast facilities within the meaning of that section. In determining whether a particular program is within the scope of one of these specified news-type programs, the basic question is whether the program meets the standard of "bona fides." To establish whether such a program is in fact a "bona fide" program, the following considerations, among others, may be pertinent: (1) The format, nature and content of the programs; (2) whether the format, nature or content of the program has changed since its inception and, if so, in what respects; (3) who initiates the programs; (4) who produces and controls the program; (5) when the program was initiated; (6) is the program regularly scheduled; and (7) if the program is regularly scheduled, specify the time and day of the week when it is broadcast. Questions have also been presented by the appearances on news-type broadcast programs of station employees who are also legally qualified candidates. In such cases, in addition to the above, the following considerations, among others, may be pertinent to a determination of the applicability of section 315: (1) What is the dominant function of the employee at the station?; (2) what is the content of the program and who prepares the program?; and (3) to what extent is the employee personally identified on the program? In the rulings set forth below, wherein the Commission held that the "equal opportunities" provision was applicable, it should be assumed that the news-type exemptions contained in the 1959 amendments were not involved.

III.A. Types of Uses

III.A. 1. Q. Does section 315 apply to one speaking for or on behalf of the candidate, as contrasted with the candidate himself?

A. No. The section applies only to legally qualified candidates. Candidate A has no legal right under section 315 to demand time where B, not a candidate, has spoken against A or in behalf of another candidate. (Felix v. Westinghouse Radio Stations, 186 F. 2d 1 (3d Cir. 1950), cert. den. 341 U.S. 909 (1951). See letter to Mr. Lawrence M. C. Smith, 40 F.C.C. 549 (1963); see also letter to Mr. George F. Mahoney, 40 F.C.C. 336 (1962).)

2. Q. Does section 315 confer rights on a political party as such?

A. No. It applies in favor of legally qualified candidates for public office, and is not concerned with the rights of political parties, as such. (Letters to The National Laugh Party, 40 F.C.C. 289 (1957); Mr. Harry Dermer, 40 F.C.C. 407 (1964).)

3. Q. Does section 315 require stations to afford "equal opportunities" in the use of their facilities in support of or in opposition to a public question to be voted on in an election?

A. No. Section 315 has no application to the discussion of political issues, as such, but is concerned with the use of broadcast stations by legally qualified candidates for public office. In the 1959 amendment of section 315, relating to certain news-type programs, Congress stated specifically that its action was not to be construed "* * * as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance." The Commission has considered this statement to be an affirmation of its "fairness doctrine", as enunciated in its Report on Editorializing by Broadcast Licensees, 13 F.C.C. 1246 (1946). (See In re Greater New York Broadcasting Corp., 40 F.C.C. 235 (1946); In re Arkansas AFL-CIO, 18 F.C.C. 2d 497 (1969); Dowie A. Crittenden, 18 F.C.C. 2d 499 (1969); Harry Lerner, 15 F.C.C. 2d 75 (1968); see caveat in letter to Cumberland Publishing Co., 13 F.C.C. 2d 897 (1968); Red Lion Broadcasting Co., Inc. v. Federal Communications Commission, 395 U.S. 367, 393-94 (1969).)

III.B. What Constitutes a "Use" of Broadcast Facilities Entitling Opposing Candidates to "Equal Opportunities"?

III.B. 1. Q. If a legally qualified candidate secures air time but does not discuss matters directly related to his candidacy, is this a use of facilities under section 315?

A. Yes. Section 315 does not distinguish between the uses of broadcast time by a candidate, and the licensee is not authorized to pass on requests for time by opposing candidates on the basis of the licensee's evaluation of whether the original use was or was not in aid of a candidacy. (In re Socialist Labor Party, 40 F.C.C. 241 (1952); In re Fordham University, 40 F.C.C. 321 (1961), Q. and A. III.B.6., infra.)

2. Q. Must a broadcaster give equal time to a candidate whose opponent has broadcast in some other capacity than as a candidate?

A. Yes. For example, a weekly report of a Congressman to his constituents via radio or television is a broadcast by a legally qualified candidate for public office as soon as he becomes a candidate for reelection, and his opponent must be given "equal opportunities" for time on the air. Any "use" of a station by a candidate, in whatever capacity, entitles his opponent to "equal opportunities." (In re Clinton D. McKinnon, 40 F.C.C. 291 (1952); see Q. and A. III.C.1, for a joint Congressional Report infra; letter to Honorable Joseph S. Clark, 40 F.C.C. 325 (1962); and for a Judge's report see telegram to Television Co. of America, 40 F.C.C. 319 (1961); see also Q. and A. III.B.10, infra; but see Q. and A. III.C.4, infra; for more recent rulings see Q. and A.'s III.B. 11, 12, 13, and 15, infra.)

3. Q. If a candidate appears on a variety program for a very brief bow or statement, are his opponents entitled to "equal opportunities" on the basis of this brief appearance?

A. Yes. All appearances of a candidate, no matter how brief or perfunctory, are "uses" of a station's facilities within section 315. (See letters to KUGN, 40 F.C.C. 293 (1958); Kenneth E. Spengler, 40 F.C.C. 279 (1956).)

4. Q. If a candidate is accorded station time for a speech in connection with a ceremonial activity or other public service, is an opposing candidate entitled to equal utilization of the station's facilities?

A. Yes. Section 315 contains no exception with respect to broadcasts by legally qualified candidates carried "in the public interest" or as a "public service." It follows that the station's broadcasts of the candidate's speech was a "use" of the facilities of the station by a legally qualified candidate giving rise to an obligation by the station under section 315 to afford "equal opportunities" to other legally qualified candidates for the same office. (Letters to Columbia Broadcasting System, Inc., 40 F.C.C. 254 (1952); K.F.I., 40 F.C.C. 257 (1952).)

5. Q. The United Community Campaigns of America advised the Commission that dating back to the early thirties it had "kicked off" its United Fund and Community Chest Campaigns with a special message broadcast by the President of the United States each fall. For the past several years the broadcast has consisted of a 5 minute program filmed on video-tape in advance at the White House and later carried on the three television networks and the four radio networks. Would the candidate opposing the President be entitled to equal opportunities if the message were carried?

A. The Commission held that section 315 contains no exceptions with respect to broadcasts by legally qualified candidates carried "in the public interest" or as a "public service" and that a candidate's speech in connection with a ceremonial activity is a section 315 "use." It is immaterial whether or not the candidate uses the time to discuss matters related to his candidacy, and the fact that the appearance of the candidate is nonpolitical is not determinative of whether his appearance is a "use." Whether the presentation of the special message in connection with a particular newstype program would meet the criteria for exemption specified in the 1959 amendment is a question initially for the exercise of the good faith judgment of the broadcast licensee. (Letter to United Community Campaigns of America, 40 F.C.C. 390 (1964).)

6. Q. Where a candidate delivers a nonpolitical lecture on a program which is part of a regularly scheduled series of lectures broadcast by an educational FM station, is that station required to grant equal time to opposing candidate?

A. Yes. Unless the candidate's appearance comes within the category of broadcasts exempt from section 315's "equal opportunities" provision, equal time must be granted. The use to which the candidate puts this broadcast time is immaterial. (See Q. and A. III.B.1, supra; telegram to Fordham University, 40 F.C.C. 321 (1961).)

7. Q. Are acceptance speeches by successful candidates for nomination for the candidacy of a particular party for a given office, a use by a legally qualified candidate for election to that office?

A. Where the successful candidate for nomination becomes legally qualified as a candidate for election as a result of the nomination, his acceptance speech constitutes a use. (Letter to Progressive Party, 40 F.C.C. 248 (1952).) However, after 1959, acceptance speeches in connection with *political conventions* are governed by section 315(a)(4). (For rulings after the 1959 Amendments see Lar Daly, 40 F.C.C. 316 (1960); Q. and A. III.C.22, infra and letter to DeBerry-Shaw Campaign Committee, 40 F.C.C. 394 (1964), Q. and A. III.C.23, infra.)

8. Q. Does section 315 apply to broadcasts by a legally qualified candidate where such broadcasts originate and are limited to a foreign station whose signals are received in the United States?

A. No. Section 315 applies only to stations licensed by the FCC and to CATV systems regulated by the FCC. (Letter to Mr. Gregory N. Pillon, 40 F.C.C. 267 (1955).)

9. Q. A candidate for the Democratic nomination for President appeared on a network variety show. A claimant for "equal opportunities" showed that his name had been on the ballots in the Democratic presidential primary elections in two states; that the network had shown him in a film on a program concerned with the various 1960 presidential candidates; and that he was continuing his efforts as a candidate for the Democratic nomination. Would the claimant be entitled to "equal opportunities"?

A. Yes, since the appearance of the first candidate was on a program which was not exempt from the "equal opportunities" requirement of section 315 and the claimant had shown that he was a "legally qualified" candidate for the nomination for the same office. (Lar Daly, 40 F.C.C. 314 (1960).)

10. Q. If a station owner, or a station advertiser, or a person regularly employed as a station announcer were to make appearances over a station after having qualified as a candidate for public office, would section 315 apply?

A. Yes. Such appearances of a candidate are a "use" under section 315. (Letters to KUGN, 40 F.C.C. 293 (1958); Robert Yeakel, 40 F.C.C. 282 (1957); Kenneth E. Spengler, 40 F.C.C. 279 (1956); to Georgia Association of Broadcasters, 40 F.C.C. 343 (1962); cf., Q.'s and A.'s III.B. 11, 12, 13, and 15, infra; letter to D. L. Grace, 40 F.C.C. 297 (1958); but compare KWTX Broadcasting Co., 40 F.C.C. 304 (1960), aff'd Brigham v. F.C.C., 276 F. 2d 828 (C.C.A.5, 1960) and Q. and A. III.C.4, infra.)

*11. Q. A television station employs an announcer who, "off camera" and unidentified, supplies the audio portion of required station identification announcements, public service announcements, and commercial announcements. The announcer is not authorized to make comments or statements concerning political matters, and he has no control over the format or content of any program material. In the event that this employee announced his candidacy for the city council, would his opponent be entitled to equal opportunities?

A. No. The employee's appearance for purposes of making commercial, noncommercial, and station identification announcements would not constitute a "use" where the announcer himself was neither shown nor identified in any way. (Letters to WNEP-TV, 40 F.C.C. 431 (1965); Station WAMB, 17 F.C.C. 2d 176 (1969); Station WENR, 17 F.C.C. 2d 613 (1969); KYSN Broadcasting Co., 17 F.C.C. 2d 164 (1969).)

12. Q. The station employee mentioned in Q. and A.III.B.11, supra, also hosts a weekly dance party on which he is identified but during which he appears or is heard only a portion of the time. He has some discretion with respect to the program's content insofar as he conducts brief conversations with teenagers appearing on the program. In the event he becomes a candidate for the city council, would his opponent be entitled to "equal opportunities"?

A. Yes. The employee's appearance as host of the dance party program would entitle other candidates for the same office to "equal opportunities" for the amount of time he appeared on the program. The deletion of the announcer's identity would not exempt his appearances from the "equal opportunities" provision, since in the case of television it is the appearance itself which constitutes the "use" of the facilities without regard to the format of the program. If an appearance of this nature were made, other candidates would be entitled to free time since the announcer would not have paid for the time he appeared. (Letter to WNEP-TV, 40 F.C.C. 431 (1965).)

13. Q. An employee of a radio station who had been for a number of years the station's news director and is responsible for preparing the news material and presenting it on regularly scheduled news programs announced his candidacy for the school board. Prior to becoming a candidate the employee was identified on the news programs he announced, but he will not be identified during his candidacy. Would the appearance of the employee while he was a legally qualified candidate on the particular news-type programs constitute a "use" of the station entitling the employee's opponents to "equal opportunities"?

A. Yes. In cases where the newscaster is identified up to the date of his candidacy and prepares and broadcasts the news, including that of a local nature, the general line of rulings prior to the 1959 amendments to section 315 would be applicable and such appearances would constitute a "use" of the station's facilities. (Newscaster Candidacy, 40 F.C.C. 433 (1965); but compare letter to KWTX Broadcasting Co., 40 F.C.C. 304 (1960), aff'd Brigham v. F.C.C. 276 F. 2d 828 (C.C.A., 5, 1960) and Q. and A. III.C.4, infra.)

14. Q. When a station, as part of a newscast, uses film clips showing a legally qualified candidate participating as one of a group in official ceremonies and the newscaster, in commenting on the ceremonies, mentions the candidate and others by name and describes their participation, has there been a "use" under section 315?

A. No. Since the facts clearly showed that the candidate had in no way directly or indirectly initiated either filming or presentation of the event, and that the broadcast was nothing more than a routine newscast by the station in the

[4] Analogous rules are now applicable to CATV Systems, 47 CFR § 74.1119; 34 F.R. 17651, 17660 (1969); 20 FCC 2d 201, 225 (1969).

*An asterisk denotes a new question and answer.

exercise of its judgment as to newsworthy events. (Letter to Allen H. Blondy, Esq., 40 F.C.C. 284 (1957); but see the 1959 amendments to section 315 exempting news programs from the equal opportunities provisions. See rulings in III.C., infra.)

*15. Q. A radio station employee, who for the last 8 months had been the announcer on a Monday through Friday all-night music-news radio show where he announced the news, made station identification announcements and time checks and gave those commercials and public service announcements which were not on tape, became a candidate for public office. The announcer never stated his name on the air and he had not been identified over the air since he had begun this show. Prior to his appearances on the present show, he was a well known air personality who had been frequently identified over the air and the licensee stated that his voice was "no doubt known to many listeners." Would the employee's appearances constitute a "use" under section 315?

A. Yes. This determination depends upon whether or not, despite his name not being given over the air since he began his present show, the announcer remains "identified" to a substantial degree because of the particular circumstances. This is a matter for licensee's reasonable good faith judgment and in light of the statement by the licensee that the announcer's voice was undoubtedly known to many listeners, his appearances would be a section 315 use. (In re Station WBAX, 17 F.C.C. 2d 316 (1969).)

*16. Q. A political party purchased television time to distribute to individual candidates for such use as they deemed appropriate. Would each of these three situations be a "use" by a candidate under 315? The camera pans a group of candidates seated in the studio while a noncandidate reads a political spot; a noncandidate reads a political spot while a silent film of a candidate is shown; and a photograph of a candidate appears on the screen while a noncandidate reads a political spot.

A. In these circumstances, each of these three situations would constitute a "use" entitling opposing legally qualified candidates for the same public office to "equal opportunities." (In re Station KWWL–TV, 23 F.C.C. 2d 758 (1966).)

*17. Q. A legally qualified candidate for a public office used on television a film of scenes taken at a college while he was talking with college students. None of the voices of the college students was actually heard because the political film was narrated by an offscreen announcer. None of the students was identified by name, and there were no close-ups of any students, but there were merely scenes of the entire group. Included in the film clips was a college student who later became a legally qualified candidate for another public office. If these film clips are shown by the first candidate who was talking with the students to further his own campaign, are legally qualified opposing candidates of the "student" shown on these clips entitled to equal opportunities?

A. Yes. Since the student was identifiable on the film, his appearance would constitute a "use" giving all opposing legally qualified political candidates the right to "equal opportunities" (limited to the time the student candidate actually appeared). (In re Station KRTV, 23 F.C.C. 2d 778 (1966); cf. National Urban Coalition, 23 F.C.C. 2d 123 (1970); see letter to the Honorable Warren D. Magnuson, 23 F.C.C. 2d 775 (1967).)

*18. Q. The National Urban Coalition requested a declaratory ruling concerning the applicability of section 315 to a 118-second public service television announcement featuring a group of about 120 people, many of whom are leading personalities in the political, sports and entertainment fields, all singing as a group, the song "Let the Sunshine In." No one's name was mentioned nor were any voices separately identifiable. Subsequent to the filming of this announcement, one of the persons appearing therein became a legally qualified candidate for public office. In an edited version of this program which eliminated any close-up of this candidate, the candidate was nevertheless visible in two video shots: (1) For about 4.2 seconds in a long-range shot of 100 people, and (2) approximately 2.8 seconds in a medium-range shot of about 6 people in which only the lower half of his face is seen. If broadcast, would one or both of these two video shots constitute a section 315 "use" by the candidate?

A. No. In video shot number one, the duration of the shot was too fleeting and the camera range too distant for the candidate to be readily identified in the group of 100 persons. In video shot number two, the camera angle caught only a partial view of the candidate's face for a fleeting moment so that he was not readily identifiable. Based on the facts and since the candidate was not readily identifiable on the film, his appearances were not "uses" within the meaning of section 315(a) of the Communications Act. (National Urban Coalition, 23 F.C.C. 2d 123 (1970).)

III.C. What Constitutes an Appearance Exempt From the Equal Opportunities Provisions of Section 315?

III.C. 1. Q. Does an appearance on a program subject to the equal opportunities provision of section 315 such as a Congressman's Weekly Report, attain exempt status when the Weekly Report is broadcast as part of a program not subject to the equal opportunities provisions, such as a bona fide newscast?

A. No. A contrary view would be inconsistent with the legislative intent and recognition of such an exemption would in effect subordinate substance to form. (Letter to Honorable Clark W. Thompson, 40 F.C.C. 328 (1962).)

2. Q. Are appearances by an incumbent-candidate in film clips prepared and supplied by him to the stations and broadcast as part of a station's regularly scheduled newscast, "uses" within the meaning of section 315?

A. Yes. Broadcast of such film clips containing appearances by a candidate constitute uses of the station's facilities. Such appearances do not attain exempt status when the film clips are broadcast as part of a program not subject to the equal opportunities provision, for the reasons set forth in Question and Answer III.C.1, above. (Letter to Honorable Clem Miller, 40 F.C.C. 353 (1962).)

3. Q. A sheriff who was a candidate for nomination for U.S. Representative in Congress conducted a daily program, regularly scheduled since 1958, on which he reported on the activities of his office. He terminated each program with a personal "Thought for the Day." Would his opponent be entitled to "equal opportunities?"

A. Yes. In light of the fact that the format and content of the program were determined by the sheriff and not by the station, the program was not of the type intended by Congress to be exempt from the "equal opportunities" requirement of section 315. (Stanley R. Cox, 40 F.C.C. 308, (1960).)

4. Q. A local weathercaster who was a candidate for reelection for Representative in the Texas Legislature was regularly employed by an AM and TV station in Texas. His weathercasts contained no references to political matters. He was identified over the air while a candidate as the "TX Weatherman." Would his opponent be entitled to "equal opportunities?"

A. No. The Court of Appeals, Fifth Circuit, ruled that the weathercaster's appearance did not involve anything but a bona fide effort to present the news; that he was not identified by name but only as the "TX Weatherman"; that his employment did not arise out of the election campaign but was a regular job; and that the facts did not reveal any favoritism on the part of the stations or any intent to discriminate among candidates. (KWTX Broadcasting Co., 40 F.C.C. 304 (1960), aff'd, Brigham v. FCC, 276 F. 2d 828 (C.C.A.5, 1960); but cf. Q.'s and A.'s III.B. 12, 13, and 15, supra, and Q. and A. III.C.5, infra, which reflect the Commission's more recent pronouncements in this area.)

5. Q. Where the facts are the same as those set forth in Q. and A. III.B.13, *supra*, would the appearances of the employee while a legally qualified candidate on news type programs constitute a "use" exempted from the provisions of 315 by reason of the 1959 Amendment?

A. No. The main purpose of the amendment was to allow greater freedom to the broadcaster in reporting *news* to the public, that is to say, in carrying news about and pictures of candidates as part of the contents of news programs. The amendment did not deal with the question of whether the appearance of station employees who have become candidates for office should be exempted on a news-type program where such employees are announcing the news (rather than being a part of the content of the news), any more than it dealt with the general question of such appearances (e.g., on a variety program or as a commercial continuity announcer), and the legislative history indicates that the appearance of the candidate on a news-type program in which he has participated in the "format and production" would not be exempt. (Newscaster Candidacy, 40 F.C.C. 433 (1965); but compare Q. and A. III.C.4, supra.)

6. Q. A Philadelphia TV station had been presenting a weekly program called "Eye on Philadelphia." This program consisted of personalities being interviewed by a station representative. Three candidates for the office of Mayor of Philadelphia, representing different political parties, appeared on the program. Would a write-in candidate for Mayor be entitled to "equal opportunities"?

A. No, since it was ascertained that the appearances of the three mayoralty candidates were on a bona fide, regularly scheduled news interview program and that such appearances were determined by the station's news director on the basis of newsworthiness. (Telegram to Mr. Joseph A. Schafer, 40 F.C.C. 303 (1959), reconsideration denied; cf. telegrams to Mr. Kenneth F. Klinkert, 40 F.C.C. 427 (1964), David Dichter, 15 F.C.C. 2d 95 (1968).)

7. Q. A New York television station had been presenting a weekly program called "Search Light". This program consisted of persons, selected by the station on the basis of their newsworthiness, interviewed by a news reporter selected by the station, a member of the Citizens Union (a permanent participant initially selected by the station), and a station newsman who acted as moderator. Two candidates appeared on the program and were interviewed. Is a third opposing candidate entitled to "equal opportunities"?

A. No. The format of the program was such as to constitute a bona fide news interview pursuant to section 315(a)(2), since the program was regularly scheduled, was under the control of the licensee, and the particular program had followed the usual program format. (Telegram to Socialist Workers Party, 40 F.C.C. 322 (1961); cf. telegraph to Mr. Kenneth F. Klinkert, 40 F.C.C. 427 (1964).)

8. Q. A Washington, D.C., television station had been presenting a weekly program called "City Side". This program consisted of persons being interviewed by a panel of reporters. The panel was selected by the station and the persons interviewed were selected by the station on the basis of newsworthiness. Three candidates for the Democratic nomination for the office of Governor of Maryland were invited to appear on the program and one of them accepted. Would a fourth candidate for the same nomination, not invited by the station to appear, be entitled to "equal opportunities"?

A. No. It was determined that "City Side" was a regularly scheduled, weekly, live, news-interview program on the station for approximately 6 years; that the normal format of the program consisted of the interview of a newsworthy guest or guests by a panel of reporters; that the appearances on the program were determined by the station on the basis of newsworthiness; and that it was on this basis that the three candidates were invited to appear. Such a program constitutes a bona fide news-interview program pursuant to section 315(a)(2). (Telegram to Mr. Charles Luthardt, Sr., 40 F.C.C. 345 (1962).)

9. Q. A New York television station had been presenting a weekly half-hour program series for over 2 years. The program, "New York Forum", was presided over by a station moderator and consisted of interviews of currently newsworthy guests by a panel of three lawyers. The guests were selected by the station in the exercise of its bona fide news judgment and not for the political advantage of any candidate for public office. The local bar association suggested the lawyer-interviewers to be used on a particular program but their final selection remained subject to the station's approval. The Democratic and Republican candidates for the office of Governor of New Jersey had appeared on separate programs in the series. Would a third party candidate be entitled to "equal opportunities"?

A. No. Such a program is a bona fide news interview and, as such, appearances on the program are exempt pursuant to section 315(a)(2). (Telegram to Socialist Labor Party of New Jersey, 40 F.C.C. 324 (1961).)

10. Q. Certain networks had presented over their facilities various candidates for the Democratic nomination for President on the programs "Meet the Press", "Face the Nation", and "College News Conference." Said programs were regularly scheduled and consisted of questions being asked of prominent individuals by newsmen and others. Would a candidate for the same nomination in a State primary be entitled to "equal opportunities"?

A. No. The programs were regularly scheduled, bona fide news interviews and were of the type which Congress intended to exempt from the "equal opportunities" requirement of section 315. (Letters to Mr. Andrew J. Easter, 40 F.C.C. 307 (1960); Lar Daly, 40 F.C.C. 310 (1960); Lar Daly, 40 F.C.C. 311 (1960); Honorable Frank Kowalski, 40 F.C.C. 355 (1962).)

11. Q. On September 30, 1962, one of the networks interviewed two Congressmen, one presenting the Republican Party view and the other presenting the Democratic Party view concerning legislative achievements of the current Congressional session. The program in which the Congressmen appeared, "Direct Line", was initiated in April 1959, and its format, nature, and content had not materially changed since its inception; it was produced and controlled by the network and was regularly scheduled on Sundays as a half-hour program, although the particular program had been expanded to an hour because of preelection interest in the subject matter. The persons interviewed were asked questions submitted by viewers of the program, supplemented by questions prepared in cooperation with the League of Women Voters. The questions to be asked were selected exclusively by employees of the network and propounded by a moderator, also a network employee, although on some occasions, an additional person such as a news reporter assisted the moderator in asking questions. Would the opponent of one of the Congressmen running for re-election be entitled to "equal opportunities"?

A. No. On the basis of the information submitted, the Commission was of the view that the program "Direct Line" was a "bona fide news interview" within the meaning of section 315(a)(2) and, therefore, the Congressmen's appearances were exempt. (Telegram to Martin B. Dworkis, 40 F.C.C. 361 (1962).)

12. Q. One of the networks had been presenting a program called "Issues and Answers" each Sunday since November 27, 1960, and the format, nature, and content of the program had not changed since its inception. The program, originated, produced and controlled by the network in question, consisted of one or more news correspondents interviewing one or more nationally or internationally prominent individuals such as Government officials, U.S. Senators, U.S. Congressmen, foreign ambassadors, etc., on topics of national interest. The Minority Leaders of the Senate and House, one of whom was a candidate for reelection, were interviewed on the program as the official Republican Congressional spokesmen. The following week the official Democratic Congressional spokesmen appeared and were interviewed on the program. Would the opponent of the Republican spokesman who was running for reelection be entitled to "equal opportunities"?

A. No. The Commission ruled that the program "Issues and Answers" was a bona fide news interview program of the type which Congress intended to be exempt from the "equal opportunities" provisions of section 315. (Telegram to Yates For U.S. Senator Committee, 40 F.C.C. 368 (1962).)

13. Q. A candidate for the Democratic nomination for President was interviewed on a network program known as "Today." It was shown that this was a daily program emphasizing news coverage, news documentaries, and on-the-spot coverage of news events; that the determination as to the content and format of the interview and the candidate's participation therein was made by the network in the exercise of its news judgment and not for the candidate's political advantage; that the questions asked of the candidate were determined by the director of the program; and that the candidate was selected because of his newsworthiness and the network's desire to interview him concerning current problems and events. Would the candidate's opponent be entitled to "equal opportunities"?

A. No, since the appearance of the candidate was on a program which was

*An asterisk denotes a new question and answer.

exempt from the "equal opportunities" requirement of section 315. (Lar Daly, 40 F.C.C. 314 (1960).)

14. Q. Does the appearance of a candidate on any of the following programs constitute a "use" under the "equal opportunities" provisions of section 315: "Meet the Press", "Youth Wants to Know", "Capitol Cloakroom", "Tonight", and "PM"?

A. The programs "Meet the Press" and "Youth Wants to Know" were specifically referred to during the Senate debates on the 1959 amendments as being regularly scheduled news interview programs of the type intended to be exempt from the "equal opportunities" provision of section 315. (Letter to Hon. Russell B. Long, 40 F.C.C. 351 (1962); Q. and A. III.C.10, supra; as to the "Tonight" program, see Q. and A. III.B.9, supra.)

15. Q. A candidate for Governor of the State of New York appeared on "The Barry Gray Show", a nightly news and discussion program which had been broadcast by the station, using the same format, for a period of at least 4 years. The program consisted of a series of interviews of indeterminate length with persons from all walks of life concerning newsworthy events. The show was interrupted five times nightly for 5-minute newscasts, two of which were given by Barry Gray. Barry Gray, an independent contractor, exercised day-to-day control over the program subject to overall and ultimate control by the station. Candidates appearing on the program were selected, not for their own political advantage, but on the basis that they were bona fide candidates and would serve to inform the audience on issues on which the audience would have to make a decision in order to vote. The station allowed Barry Gray the maximum latitude for initiative and editorial freedom. Barry Gray determined, on the basis of the interest value of the guest and the articulate manner in which he expressed himself on the topic under discussion, the amount of time to be allocated to any particular interview, and either actively participated in the discussion, acted as an impartial moderator in the interview, or on occasion, "talked the show" out if the guest was of little interest value. In some instances, the program consisted of an exchange of views and in other instances, constituted a panel discussion. Would the opponent of the candidate for Governor of New York be entitled to "equal opportunities"?

A. Yes. The Commission held that the definition of a bona fide news interview must be derived from the specific examples of such programs cited in the legislative history of the 1959 amendment to section 315. On the basis of the information submitted, the Commission could not determine that the Barry Gray Show was a bona fide news interview. (Telegram to WMCA, Inc., 40 F.C.C. 367 (1962); but compare Q. and A. III.C.13, supra.)

16. Q. A New Jersey television station had been presenting for approximately 2½ years a weekly program called "Between the Lines." This program consisted of interviews by a station moderator of persons involved with current public events in New Jersey and New York. The incumbent, candidate for re-election to the State assembly, appeared on the program. Would his opponent be entitled to "equal opportunities"?

A. No. The Commission ruled that "* * * the program in question is the type of program Congress intended to be exempt from the equal time requirements of section 315." (James N. Fazio, 40 F.C.C. 318 (1960).)

17. Q. The "Governor's Radio Press Conference" is a weekly 15-minute program which has been broadcast approximately 2 years employing essentially the same format since its inception. In the program, the Governor-candidate is seated in his office and speaks into a microphone; each of the participating stations has selected a newsman, who, while located at his respective station, asks questions of the Governor which the newsman considers to be newsworthy. The questions are communicated to the Governor-candidate by telephone from the respective stations and the questions and the Governor's answers are communicated to the stations by the means of a broadcast line from his office to the stations. The questions and answers are taped both by his office and each of the participating stations, and no tapes are supplied by the Governor to the stations. Questions asked of the Governor and all of the material, including his answers, are not screened, or edited by anyone in his office or on his behalf. The program is unrehearsed and there is no prepared material of any kind used by the Governor or by anyone on his behalf. The newsmen are free to ask any question they wish and each program in under the control of the participating stations. Does the appearance of the Governor-candidate on said program constitute a "use" under the "equal opportunities" provision of section 315?

A. No. Since the program involves the collective participation of the stations' newsmen, is prepared by the stations, is under their sole supervision and control, has been regularly scheduled for a period of time, and was not conceived or designated to further the candidacy of the Governor, it was held to be a bona fide news interview program and, therefore, exempt from the "equal opportunities" provision of section 315. (Letter to Honorable Michael V. DiSalle, 40 F.C.C. 348 (1962).)

18. Q. The "Governor's Forum" program has been broadcast for approximately 8 months by several participating stations. In this program, the Governor-candidate is seated in his office and speaks into a microphone. The program consists of his answers to and questions submitted by the listening public. Questions asked are either telephoned or written to the stations or directly to his office. The questions which are telephoned or written to the several stations are forwarded to the principal participating station, which then selects the questions, edits the questions, and accumulates them on a tape. The questions telephoned or written to the Governor's office are likewise selected and edited by his office for taping. The tape or tapes containing the questions are played in his office and the questions and the Governor's answers are then recorded on a master tape prepared by his office. Additional questions are asked of the Governor by the principal station's newsman, present in the Governor's office, to amplify any prior question and answer. On occasion, further editing of the tape has been made by the Governor's office or by the stations. The tape is sent to each of the participating stations by the Governor's office. There is no prepared material or rehearsal by the Governor's office. Would the appearance by the Governor-candidate on the above program constitute a "use" under the "equal opportunities" provision of section 315?

A. Yes. Such a program is not a news-interview program as contemplated by section 315(a)(2). This conclusion has been reached since the selection and compilation of the questions, as well as the production, supervision, control, and editing of the program are not functions exercised exclusively by the stations. (Letter to Hon. Michael V. DiSalle, 40 F.C.C. 348 (1962).)

19. Q. A Congressmen who was a candidate for reelection appeared in a news interview on a station and was interviewed by the station's Public Affairs Department regarding his experiences as a freshman Congressman. The program was described by the licensee as a "bona fide special news interview" and the licensee stated that it had sought the interview on the basis of its news judgment. The interview was conducted by a station employee and the questions asked related to current newsworthy events. The licensee stated further that although the program was a "special news interview" (the station did not broadcast regularly scheduled news interviews but presented special news interviews as the occasion arose and this was deemed by the licensee to be such an occasion), the interview itself and the format and nature of the questions were the same as in news interview programs of other newsworthy individuals and that the program was initiated, produced, and controlled by the licensee. Would the Congressman's opponent be entitled to "equal opportunities"?

A. Yes. The Commission pointed out that the legislative history of the 1959 amendment to section 315 clearly indicated that a basic element of a "bona fide news interview" is that it be regularly scheduled. Accordingly, it held that the Congressman's appearance did not occur in connection with a "bona fide news interview" within the meaning of section 315(a)(2) and that his appearance, therefore, constituted a "use" entitling his opponent to "equal opportunities." (Telegram to Station KFDX-TV, 40 F.C.C. 374 (1962).)

20. Q. CBS Television Network presented a 1-hour program entitled "The Fifty Faces of '62." The program consisted of a comprehensive news report of the current off-year elections and campaigns. It included a brief review of the history of off-year elections, individual and group interviews, on-the-spot coverage of conventions and campaigns, and flashbacks of currently newsworthy aspects of the current campaigns and elections. In addition to the appearances on the broadcast of private citizens, voters, college students, and candidates, there were approximately 25 political figures, none of whom was on camera for more than approximately 2 or 3 minutes. Some of the candidates appearing on the program mentioned their candidacy; others, including the minority leader of the House of Representatives, who appeared in that capacity and discussed the prospect of his party in the Fall elections, did not discuss their candidacies. The determination as to who was to appear on the program was made solely by CBS News on the basis of of its bona fide news judgment that their appearances were in aid of the coverage of the subject of the programs and not to favor or advance the candidacies of any of those who appeared, such appearances being incidental and subordinate to the subject of the documentary. Is the appearance on the program of a candidate, in his capacity as minority leader of the House of Representatives, a "use" within the "equal opportunities" provision of section 315?

A. No. Such a program is a bona fide news documentary pursuant to section 315(a)(3). The appearance of the candidate therein is incidental to the presentation of the subject covered by the documentary and the program is not designed to aid his candidacy. (Telegram to Judge John J. Murray, 40 F.C.C. 350 (1962).)

21. Q. A television station had been presenting since 1958 a weekly 30 minute program concerning developments in the State legislature with principal Democratic and Republican party leaders of both houses of the legislature participating. At the close of each legislative term, the station televised a one hour summary of the legislature's activities, using film and recordings made during its meetings. Is the appearance, in the latter program, of an officer of the State legislature, who is also a candidate, in which he and others express their views on the accomplishments of the legislative session a "use" under the "equal opportunities" provision of section 315?

A. No. For the reasons stated in Q. and A. III.C.20, supra.

22. Q. A former President expressed his views with respect to a forthcoming national convention of his party. A candidate for that party's nomination for President called a press conference at the convention site and immediately prior to the convention to comment on said views, which conference was broadcast by two networks. Would said candidate's opponent for the same nomination be entitled to "equal opportunities"?

A. No, since the appearance of the first candidate incidental to a political convention was on a program which constituted "on-the-spot coverage of bona fide news events," pursuant to section 315(a)(4). (Letter to Lar Daly, 40 F.C.C. 316 (1960); see section 315(a)(4), and Q. and A. III.C.23, infra; but see Q. and A. III.B.7, supra for a ruling prior to the 1959 amendment.)

*23. Q. Are acceptance speeches made at a nominating convention by successful candidates for a political party's nomination for president and vice president uses which entitle other parties' candidates for those offices to "equal opportunities" under section 315?

A. No. Prior to 1959 any use of a station's facilities by a candidate for public office required the station to afford "equal opportunities" to other candidates for the same office. However, one of the specific types of news programs exempted by Congress was "on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto)" in the language of 315(a)(4). The broadcast of an acceptance speech made at a political convention is an aspect of the coverage of the political convention. (Letter to Deberry-Shaw Campaign Committee, 40 F.C.C. 392 (1964). See also Q. and A. III.C.22, supra; but for a ruling prior to the 1959 Amendments see letter to Progressive Party, 40 F.C.C. 248, Q. and A. III.B.7, supra.)

24. Q. A Chicago television station covered the annual Saint Patrick Day parade in that city. During the broadcast, the Mayor, a candidate for reelection, appeared for 2 minutes. Would the Mayor's opponent be entitled to "equal opportunities"?

A. No. Broadcast coverage of a parade is the type of bona fide news event contemplated by Congress in enacting the 1959 amendments to section 315. Therefore, such a broadcast would appear to constitute "on-the-spot coverage of bona fide news events" pursuant to section 315(a)(4) and any appearance by a candidate during the course of such a broadcast would not constitute a "use" of broadcast facilities entitling opposing candidates to "equal opportunities." (Letter to Lar Daly, 40 F.C.C. 377 (1963).)

25. Q. An Indiana station presented the County Court Judge, who was a candidate for the Democratic mayoralty nomination in Gary, Ind., on a program entitled "Gary County Court on the Air". The program had been broadcast live by the station as a public service for the past 14 years, each Monday, Wednesday, Thursday and Friday from 9:05 a.m. to 10 a.m. One of the programs was taped for broadcast 1 day prior to the actual broadcast. The station had met with the presiding Judge some 14 years prior to the election in question to arrange for the broadcasts and each succeeding judge had agreed to continue the program because of its public interest value. For 7½ years prior to the election in question, the judge who was a candidate for the mayoralty nomination had appeared on the program. Persons appearing in the court had the privilege of declining to have their cases heard during broadcast time to prevent invasion of privacy. If, in the opinion of the presiding judge, certain cases did not lend themselves to broadcast, they were heard at times when the proceedings were not being covered by the station. The court was the usual type of City Court, handling a variety of cases and was not solely a traffic court, and it was, generally, impossible for the judge to control the content and/or persons who did appear. The program could not be by its nature and was not, by licensee insistence, tailored to suit the judge who was a candidate. The format of "Gary County Court on the Air" had remained unchanged since the inception of the program. The station used City Court case decisions on its regularly scheduled newscasts and such decisions also appeared in Gary newspapers. Would the Judge's opponent for the nomination for Mayor be entitled to "equal time"?

A. No. The Commission concluded that the program fell within the "news event" exemption of section 315(a)(4) because the program covered the operation of an official governmental body and because the court proceedings were newsworthy. The Commission held that the program was "bona fide" in view of the fact that it had been presented by the station for 14 years, with this particular judge for 7½ years, and inasmuch as the appearance of the candidate was incidental to the on-the-spot coverage of a news event rather than for the purpose of advancing his candidacy. Therefore, the Commission ruled that "Gary County Court on the Air" fell within the reasonable latitude allowed to licensees for the exercise of good faith news judgment and was exempt from the "equal time" requirement of section 315. (Letter to Thomas R. Fadell, Esq., 40 F.C.C. 379 (1963); affirmed by order entered Apr. 29, 1963, Thomas R. Fadell v. U.S., FCC and WWCA Radio Station, Case No. 14142 (U.S.C.A., 7th 1963).)

26. Q. On September 30, 1962, two candidates for the office of Governor of California held a 1-hour debate which was given coverage on every major television station in California, the time being donated by the stations carrying the debate. The debate was held in San Francisco as part of the annual convention of United Press International which had invited the two candidates to appear and had invited all news media to cover the event. The debate was not arranged by the stations but was broadcast by them as a public service and in the exercise of their bona fide news judgment. No other aspect of the UPI convention was broadcast other than the joint appearance of the two candidates. A third candidate for the same office requested "equal opportunities" and the stations denied the request on the basis that the prior appearances constituted "on-the-spot coverage of a bona fide news event" pursuant to section 315(a)(4) of the Communications Act. Was the third candidate entitled to "equal opportunities"?

A. Yes. The Commission held that neither the language of the amendment, the legislative history nor subsequent Congressional action indicated a Congressional intent to exempt from the

*An asterisk denotes a new question and answer.

"equal opportunities" provision of section 315 a debate qua debate between legally qualified candidates. The Commission pointed out that the bona fides of the licensee's news judgment, while not questioned, was not the sole criterion to be used in determining whether section 315(a)(4) had been properly invoked. It was concluded that where the appearance of the candidates was designed by them to serve their own political advantage and such appearance was ultimately the subject of a broadcast program encompassing only their entire appearance, such program cannot be considered to be on-the-spot coverage of a bona fide news event simply because the broadcaster deems that the candidates' appearance (or speeches) will be of interest to the general public and, therefore, newsworthy. (Telegram to Robert L. Wyckoff, 40 F.C.C. 366 (1962), reconsideration denied in letter to Robert L. Wyckoff, 40 F.C.C. 370 (1962); cf. letter to The Goodwill Station, Inc., 40 F.C.C. 362 (1962), the ruling mentioned in Robert L. Wyckoff telegram, supra at 366; see In re Socialist Labor Party, 15 F.C.C. 2d 98 (1968), aff'd per curiam by order entered Oct. 31, 1968, sub nom, Taft Broadcasting Co. v. F.C.C., Case No. 22445 (C.A.D.C., 1968); See also Q. and A. VI.B.6, infra. The Advocates, 23 F.C.C. 2d 462 (1970); reconsideration denied.)

*27. Q. The Columbia Broadcasting System, Inc., advised the Commission that over the years it had become the practice of the President to hold press conferences; that President Johnson had held such conferences on a periodic, though irregular, basis in the past and would undoubtedly hold press conferences prior to election day, as would his opposing candidate Senator Goldwater. CBS stated that it considered Presidential press conferences important news events, and had given them such broadcast coverage as it in its news judgment had thought was warranted and that it believed it would be in the public interest to continue to cover these press conferences, as well as those of Senator Goldwater, or some of them, in whole or in part, provided this would not require it to afford equal time to all other persons who might also be candidates for the presidency. Would such press conferences be exempt from the requirements of section 315 on the ground that the appearances were considered to be either "bona fide news interviews" or "on the spot coverage" of "bona fide news events"?

A. No. The broadcast of press conferences, such as the one described in the inquiry, would not be exempt from the provisions of section 315 either as "bona fide news interviews" or "on the spot coverage of a bona fide news event." The press conference could not qualify as a "bona fide news interview" exemption inasmuch as it was not a regularly scheduled program, within the recognized and accepted meaning of that term, but rather was one that could be called by the candidates solely in their discretion and at times they themselves specify. Such a press conference could not, in any event, qualify for exemption, since the scheduling and in significant part the content and format of the press conference was not under the control of the network. In addition the broadcast of the press conference could not be deemed to be an "on-the-spot coverage of a bona fide news event," since prior Commission rulings issued on October 19 and 26, 1962 (see Q. and A. III.C.26, supra) pointed out inter alia, "* * * that 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 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." Such a test would, in effect, amount to a repeal of the "equal opportunities" provision of section 315(a)—something Congress clearly did not intend, as shown, for example by the necessity for the suspension of that provision for the 1960 debates between the two major presidential candidates. (Letter to Columbia Broadcasting System, Inc., 40 F.C.C. 395 (1964); In re Socialist Labor Party, 15 F.C.C. 2d 98 (1968), aff'd per curiam by order entered Oct. 31, 1968, sub nom, Taft Broadcasting Co. v. F.C.C., and U.S.A. Case No. 22445 (C.A.D.C., 1968).)

28. Q. The President of the United States during a presidential campaign used 15 minutes of radio and television time to address the Nation with respect to an extraordinary international situation in the Middle East (the so-called Suez crisis). Would the networks carrying this address be obliged to afford "equal opportunities" to the other presidential candidates?

A. No. On the basis of the legislative history of section 315 the Commission concluded that Congress did not intend to grant equal time to all presidential candidates when the President uses the air waves in reporting to the Nation on an international crisis. (Section 315 interpretations Telegrams to CBS, NBC, and ABC, 40 F.C.C. 276 (1956).)

29. Q. The President of the United States, upon the recommendation of the National Security Council, went on the air to deliver a report to the Nation with respect to an important announcement by the Soviet Government as to change in its leadership, and the explosion by Communist China of a nuclear device. Would the President's opponents for the Presidency be entitled to "equal opportunities?"

A. No. The networks carrying the report, in determining that such a report by the President on specific, current international events affecting the country's security falls within the "on-the-spot coverage of a bona fide news event" exemption of section 315(a)(4), acted within their "reasonable latitude for the exercise of good faith news judgment." The Commission also discussed its previous ruling of 1956 (Q. and A. III.C28 supra) and noted that this ruling had been fully reported to the Congress and that Congress had reexamined the concept of "use" in connection with extensive amendments in 1959 to section 315, but did not alter or comment adversely upon the 1956 ruling. (Letter to Republican National Committee, 40 F.C.C. 408 (1964), aff'd per curiam by an equally divided Court by order entered October 27, 1964, sub nom, Goldwater v. F.C.C. and U.S.A., Case No. 18963 (C.A.D.C. 1964); cert. den. 379 U.S. 893 (1964).)

*30. Q. The complainant stated that an opposing candidate for public office had appeared on "NET Journal" and he demanded "equal opportunities" based on this appearance. Is this program one of the kind which Congress meant to exempt under 315(a)(2) so that an appearance thereon would not establish any equal opportunity rights?

A. Yes. "NET Journal" was a regularly scheduled program; the format, although varying depending on the issues examined, included debates, panel discussions, documentary films, video tape documentaries and combinations thereof; the news-interview type format was regularly used on the program; the format was determined by the NET staff and the questions used in the news interview were formulated by the program producer and NET Public Affairs department; the factors in selecting interviewees were the public significance of the individuals and their news interest; and the program had been on the air every week for almost 2 years. (In re Socialist Workers 1968 National Campaign Committee, 14 F.C.C. 2d 858 (1968).)

*31. Q. Licensee had broadcast weekdays, since June 14, 1965, a regularly scheduled phone-in program entitled "Phone Forum." The program was prepared and produced by the station's news department; the station's news director selected the guests, including candidates for public office, on the basis of newsworthiness and availability. During the program, questions were directed to the guest by members of the listening public by telephone. The moderator of the program used a 4-second tape delay to exclude questions phoned in by listeners using offensive language and those which posed unsuitable questions, i.e., not relevant to the topic of the specific program. The moderator prepared a list of questions which were asked the guest when no questions were being phoned in. The views of listeners were neither solicited nor broadcast. Was this program exempt as a "bona fide news interview?"

A. The Commission assumed that the licensee's employees exercised control not only as to the suitability of the questions asked but also to insure that the program couldn't be taken over by either the supporters or opponents of the guest candidates. The Commission held that merely because the questions were posed by the listening public did not remove it from the category of a bona fide news interview. It also stated that this type of program was readily distinguishable from the "open mike" format of programming which generally consists of an airing of the views of callers on various subjects but which occasionally may also feature a guest who is a public figure and answers questions. On "Phone Forum", the program sought primarily to elicit the views of the guest-interviewee. (Letter to Socialist Labor Party, 7 F.C.C. 2d 857 (1967).)

*32. Q. On the occasion of a visit to a community by a presidential candidate during the course of the election campaign, a licensee arranged and broadcast a 30-minute "press conference" during which the candidate was interviewed on problems of particular interest to the community by three prominent public officials selected by the news staff of the licensee. All questions asked were selected by the interviewers and the candidate had no advance knowledge of the questions and no opportunity to make any statements other than in answer to the questions. The station contended that the broadcast constituted on-the-spot coverage of a bona fide news event, that the program consisted of a bona fide news interview, and that therefore the candidate's appearance on the program did not constitute a use of the station under section 315. The station contended that the news interview exemption was not limited to regularly scheduled programs and while Congress did not intend to exempt interviews which are under the control of the candidate, this program should be exempt since it was not controlled by the candidate. Was the broadcast a section 315 "use" entitling an opposing candidate to equal opportunities?

A. Yes. The broadcast was not exempt either as on-the-spot coverage of a bona fide news event or a bona fide news interview. With respect to the first point, the Commission cited many analogous cases where it had ruled the exemption did not apply in light of the legislative history and the fact that any other ruling on this point would mean that by adding section 315(a)(4), Congress, in effect, largely repealed the equal opportunities provision of section 315. The Commission further stated that it has consistently held in the light of legislative history of section 315(a)(2), that in order to qualify as a "bona fide news interview" the program must be regularly scheduled. (In re Socialist Labor Party, 15 F.C.C. 2d 98, aff'd per curiam by order entered Oct. 31, 1968, sub nom Taft Broadcasting Co. v. F.C.C., Case No. 22445 (C.A.D.C., 1968).)

IV. Who is a Legally Qualified Candidate?

IV 1. Q. How can a station know which candidates are "legally qualified"?

A. The determination as to who is a legally qualified candidate for a particular public office within the meaning of section 315 and the Commission's rules must be determined by reference to the law of the State in which the election is being held. In general, a candidate is legally qualified if he can be voted for in the State or district in which the election is being held, and, if elected, is eligible to serve in the office in question.

2. Q. Need a candidate be on the ballot to be legally qualified?

A. Not always. The term "legally qualified candidate" is not restricted to persons whose names appear on the printed ballot; the term may embrace persons not listed on the ballot if such persons are making a bona fide race for the office involved and the names of such persons, or their electors can, under applicable law, be written in by voters so as to result in their valid election. The Commission recognizes, however, that the mere fact that any name may be written in does not entitle all persons who may publicly announce themselves as candidates to demand time under section 315; broadcast stations may make suitable and reasonable requirements with respect to proof of the bona fide nature of any candidacy on the part of applicants for the use of facilities under section 315. (§§ 73.120, 73.290, 73.657, esp. par. (f) of the Commission rules; letters to Socialist Party of America, 40 F.C.C. 239 (1951); Columbia Broadcasting System, Inc., 40 F.C.C. 244 (1952); Lar Daly, 40 F.C.C. 270 (1956); reconsideration denied; "Legally Qualified Candidate", 40 F.C.C. 233 (1941); see also Q.'s and A.'s IV. 10, 11, 12, 13, 14, 15, and 16, infra.)

3. Q. May a person be considered to be a legally qualified candidate where he has made only a public announcement of his candidacy and has not yet filed the required forms or paid the required fees for securing a place on the ballot in either the primary or general elections?

A. The answer depends on applicable State law. In some States persons may be voted for by the electorate whether or not they have gone through the procedures required for getting their names placed on the ballot itself. In such a State, the announcement of a person's candidacy—if determined to be bona fide—is sufficient to bring him within the purview of section 315. In other States, however, candidates may not be "legally qualified" until they have fulfilled certain prescribed procedures. The applicable State laws and the particular facts surrounding the announcement of the candidacy are determinatives. (Letter to Honorable Earle C. Clements, 23 F.C.C. 2d 756 (1954); see letter to Clinton D. McKinnon, 40 F.C.C. 291 (1952).)

4. Q. May a station deny a candidate "equal opportunities" because it believes that the candidate has no possibility of being elected or nominated?

A. No. Section 315 does not permit any such subjective determination by the station with respect to a candidate's chances of nomination or election. (Letter to Columbia Broadcasting System, Inc., 40 F.C.C. 244 (1952).)

5. Q. When is a person a legally qualified candidate for nomination as the candidate of a party for President or Vice President of the United States?

A. In view of the fact that a person may be nominated for these offices by the conventions of his party without having appeared on the ballot of any State having presidential primary elections, or having any pledged votes prior to the convention, or even announcing his willingness to be a candidate, no fixed rule can be promulgated in answer to this question. Whether a person so claiming is in fact a bona fide candidate will depend on the particular facts of each situation, including consideration of what efforts, if any, he has taken to secure delegates or preferential votes in State primaries. It cannot, however, turn on the licensee's evaluation of the claimant's chances for success. (Letter to Columbia Broadcasting System, Inc., 40 F.C.C. 244 (1952); and see also par. (f) of §§ 73.120, 73.290, 73.657, and par. (e) of § 74.1113 of the Commission rules.)

6. Q. Has a claimant under section 315 sufficiently established his legal qualifications when the facts show that after qualifying for a place on the ballot for a particular office in the primary, he notified State officials of his withdrawal therefrom and then later claimed he had not really intended to withdraw, and where the facts further indicated that he was supporting another candidate for the same office and was seeking the nomination for an office other than the one for which he claimed to be qualified?

A. No. Where a question is raised concerning a claimant's legal qualification, it is incumbent on him to prove that he is in fact legally qualified. The facts here did not constitute an unequivocal showing of legal qualification. (Letter to Lar Daly, 40 F.C.C. 270 (1956), reconsideration denied; cf. letter to American Vegetarian Party, 40 F.C.C. 278 (1956).)

7. Q. If a candidate establishes his legal qualifications only after the date of nomination or election for the office for which he was contending, is he entitled to equal opportunities which would have been available had he timely qualified?

A. No, for once the date of nomination or election for an office has passed, it cannot be said that one who failed timely to qualify therefor is still a "candidate". The holding of the primary or general election terminates the possibility of affording "equal opportunities", thus mooting the question of what rights the claimant might have been entitled to under section 315 before the election. (Letter to Socialist Workers' Party, 40 F.C.C. 281 (1956), referring to letter to Socialist Workers' Party, 40 F.C.C. 280 (1956); letter to Mr. Lar Daly, 40 F.C.C. 273 (1956); aff'd. by order dismissing appeal entered Mar. 7, 1957, Lar Daly v. U.S.A. and F.C.C., Case No. 11946 (C.C.A. 7, 1957) rehearing denied by order entered Apr. 2, 1957; cert. den., 355 U.S. 826, rehearing denied 355 U.S. 885 (1957).)

8. Q. Under the circumstances stated in the preceding question, is any post-election remedy available to the candidate, before the Commission, under section 315?

A. None, insofar as a candidate may desire retroactive "equal opportunities". But this is not to suggest that a station can avoid its statutory obligation under

*An asterisk denotes a new question and answer.

section 315 by waiting until an election has been held and only then disposing of demands for "equal opportunities". (See citations in Q. and A. IV.7, supra).

9. Q. A, a candidate for the Democratic Party nomination for President, appeared on a variety program prior to the nominating convention because of the prior appearance of B, his opponent. After the closing of the convention, A claimed he was entitled to additional time in order to equalize his appearance with that afforded B. Would A be entitled to additional time?

A. No. A licensee may not be required to furnish the use of its facilities to a candidate for nomination for President after the convention has chosen its nominee. (Telegram to Lar Daly, 40 F.C.C. 317 (1960), reconsideration denied.)

10. Q. When a State Attorney General or other appropriate State official having jurisdiction to decide a candidate's legal qualification has ruled that a candidate is not legally qualified under local election laws, can a licensee be required to afford such "candidate" "equal opportunities" under section 315?

A. In such instances, the ruling of the State Attorney General or other official will prevail, absent a judicial determination. (Telegram to Ralph Muncy, 23 F.C.C. 2d 766 (1956); letter to Socialist Workers' Party, 40 F.C.C. 280 (1956); In re Lester Posner, 15 F.C.C. 2d 807 (1968); Q. and A. IV.16, infra.)

*11. Q. A television station afforded time to the Democratic candidate from the State of California for the U.S. Senate. The station subsequently turned down a request from the Socialist Labor Party for time for their candidate for the same office, on the basis of a telegram which it had received from the Secretary of State of the State of California which declared that he did not consider the Socialist Labor Party candidate a legally qualified candidate under provisions of the California Election Code. The candidate in question was duly nominated and had accepted the nomination at the Party State Convention; the Secretary of State's office was officially notified of his nomination; notification of his candidacy was sent to all news media and was published in the metropolitan newspapers; he had addressed public meetings in four large California cities on behalf of his candidacy. Upon request of the Secretary of State the Deputy Attorney General advised the Commission that under California election law write-in votes may be cast and counted for an individual seeking the office of U.S. Senator and if the individual received a plurality of the votes cast for the office the Secretary of State would certify the individual as having been elected. Would the candidate be considered legally qualified so as to be entitled to "equal opportunities" for the use of the station's facilities?

A. Yes. The Commission's rules define a legally qualified candidate, in part, as any person who has publicly announced that he is a candidate; meets the qualifications prescribed by the applicable laws to hold the office for which he is a candidate so that he may be voted for by the electorate; is eligible under the law to be voted for by writing in his name on the ballot; and makes a substantial showing that he is a bona fide candidate for nomination or office. On the basis of the facts recited it was determined that the candidate was a legally qualified candidate and as such was entitled to "equal opportunities." (Letter to Socialist Labor Party of California, 40 F.C.C. 423 (1964).)

*12. Q. An incumbent county clerk having publicly announced his intention to run for renomination in an upcoming primary continued to broadcast sports events and otherwise speak on radio. It appeared that he had not filed his notification and declaration papers with the appropriate State official. Is a legally qualified candidate for the same nomination entitled to "equal opportunities" in response to the broadcast by the incumbent?

A. No. The State Attorney General indicated that a person does not become a legally qualified or "bona fide" candidate in the primary until his notification and declaration papers have been received and accepted by the applicable State officer. Since the incumbent county clerk had not filed these required papers, he was not a legally qualified candidate under section 73.120(a) of the Commission rules at the time of his broadcasts. His opponent, therefore, was not entitled to "equal opportunities" to respond to these broadcasts. (Letter to Rady Davis, 40 F.C.C. 435 (1965); see Q. and A. IV.16, infra.)

*13. Q. When a State Secretary of State has ruled that an individual has not followed the procedures required by State law for becoming a legally qualified candidate for U.S. Senator from that State, can a licensee be required to afford that individual "equal opportunities" under section 315?

A. No. When it appears that a State Secretary of State has ruled that an individual is not a legally qualified candidate under the State election law and that individual has presented no further information regarding his claimed candidacy, he has failed to meet the burden imposed by section 73.120(f) of the Commission's rules of proving that he is a legally qualified candidate for public office under section 73.120(a) of those rules. (Letter to Socialist Workers Party, 40 F.C.C. 421 (1964).)

*14. Q. An individual seeking a U.S. Senate seat requested time from a station equal to that afforded his opponents. The individual's request had been refused by the station on the grounds that he was not a bona fide candidate. The candidate informed the Commission that he had been advised by the local election board that he possessed the necessary requisites to be a write-in candidate and claimed that he was thus entitled to equal time. Would the individual be entitled to equal opportunities under these circumstances?

A. No. The Commission found that the individual had not complied with the Commission's rules for establishing one's self as a legally qualified candidate. He had failed to submit any proof other than his own statements relating to whether he was "eligible under the applicable law to be voted for * * * by writing in his name on the ballot." Therefore, he had not met his burden of proof under section 73.657(f) of the rules. (Letter to Raymond Harold Smith, 40 F.C.C. 430 (1964); see Mr. Roy Anderson, 14 F.C.C. 2d 1064 (1968), aff'd per curiam, Anderson v. Federal Communications Commission, 403 F. 2d 61 (C.C.A. 2, 1968), which although it made no determination of the legal qualifications of the complainant, set forth some criteria in this area.)

*15. Q. The names of candidates for delegates to the national political convention did not appear on the ballot in the Primary of a certain State. The electorate voted solely for the candidate for nomination to the Presidency, including favorite son candidates. If a licensee presents a delegate in such a fashion that would constitute a "use" if he were a legally qualified candidate for a public office, would it constitute a "use" here?

A. No. The Secretary of State, with the concurrence of the State's Attorney General, stated that the State did not consider a candidate for delegate on a slate of delegates in a Presidential Primary to be a legally qualified candidate for any public office. In view of this fact, the candidate was not a legally qualified candidate for any public office and his appearances would not constitute a "use" within the meaning of section 315. (In re KNBC–TV, 23 F.C.C. 2d 765 (1968); see also In re Lester Posner, 15 F.C.C. 2d 807 (1968).)

*16. Q. Under State law, the General Assembly was preparing to vote to fill a vacancy in the office of Governor. The complainant asserted that he was a legally qualified candidate for the office of Governor. The licensee contended that the complainant was not a legally qualified candidate for public office within the meaning of section 315 and forwarded a letter from the Deputy Attorney General of the State, which stated that the forthcoming legislative action by the General Assembly choosing a new governor was not an election under State law by which the voters of the State would elect a governor. Under this fact situation, was the complainant entitled to equal opportunities?

A. No. The position of the licensee that the complainant had no right to time under section 315 was not unreasonable in light of the circumstances of the case. (In re Lester Posner, 15 F.C.C. 807 (1968).)

*17. Q. A write-in candidate for Mayor sought equal time to that given to the only two candidates for that office whose names appeared on the ballot. The State law provided that only the two candidates for each elective position receiving the greatest number of votes cast in the city primary election would become the "official candidates" for the final election. The Secretary of State, the "Ex Officio Chief Elections Officer," stated that write-in candidates were not "official candidates" and that there was no statutory provision whereby a person could be "officially" identified as a write-in candidate. Therefore only the candidates whose names were printed on the ballot could qualify as official candidates and only these official ones were entitled to "equal time" under section 315. The licensee stated that under the Commission rule regarding write-in candidates, this candidate appeared to be legally qualified in that he met the requirements of the laws of the State to hold office and his name could be written on the ballot if any voter so desired. Was the write-in candidate entitled to equal time?

A. Yes. The Commission observed that the Secretary of State had stated that write-in candidates were not "official candidates," but that he did not state that they were not "legally qualified candidates." After quoting from § 73.657(a), the Commission noted that the write-in candidate met the requirements of state laws to hold office and could be written-in on the ballot by any voter who so desired. The Commission stated that the write-in candidate may be a legally qualified candidate under the Commission rules if he made a substantial showing that he was a bona fide candidate. (In re Request by Tom Leonard, 20 F.C.C. 2d 177 (1969).)

18. Q. The networks broadcast a program entitled "A conversation with President Johnson" on December 19, 1967. The President had not publicly announced his intention to be a candidate for his party's nomination for president and refused to speculate about the matter during the program in question stating that he had not made his decision about running again and "* * * in due time * * * will cross that bridge." Complainant, who had publicly announced his intention to seek the presidential nomination of the same party as the President's, requested equal time contending that he and the President were opposing candidates for the nomination of their party for President of the United States. Was the complainant entitled to equal time under the above facts?

A. No. The Commission's rules, in effect for over 25 years and adhered to without exception, provide that a person is not a legally qualified candidate within the meaning of the statute unless he had publicly announced his intention to be a candidate. In re Senator Eugene J. McCarthy, 11 FCC 2d 511 (1968), aff'd. Eugene McCarthy v. Federal Communications Commission, 390 F.2d 471 (D.C. Cir. 1968), in which the Court stated that: "[t]he obvious difficulty in determining whether a likely public figure is a candidate within the intent of the statute justifies the Commission in promulgating a more or less absolute rule. If the application of such a rule more often than not produces a result which accords with political reality, its rational basis is established. * * * Considering the content and the timing of the not unprecedented year-end interview with the President, we cannot say that the application of the Commission's Rule in this case without the requested hearing produced an unreasonable result." (See § 73.657(a) of the Commission rules which indicates the criteria in addition to a public announcement which must be met to be considered a legally qualified candidate.)

*19. Q. A complainant stated that he disagreed with a licensee's determination that he was a legally qualified candidate. He had publicly announced his intention to seek the nomination of his party for Governor. He stated that there were only three procedures whereby a person could be listed on his party's primary ballot and he was not a legally qualified candidate until he had completed one of them. The licensee contended that under certain circumstances a person designated by a meeting of the State Committee of the party could become the nominee of the party without any primary being held. Was the licensee's determination that the complainant was a legally qualified candidate reasonable?

A. Yes. It was possible that the complainant could become his party's nominee solely by action of the party's State Committee and because § 73.657(a) of the Commission rules provides, inter alia, that "a 'legally qualified candidate' means any person who has publicly announced that he is a candidate for nomination by a convention of a political party * * *", the licensee's judgment was not unreasonable. (Letter to Mr. William vanden Heuvel, 23 F.C.C. 2d., 119 (1970).)

V. When Are Candidates Opposing Candidates?

V. 1. Q. What public offices are included within the meaning of section 315?

A. Under the Commission's rules, section 315 is applicable to both primary and general elections, and public offices include all offices filled by special or general election on a municipal, county, state, or national level as well as the nomination by any recognized party of a candidate for such an office.

2. Q. May the station under section 315 make time available to all candidates for one office and refuse all candidates for another office?

A. Yes. The "equal opportunities" requirement of section 315 is limited to all legally qualified candidates for the same office.

3. Q. If the station makes time available to candidates seeking the nomination of one party for a particular office, does section 315 require that it make equal time available to the candidates seeking the nomination of other parties for the same office?

A. No, the Commission has held that while both primary elections or nominating conventions and general elections are comprehended within the terms of section 315, the primary elections or conventions held by one party are to be considered separately from the primary elections or conventions of other parties, and, therefore, insofar as section 315 is concerned, "equal opportunities" need only be afforded legally qualified candidates for nomination for the same office at the same party's primary or nominating convention. The station's actions in this regard, however, would be governed by the public interest standards encompassed within the "fairness doctrine". (Letters to KWFT, Inc., 40 F.C.C. 237 (1948); Socialist Labor Party, 40 F.C.C. 240 (1952); Carbondale Broadcasting Company, 40 F.C.C. 259 (1953); Honorable Joseph S. Clark, 40 F.C.C. 325 (1962); Honorable Joseph S. Clark, 40 F.C.C. 332; Mrs. Eleanor Clark French, 40 F.C.C. 417 (1964); Telegrams to The Lueddeke For Governor Committee, 40 F.C.C. 320 (1961); Mr. Paul H. Rivet, 40 F.C.C. 437 (1965); Q. and A. V.5, infra; see letter to Lar Daly, 40 F.C.C. 302 (1959); see also letter to Greater New York Broadcasting Corp., 40 F.C.C. 235 (1946).)

4. Q. If the station makes time available to all candidates of one party for nomination for a particular office, including the successful candidate, may candidates of other parties in the general election demand an equal amount of time under section 315?

A. No. For the reason given in Q. and A. V.3, supra. (Letter to KWFT, Inc., 40 F.C.C. 237 (1948).)

5. Q. On May 3, 1964, an incumbent Congressman from New York was afforded time to appear on a television program. At that time he was the only person who had been designated by petition under New York law as the Republican nominee for his Congressional seat. The complainant at that date was the only designated Democratic—Liberal nominee. Primaries for both parties were due to be held on June 2, 1964. However, if no further nominees were designated by April 28, 1964, and if no petitions for write-in nominees were filed by May 5, 1964, no primary would be held, since the incumbent and the complainant each would have the uncontested nomination of his respective party. In fact, no further petitions, either "designating" or "write-in," were ever filed. Was the licensee correct in refusing "equal opportunities" to the complainant in response to incumbent's May 3, broadcast on the ground that on that date each was merely a candidate for his respective party's nomination, and thus they were not opposing candidates for the same office?

A. Yes. The issue must be determined under the New York State election laws and should be resolved by appropriate State or local authorities. Since neither the complainant nor the Commission was able to obtain an interpretation of that law from the New York authorities, the Commission of necessity interpreted the law. An "uncontested position" as defined by the New York statute is one as to which (1) the number of candidates designated for the particular office does not exceed the number to be nominated or elected thereto by the party in the primary, and (2) no valid petition requesting an opportunity to write-in the name of an undesignated candidate has

*An asterisk denotes a new question and answer.

been filed. If both conditions are fulfilled when the period for filing such petitions is over (May 5), no primary is required. Since condition (2) of this definition could not be fulfilled until May 5, 1964, 2 days after the Republican incumbent's broadcast, neither designated candidate here involved could be considered the nominee of his respective party until May 5, and, therefore, they were not opposing candidates for Congress at the time of incumbent's broadcast. (Letter to Mrs. Eleanor Clark French, 40 F.C.C. 417 (1964); cf. Honorable Clarence E. Miller, 23 F.C.C. 2d 121 (1970).)

VI. What Constitutes Equal Opportunities?

A. In General.

VI.A. 1. Q. Generally speaking, what constitutes "equal opportunities"?

A. Under section 315 and §§ 73.120, 73.290, and 73.657 of the Commission's rules, no licensee shall make any discrimination in charges, practices, regulations, facilities, or services rendered to candidates for a particular office.

2. Q. Is a licensee required or allowed to give time free to one candidate where it had sold time to an opposing candidate?

A. The licensee is not permitted to discriminate between the candidates in any way. With respect to any particular election it may adopted a policy of selling time, or of giving time to the candidates free of charge, or of giving them some time and selling them additional time. But whatever policy it adopts, it must treat all candidates for the same office alike with respect to the time they may secure free and that for which they must pay.

3. Q. Is it necessary for a station to advise a candidate or a political party that time has been sold to other candidates?

A. No. The law does not require that this be done. If a candidate inquires, however, the facts must be given him. It should be noted here that a station is required to keep a public record of all requests for time by or on behalf of political candidates, together with a record of the disposition and the charges made, if any, for each broadcast. (§§ 73.120(d), 73.290(d), 73.657(d); and (47 C.F.R. 74.1113(c) (1970) of the rules; telegram to Norman William Seeman, Esq., 40 F.C.C. 341 (1962); letter to Honorable William Benton, 40 F.C.C. 1081 (1950).)

4. Q. If a station desires to make its facilities available on a particular day for political broadcasts to all candidates for the same office, is one of the candidates precluded from requesting "equal opportunities" at a later date if he does not accept the station's initial offer?

A. This depends on all of the circumstances surrounding the station's offer of time and, particularly, whether the station has given adequate advance notice. The Commission has held that a 4-day notice by a Texas station to a Congressman while Congress is in session does not constitute adequate advance notice and the Congressman is not foreclosed from his right to request "equal opportunities". (Letter to KTRM, 40 F.C.C. 335 (1962) but compare letter to Senate Committee on Commerce, 40 F.C.C. 357 (1962), Q. and A. VI.B.8., infra.)

5. Q. With respect to a request for time by a candidate for public office where there has been no prior "use" by an opposing candidate, must the station sell the candidate the specific time segment he requests?

A. No. Neither the Act nor the Commission's rules contain any provisions which require a licensee to sell a specific time segment to a candidate for public office. (Letter to KTRM, 40 F.C.C. 331 (1962) but see Q. and A. VI.A.14, infra.)

6. Q. Is a station required to sell to a candidate time which is unlimited as to total time and as to the length of each segment?

A. Neither the Act nor the Commission's rules contain provisions requiring stations to sell unlimited periods of time for political broadcasts. Section 315 of the Act imposes no obligation on any licensee to allow the use of its station by any candidate. Commission's programming statement contemplates the use of stations for political broadcasting. Where the station showed that sale of limited time segments to candidates was based on its experience and the interests of viewers in programing diversification, no Commission action was required. (Telegrams to Mr. J. B. Lahan, 40 F.C.C. 342 (1962) to Grover C. Doggette, Esq., 40 F.C.C. 346 (1962); to Grover C. Doggette, 40 F.C.C. 347 (1962); see Q. and A. IV.A.14 infra; cf. letters to Station WLBT-TV, 40 F.C.C. 333 (1962) and Radio Station WROX, 40 F.C.C. 339 (1962). In a public notice entitled, Licensee Responsibility as to Political Broadcasts, 15 F.C.C. 2d 94 (1968), the Commission apprised licensees of "* * * the desirability of making their facilities effectively available to candidates for political office even though this may require modification of normal station format." See also: In re Complaint of W. Roy Smith, 18 F.C.C. 2d 747 (1969), and In re Port Huron Broadcasting Co. (WHLS), 12 F.C.C. 1069, 1071 (1948).)

7. Q. If a station offers free time to opposing candidates and one candidate declines to use the time given him, are other candidates for that office foreclosed from availing themselves of the offer?

A. No. The refusal of one candidate does not foreclose other candidates wishing to use the time offered. However, whether the candidate initially declining the offer could later avail himself of "equal opportunities" would depend on all the facts and circumstances. (Letter to section 315 Requirements, 40 F.C.C. 272 (1956); compare letter to Senate Committee on Commerce, 40 F.C.C. 357 (1962); cf. letter to Station WLBT-TV, 5 F.C.C. 2d 479 (1966); Q. and A. VI.A.13, infra; cf. In re Stations KHJ-TV and KABC-TV, 23 F.C.C. 2d 769 (1966); Q. and A. VI.A.14, infra.)

8. Q. If one political candidate buys station facilities more heavily than another, is a station required to call a halt to such sales because of the resulting imbalance?

A. No. Section 315 requires only that all candidates be afforded "equal opportunities" to use the facilities of the station. (Letter to Mrs. M. R. Oliver, 40 F.C.C. 253 (1952); letter to Honorable Frank M. Karsten, 40 F.C.C. 269 (1955).)

9. Q. Can a station contract with the committee of a political party whereby it commits itself in advance of an election to furnish substantial blocks of time to the candidates of that party?

A. Neither section 315 nor the Commission's rules prohibit a licensee from contracting with a party for reservation of time in advance of an election. However, substantial questions as to a possible violation of section 315 would arise if the effect of such prior commitment were to disable a licensee from meeting its "equal opportunities" obligations under section 315. (Letter to Honorable Frank M. Karsten, 40 F.C.C. 269 (1955).)

10. Q. Where a television station had previously offered certain specified time segments during the last week of the campaign to candidate A, who declined the purchase, and then sold the same segments to A's opponent was the station obligated under section 315 to accede to A's subsequent request for particular time periods immediately preceding or following the time segments previously offered to him and refused by him and subsequently sold to his opponent?

A. No. But the time offered to candidate A must be generally comparable. The principal factors considered in this situation were: (a) the total amount of time presently scheduled for each candidate; (b) the time segments presently offered to candidate A; (c) the time segments presently scheduled for candidate A's opponent and previously rejected by candidate A; (d) the time segments now scheduled for candidates for other offices, if any, and previously rejected by candidate A; and (e) the station's possible obligations to other candidates for office. (Telegram to Major General Harry Johnson, 40 F.C.C. 323 (1961).)

11. Q. If a station has a policy of confining political broadcasts to sustaining time, but has so many requests for political time that it cannot handle them all within its sustaining schedule, may it refuse time to a candidate whose opponent has already been granted time, on the basis of its established policy of not canceling commercial programs in favor of political broadcasts?

A. No. The station cannot rely upon its policy if the latter conflicts with the "equal opportunities" requirement of section 315. (In the matter of E. A. Stephens, 11 F.C.C. 61 (1945).)

12. Q. If one candidate has been nominated by Parties A, B, and C, while a second candidate for the same office is nominated only by Party D, how should time be allocated as between the two candidates?

A. Section 315 has reference only to the use of facilities by persons who are candidates for public office and not to the political parties which may have nominated such candidates. Accordingly, if broadcast time is made available for the use of a candidate for public office, the provisions of section 315 require that "equal opportunities" be afforded each person who is a candidate for the same office, without regard to the number of nominations that any particular candidate may have. (Letters to Greater New York Broadcasting Corp., 40 F.C.C. 235 (1946); to Lar Daly, 40 F.C.C. 302 (1959).)

*13. Q. Licensee intended to devote a substantial block of time on a sustaining basis to legally qualified candidates for various public offices, but desired that all candidates avail themselves of the opportunity to appear on the chosen date only. It proposed to require a waiver from each candidate who accepted the invitation to appear that, if subsequent events forced the candidate to not appear at the chosen date, he forfeited his right to appear at a later date. It also intended to request of those candidates who could not or did not want to appear at the specified date a waiver of their right to appear at a different date. Finally, the licensee wanted to apprise all candidates that if any one of them refused to sign such a waiver, the licensee would be forced to rescind all invitations to candidates for that particular office, whether already accepted or not, and notify all other candidates for that office of the reason for cancellation. Would all of these plans of the licensee be generally valid and consistent with requirements under section 315?

A. Yes, as a general matter. If the licensee has made a good faith, reasonable judgment that his area's interests would be best served by all legally qualified candidates appearing on a particular program, he may make the offer of free time contingent on all candidates agreeing to appear or to waive their right to equal opportunities. As a general matter the waiver would be binding, but because this letter is based on uncertain future events, circumstances might arise which would alter this conclusion. However, the candidate who does not sign the waiver and rejects the offer is exercising rights expressly bestowed upon him by Congress. Therefore, it would be inappropriate for the licensee to impute blame or indicate that the candidate was acting improperly in so doing. Likewise, it would be wrong to use the threat to blame failure of the negotiations on any particular candidate as a lever to dictate the format of the program. (Letters to Station WBTW-TV, 5 F.C.C. 2d 479 (1966); to Senate Committee on Commerce, 40 F.C.C. 357 (1962); see In re Station WOR-TV, 22 F.C.C. 2d 528 (1969).)

*14. Q. When an offer of free time is made by a licensee to legally qualified candidates for a public office and this offer is refused, does this give any rights to opposing candidates for the same office, i.e., can they require that they be afforded free time?

A. No. The "equal opportunities" provision of section 315 becomes applicable only when a licensee permits a legally qualified candidate for public office to actually use its facilities. (In re Stations KHJ-TV and KABC-TV, 23 F.C.C. 2d 767 (1966); cf. Telegram to Socialist Labor Party, 40 F.C.C. 376 (1962); "Legally Qualified Candidate", 40 F.C.C. 233 (1941); Q. and A. VI.A. 5 and 6, supra.)

*15. Q. A station proposed to make its facilities available free of charge to all candidates for the office of Mayor of New York and Governor of New Jersey on the day before the election. The broadcast day would be divided into four segments and each of the seven candidates for governor and seven for mayor would have a 15-minute period within each of the segments. Drawing by lot would determine the order of appearance; each candidate could use his segment as he desired. However, the station would require the candidate to appear personally during each of his four broadcasts. Telephone call-in facilities would be available for any candidate upon request; free helicopter service to and from the studio would be provided each candidate; office facilities would be provided for any candidate who desired it. Any candidate who refused to appear in person or those who did not use all or any part of their free time would not receive substitute time by the station, and their unused time would be used to broadcast "information of interest" to the electorate. The station requested a ruling as to whether this proposal complied with section 315.

A. The Commission stated that while it could not anticipate the basis for all complaints candidates might file alleging violations of section 315 rights, it would offer the licensee guidance. The Commission advised that the proposed program constituted a highly commendable effort to contribute to an informed electorate and appeared to provide a good basis for affording equal opportunities to the candidates. However, insistance that each candidate appear personally at each of his broadcasts might be inconsistent with the provision of section 315. Some candidates might prefer to participate by prerecorded videotape or film rather than by the "give and take" of a live appearance, or to devote their last day of campaigning to purposes other than live appearances on the proposed program. (In re WOR-TV, 22 F.C.C. 2d 528 (1969).)

B. Comparability

VI.B. 1. Q. Is a station's obligation under section 315 met if it offers a candidate the same amount of time an opposing candidate has received, where the time of the day or week afforded the first candidate is superior to that offered his opponent?

A. No. The station in providing "equal opportunities" must consider the desirability of the time segment allotted as well as its length. And while there is no requirement that a station afford candidate B exactly the same time of day on exactly the same day of the week as candidate A, the time segments offered must be comparable as to desirability. In the matter of E. A. Stephens, 11 F.C.C. 61 (1945); telegram to Major General Harry Johnson, 40 F.C.C. 323 (1961) Q. and A. VI.B.2, infra.)

2. Q. If candidate A has been afforded time during early morning, noon and evening hours, does a station comply with section 315 by offering candidate B time only during early morning and noon periods?

A. No. However, the requirements of comparable time do not require a station to make available exactly the same time periods, nor the periods requested by candidate B. (Letter to D. L. Grace, Esq., 40 F.C.C. 297 (1958).)

3. Q. If a station broadcasts a program sponsored by a commercial advertiser which includes one or more qualified candidates as speakers or guests, what are its obligations with respect to affording "equal opportunities" to other candidates for the same office?

A. If candidates are permitted to appear without cost to themselves, on programs sponsored by commercial advertisers, opposing candidates are entitled to receive comparable time also at no cost. ("Equal Time Requirements," 40 F.C.C. 251 (1952); Telegram to WWIN, 40 F.C.C. 338 (1962); In re Station WAKR, 23 F.C.C. 2d 759 (1970).)

*4. Q. When a station broadcasts an appearance by a candidate which constitutes a use and it is paid for by the political campaign committee of a labor union, is an opposing candidate entitled to comparable *free* time?

A. No. Where a political committee of an organization such as a labor union purchases time specifically on behalf of a candidate, opposing candidates are not entitled to *free* time. There is a distinction between this situation and a case where a candidate is permitted to appear on a program which is regularly sponsored. (Telegram to Metromedia, Inc., 40 F.C.C. 426 (1964); compare Q. and A. VI.B.3, supra, and In re Station WAKR, 23 F.C.C. 2d 759 (1970).)

5. Q. Where a candidate for office in a State or local election appears on a national network program, is an opposing candidate for the same office entitled to equal facilities over stations which carried the original program and serve the area in which the election campaign is occurring?

A. Yes. Under such circumstances an opposing candidate would be entitled to time on such stations. (Equal Time Requirements, 40 F.C.C. 251 (1952).)

6. Q. Where a candidate appears on a particular program—such as a regular series of forum programs—are opposing candidates entitled to demand to appear on the same program?

A. Not necessarily. The mechanics of the problem of "equal opportunities" must be left to resolution of the parties. And while factors such as the size of the potential audience because of the appearance of the first candidate on an es-

*An asterisk denotes a new question and answer.

tablished or popular program might very well be a matter for consideration by the parties, it cannot be said, in the abstract, that "equal opportunities" could only be provided by giving opposing parties time on the same program. (Letters to Socialist Workers Party, 40 F.C.C. 256 (1952); to Columbia Broadcasting System, Inc., 40 F.C.C. 254 (1952); to Mr. Harry Dermer, 40 F.C.C. 407 (1964).)

7. Q. Where a station asks candidates A and B (opposing candidates in a primary election) to appear on a debate-type program, the format of which is generally acceptable to the candidate, but with no restrictions as to what issues or matters might be discussed, and candidate A accepts the offer and appears on the program and candidate B declines to appear on the program, is candidate B entitled to further "equal opportunities" in the use of the station's facilities within the meaning of section 315 of the act? If so, is any such obligation met by offering candidate B, prior to the primary, an opportunity to appear on a program of comparable format to that on which candidate A appeared, or is the station obligated to grant candidate B time equal to that used by candidate A on the program in question unrestricted as to format?

A. Since the station's format was reasonable in structure and the station put no restrictions on what matters and issues might be discussed by candidate B and others who appeared on the program in question, it offered candidate B "equal opportunities" in the use of its facilities within the meaning of section 315 of the Act. The station's further offer to candidate B, prior to the primary, of its facilities on a "comparable format" was reasonable under the facts of the case, consistent with any continuing obligation to afford candidate B "equal opportunities" in the use of the station which he may have had. (Letter to Honorable Bob Wilson, 40 F.C.C. 300 (1958); but see letter to Senate Committee on Commerce, 40 F.C.C. 357 (1962), Q. and A. VI.B.8, infra, which partially superseded this ruling.)

8. Q. A licensee offered broadcast time to all the candidates for a particular office for a joint appearance, the details of which program were determined solely by the licensee. If Candidate "A" rejects the offer and Candidate "B" and/or other candidates accepts and appears, would Candidate "A" be entitled to "equal opportunities" because of the appearance of Candidate "B" and/or other candidates on the program previously offered by the licensee to all of the candidates?

A. Yes, provided the request is made by the candidate within the period specified by the rules. The Commission stated that licensees should negotiate with the affected candidates and that where the offer was mutually agreeable to such candidates, "equal opportunities" were being afforded to the candidates. Where the candidate rejected the proposal, however, and other candidates accepted and appeared, the Commission stated: "Where the licensee permits one candidate to use his facilities, section 315 then—simply by virtue of that use—requires the licensee to 'afford equal opportunities to all other such candidates for that office in the use of such broadcasting station.' This obligation may not be avoided by the licensee's unilateral actions in picking a program format, specifying participants other than and in addition to the candidates, setting the length of the program, the time of taping, the time of broadcast, etc., and then offering the package to the candidates on a 'take it or leave it—this is my final offer' basis. For * * * section 315 provides that the station 'shall have no power of censorship over the material broadcast.' (Cf. In re Port Huron Broadcasting Co. (WHLS), 12 F.C.C. 1069 (1948).) Clearly, the 'take it or leave it' basis described above would constitute such prohibited censorship, since it would, in effect, be dictating the very format of the program to the candidate—and thus, an important facet of 'the material broadcast.' We wish to make clear that the Commission is in no way saying that one format is more in the public interest than another. On the contrary, the thrust of our ruling is that the Act bestows upon the candidate the right to choose the format and other similar aspects of 'the material broadcast', with no right of 'censorship' in the licensee." (Letter to Senate Committee on Commerce, 40 F.C.C. 357 (1962); see In re Licensee Obligations In Political Campaigns, 14 F.C.C. 2d 765 (1968); In re Station WOR–TV, 22 F.C.C. 2d 528 (1969); compare earlier rulings Q.'s and A.'s VI.A.4.7 and VI.B.7, supra; cf. Farmers Educational and Cooperative Union of America, North Dakota Division v. WDAY, Inc., 360 U.S. 525 (1959).)

9. Q. In affording "equal opportunities", may a station limit the use of its facilities solely to the use of a microphone?

A. A station must treat opposing candidates the same with respect to the use of its facilities and if it permits one candidate to use facilities over and beyond the microphone, it must permit a similar usage by other qualified candidates. (Letter to D. L. Grace, Esq., 40 F.C.C. 297 (1958).)

*10. Q. (See Q. and A. III.B.17, supra, for additional facts.) A station developed a policy that advertisements for candidates for local offices in an election would be shown before 6 p.m. while those of candidates for national offices would be shown after 6 p.m. On a film clip used by a candidate for a national office shown after 6 p.m., there were scenes of the national candidate talking with a group of students, one of whom later becomes a legally qualified candidate for a local public office. Can legally qualified opponents of this "student"—candidate for local public office demand and receive broadcast time after 6 p.m.?

A. Yes. Although the station's policy of not affording time to candidates for local offices after 6 p.m., if uniformly applied, seemed reasonable, if, as here, the licensee permitted a use of the station's facilities by a legally qualified candidate for a local public office after 6 p.m., it must afford comparable time periods to all opposing legally qualified candidates for the same local public office. (In re Station KRTV, 23 F.C.C. 2d 778 (1966).)

*11. Q. Two out of four candidates of the same party in a primary election were given free time by a television station for a one-half hour face-to-face debate. The other two candidates were offered free time in comparable time segments to engage in a one-half hour debate or to talk in separate 15-minute programs. The two candidates not in the original debate protested to the Commission and stated that all four should be included in the debate because a debate format was more effective, the original two debaters were publicized as "front runners" and the original debate had been well-publicized so it was certain to draw a large audience. Was the equal opportunity requirement met by this station licensee when it did not grant this demand?

A. Yes. The station fulfilled the requirements of the equal opportunity provisions when it offered all candidates equal amounts of time free of charge in comparable time periods. (In re Messrs. William F. Ryan and Paul O'Dwyer, 14 F.C.C. 2d 633 (1968); In re Constitutional Party and Frank W. Gaydosh, 14 F.C.C. 2d 255 (1968), petition to review denied, 14 F.C.C. 2d 861 (1968), in which the Commission stated that "[e]qual time right under section 315 of the Communications Act does not include right to appear on same program with other candidates since station licensee cannot compel political candidates to appear on same program with you." (In re Conservative Party, 40 F.C.C. 1086 (1962).)

*12. Q. It was arranged that approximately the first hour of a debate between two legally qualified candidates could be videotaped by licensee A. Licensee B arranged to have a copy of the tape made for broadcast of the one hour program at 10:30 p.m. that night. At 5 p.m., licensee B discovered that because of the failure of licensee A's videotape machine, the video portion of the last 2 minutes and 50 seconds of the closing remarks of candidate C were lost, but the audio portion was unaffected. Licensee B substituted a still picture of candidate C during its broadcasting of the defective video portion of the tape. During the presentation of this still picture image, the video image became defective and a slide which read "technical difficulties" was flashed on the screen. Candidate C requested that he be permitted to rebroadcast the portion of the tape which was not shown over the facilities of licensee B. Under the requirements of section 315, can candidate C require that licensee B rebroadcast the defective portion of the tape and to also permit candidate C to repeat what was said on the defective portion of the tape?

A. No. Because the audio portion of candidate C's remarks was broadcast without interruption and licensee B appeared to have made a reasonable effort to remedy the defective video portion. Licensee B substantially complied with the requirements of section 315. (In re Senator Birch Bayh, 15 F.C.C. 2d 47 (1968).)

*An asterisk denotes a new question and answer.

VII. What Limitations Can Be Put on the Use of Facilities by a Candidate?

VII. 1. Q. May a station delete material in a broadcast under section 315 because it believes the material contained therein is or may be libelous?

A. No. Any such action would entail censorship which is expressly prohibited by section 315 of the Communications Act. (In re Port Huron Broadcasting Co. (WHLS), 12 F.C.C. 1069 (1948); In the matter of WDSU Broadcasting Corporation, 16 F.C.C. 345 (1951); see Q. and A. VII.2, infra.)

2. Q. If a legally qualified candidate broadcasts libelous or slanderous remarks, is the station liable therefor?

A. In Port Huron Broadcasting Co., 12 F.C.C. 1069 (1948), the Commission expressed an opinion that licensees not directly participating in the libel might be absolved from any liability they might otherwise incur under State law, because of the operation of section 315, which precludes them from preventing a candidate's utterances. In a subsequent case, the Commission's ruling in the Port Huron case was, in effect, affirmed, the Supreme Court holding that since a licensee could not censor a broadcast under section 315, Congress could not have intended to compel a station to broadcast libelous statements of a legally qualified candidate and at the same time subject itself to the risk of damage suits. (Farmers Educational & Cooperative Union of America v. WDAY, Inc., 360 U.S. 525 (1959).)

3. Q. Does the same immunity apply in a case where the Chairman of a political party's campaign committee, not himself a candidate, broadcasts a speech in support of a candidate?

A. No, licensees are not entitled to assert the defense that they are not liable since the speeches could have been censored without violating section 315. Accordingly, they were at fault in permitting such speeches to be broadcast. (Felix v. Westinghouse Radio Stations, 186 F. 2d 1 (C.C.A. 3, 1950), cert. den., 341 U.S. 909; George F. Mahoney, 40 F.C.C. 336 (1962); Q. and A. VII,4, infra; but cf. In re Gray Communications Systems, Inc., 14 F.C.C. 2d 766 (1968) and Herald Publishing Company, 14 F.C.C. 2d 767, 768 (1968); reconsideration denied, In the Matter of Gray Communications Systems, Inc., 19 F.C.C. 2d 532, 533 (1969); see In re Station WOR–TV, 22 F.C.C. 2d 528 (1969).)

4. Q. A candidate prepared a 15-minute video tape which contained the opinions of several private citizens with respect to an issue pertinent to the pending election. If the station broadcast such program in which the candidate did not appear, would the immunity afforded licensees by section 315 from liability for the broadcast of libelous or slanderous remarks by candidates be applicable?

A. No. The provision of section 315 prohibiting censorship by a licensee over material broadcast pursuant to section 315 applies only to broadcasts by candidates themselves. Section 315, therefore, is not a defense to an action for libel or slander arising out of broadcasts by non-candidates speaking in behalf of another's candidacy. Since section 315 does not prohibit the licensee from censoring such a broadcast, the licensee is not entitled to the protection of section 315. (George F. Mahoney, 40 F.C.C. 336 (1962); but cf. In re Gray Communications System, Inc., 14 F.C.C. 2d 766 (1968) and Herald Publishing Company, 14 F.C.C. 2d 767 (1968); reconsideration denied, In the Matter of Gray Communications System, Inc., 19 F.C.C. 2d 532, 534 (1969); Q. and A. VII.5, infra; cf. In re Station WOR–TV, 22 F.C.C. 2d 528 (1969).)

5. Q. If a candidate secures time under section 315, must he talk about a subject directly related to his candidacy?

A. No. The candidate may use the time as he deems best. To deny a person time on the ground that he was not using it in furtherance of his candidacy would be an exercise of censorship prohibited by section 315. (Socialist Labor Party of America, 40 F.C.C. 241 (1952).)

6. Q. If a station makes time available to an office holder who is also a legally qualified candidate for reelection and the office holder limits his talks to nonpartisan and informative material, may other legally qualified candidates who obtain time be limited to the same subjects or the same type of broadcast?

A. No. Other qualified candidates may use the facilities as they deem best in their own interest. (Legally Qualified Candidate, 40 F.C.C. 246 (1952).)

7. Q. May a licensee, as a condition to allowing a candidate the use of its broadcast facilities, require the candidate to submit an advance script of his program?

A. Section 315 expressly provides that licensees "shall have no power of censorship over the material broadcast under the provisions of this section." The licensee may request submission of an advance script, to aid in its presentation of the program (e.g., suggestions as to the amount of time needed to deliver the script). But any requirement of an advance script from a candidate violates section 315. A licensee could not condition permission to broadcast upon receipt of an advance script, because "the Act bestows upon the candidate the right to choose the format and other similar aspects of 'the material broadcast', with no right of 'censorship in the licensee.'" (See letter to Senate Committee on Commerce, 40 F.C.C. 357 (1962); see also Farmers Educational and Cooperative Union of America, North Dakota Division v. WDAY, Inc., 360 U.S. 525 (1959).)

8. Q. Where a candidate desires to record his proposed broadcast, may a station require him to make the recording at his own expense?

A. Yes. Provided that the procedures adopted are applied without discrimination between candidates for the same office and no censorship is attempted. (Legally Qualified Candidate, 40 F.C.C. 249 (1952).)

*9. Q. The complainant made an agreement with a licensee that the complainant would receive equal opportunities free because of the appearance of an opposing candidate for public office. The complainant desired to have some high-school students sing and entertain on the program he would broadcast under his equal opportunity rights. During the program, he also wanted to have the keys to a car be presented to the winner of the automobile by a member of a merchant's association. Does section 315 prohibit the licensee from restricting the appearance of other persons with the complainant during the time allocated because of a prior appearance by an opposing candidate, and if any of these persons thus appearing utter libelous statements, does 315 guarantee immunity to the licensee from civil action based on these utterances?

A. Yes to both questions. The complainant intended to appear throughout the program and to participate in it. He planned to use the entertainment to supplement the program and he would introduce the entertainment, interview the people involved and thank them for appearing with him. If the candidate in his contemplated "use" proposed merely to substitute others for himself, without appearing to a substantial degree on the program himself, then the program would not in fact be a "use." But this is not the case here and thus this program falls within the protection of section 315, and, as required by that section, the licensee cannot censor the program in any manner. Therefore, the licensee would not be liable for libelous statements made by persons appearing with the candidate on his broadcast under the reasoning of Farmers Educational and Cooperative Union of America, North Dakota Division v. WDAY, Inc., 360 U.S. 525 (1959). In re Gray Communications Systems, Inc., 14 F.C.C. 2d 766 (1968); Herald Publishing Company, 14 F.C.C. 2d 767 (1968); reconsideration denied in In the Matter of Gray Communications System, Inc., 19 F.C.C. 2d 532, 534 (1969), there the Commission stated, "[i]n general, we believe that where a candidate's personal appearance, either vocal or visual, is the focus of the program presented, the program constitutes a section 315 'use' and the station is prohibited from censoring the candidate's choice of program material. This general rule is framed for circumstances where the candidate's personal appearance(s) is substantial in length, integrally involved in the program, and indeed the focus of the program, and where the program is under the control and direction of the candidate." (In the Matter of Gray Communications System, Inc., 19 F.C.C. 2d 532, 534 (1969); cf. In re Station WOR–TV, 22 F.C.C. 2d 528 (1969); see Capitol

*An asterisk denotes a new question and answer.

Broadcasting Co., Inc., 8 F.C.C. 2d 975 (1967); but see Q. and A.'s VII. 3 and 4, supra.)

*10. Q. During a broadcast, a legally qualified candidate made a personal attack in the course of a discussion of a controversial issue of public importance on two people who didn't fit within the exception to the personal attack rules, because they were neither candidates, their authorized spokesmen, nor persons associated with candidates in the campaign. The licensee contended that the Commission should consider waiving, amending or holding the personal attack rules inapplicable to situations like this. Was the licensee required to comply with all the requirements of the personal attack rules in these circumstances?

A. Yes. The public interest reasons supporting the personal attack rule were not outweighed by the consideration that the licensee could not censor the broadcast of the candidate who made the attack. The Commission stated that situations such as this one do not appear to arise frequently and there is no showing or indication that application of the personal attack obligations to political broadcasts (with the important exemption in subsection (b) of the personal attack rules) had discouraged licensees from carrying such broadcasts. Moreover, the licensee's reliance on Fairness Education and Cooperative Union of America v. WDAY, Inc., 360 U.S. 525 (1969) was inapposite because the obligation to notify a person that has been attacked and to send him a copy of the attack and an offer of an opportunity to reply was not comparable to the possible liability for large sums of money which may result from civil action based on the broadcast of defamatory remarks. No penalty was involved. The licensee, in its discharge of its obligation to serve the public interest, is generally called upon to afford a reasonable amount of time to the coverage of controversial issues of public importance, including political broadcasts, and, if on such broadcasts, nonexempt personal attacks occur, all the licensee is required to do is give notification and afford a reasonable opportunity for the person attacked to present his side of the attack issue, so that the electorate may be fully and fairly informed. (Capital Cities Broadcasting Corp., 13 F.C.C. 2d 869 (1968); see Commission rules 47 C.F.R. §§ 73.123, 73.300, 73.598, 73.679, and 74.1115 (1970).)

11. Q. A legally qualified candidate allegedly was personally attacked under the fairness doctrine during broadcasts by a licensee. The licensee allegedly also broadcast editorials supporting another candidate. The licensee asked the Commission whether, if the candidate himself was given time to reply personally to the attacks and the editorials, the opponents of this candidate would be entitled to equal opportunities as a result of the broadcast?

A. Yes. If a licensee in its discretion, permits the candidate personally to broadcast the reply, this would give rise to a right to equal opportunities for all opposing legally qualified candidates for the same office. (Times-Mirror Broadcasting Company, 40 F.C.C. 531, 532 (1962); 40 F.C.C. 538, 539–540 (1962); see Personal Attack and Political Editorializing Rules, 8 F.C.C. 2d 721, 727 (1967); 47 C.F.R. §§ 73.123, 73.300, 73.598, 73.679, and 74.1115 (1970).)

VIII. What Rates Can Be Charged Candidates for Programs Under Section 315?

VIII. 1. Q. May a station charge premium rates for political broadcasts?

A. No. Section 315, as amended, provides that the charges made for the use of a station by a candidate "shall not exceed the charges made for comparable use of such stations for other purposes." (See Noe Enterprises, Inc., 40 F.C.C. 388 (1964).)

2. Q. Does the requirement that the charges to a candidate "shall not exceed the charges for comparable use" of a station for other purposes apply to political broadcasts by persons other than qualified candidates?

A. No. This requirement applies only to candidates for public office. Hence, a station may adopt whatever policy it desires for political broadcasts by organizations or persons who are not candidates for office, consistent with its obligation to operate in the public interest. (Political Broadcast Rates, 40 F.C.C. 265 (1955).)

3. Q. May a station with both "national" and "local" rates charge a candidate for local office its "national" rate?

A. No. Under §§ 73.120, 73.290, 73.657 and 74.1113 of the Commission's rules a station may not charge a candidate more than the rate the station would charge if the candidate were a commercial advertiser whose advertising was directed to promoting its business within the same area as that within which persons may vote for the particular office for which such person is a candidate. (See letter to Mr. Waldo E. Spence, 40 F.C.C. 392 (1964).)

4. Q. Considering the limited geographical area which a member of the House of Representatives serves, must candidates for the House be charged the "local" instead of the "national" rate?

A. This question cannot be answered categorically. To determine the maximum rates which could be charged under section 315, the Commission would have to know the criteria a station uses in classifying "local" versus "national" advertisers before it could determine what are "comparable charges." In making this determination, the Commission does not prescribe rates but merely requires equality of treatment as between 315 broadcasts and commercial advertising. (Political Broadcast Rates, 40 F.C.C. 286 (1957).)

5. Q. Is a political candidate entitled to receive discounts?

A. Yes. Under §§ 73.120, 73.290, 73.657 and new rules in 74.1113 of the Commission's rules political candidates are entitled to the same discounts that would be accorded persons other than candidates for public office under the conditions specified, as well as to such special discounts for programs coming within section 315 as the station may choose to give on a nondiscriminatory basis. (Letter to Mr. Waldo E. Spence, 40 F.C.C. 392 (1964).)

6. Q. Can a station refuse to sell time at discount rates to a group of candidates for different offices who have pooled their resources to obtain a discount, even though as a matter of commercial practice, the station permits commercial advertisers to buy a block of time at discount rates for use by various businesses owned by them?

A. Yes, section 315 imposes no obligation on a station to allow the use of its facilities by candidates, and neither that section nor the Commission's rules require a station to sell time to a group of candidates on a pooled basis, even though such may be the practice with respect to commercial advertisers. (Political Ad Requirements, 40 F.C.C. 263 (1954); Letter to Mr. Waldo E. Spence, 40 F.C.C. 392 (1964); see Political Broadcast Rates, 40 F.C.C. 1075 (1954); Q. and A. VI.A.5, supra; but see caveat in Q. and A. VI.A.6, supra.)

7. Q. If candidate A purchases 10 time segments over a station which offers a discount rate for purchase of that amount of time, is candidate B entitled to the discount rate if he purchases less time than the minimum to which discounts are applicable?

A. No. A station is under such circumstances only required to make available the discount privileges to each legally qualified candidate on the same basis. (See "Equal Time Requirements," 40 F.C.C. 261 (1954).)

8. Q. If a station has a "spot" rate of 2 dollars per "spot" announcement, with a rate reduction to 1 dollar if 100 or more such "spots" are purchased on a bulk time sales contract, and if one candidate arranges with an advertiser having such a bulk time contract to utilize five of these spots at the 1 dollar rate, is the station obligated to sell the candidates of other parties for the same office time at the same 1 dollar rate?

A. Yes. Other legally qualified candidates are entitled to take advantage of the same reduced rate. (Political Ad Requirements, 40 F.C.C. 252 (1952).)

9. Q. Where a group of candidates for different offices pool their resources to purchase a block of time at a discount, and an individual candidate opposing one of the group seeks time on the station, to what rate is he entitled?

A. He is entitled to be charged the same rate as his opponent since the provisions of section 315 run to the candidates themselves and they are entitled to be treated equally with their individual opponents. (Political Broadcast Rates, 40 F.C.C. 1075 (1954); see also Q. and A. VI.B.3 supra.)

10. Q. Is there any prohibition against the purchase by a political party of a block of time for several of its candidates, for allocation among such candidates on the basis of personal need, rather than on the amount each candidate has contributed to the party's campaign fund?

A. There is no prohibition in section 315 or the Commission's rules against the above practices. It would be reasonable to assume that the group time used by a candidate is, for the purposes of section 315, time paid for by the candidate through the normal device of a recognized political campaign committee, even though part of the campaign funds was derived from sources other than the candidates' contributions. ("Equal Time Requirements," 40 F.C.C. 261 (1954); letter to Mr. Lar Daly, 40 F.C.C. 377 (1963).)

11. Q. When a candidate and his immediate family own all the stock in a corporate licensee and the candidate is the president and general manager, can he pay for time to the corporate licensee from which he derives his income and have the licensee make a similar charge to an opposing candidate?

A. Yes. The fact that a candidate has a financial interest in a corporate licensee does not affect the licensee's obligation under section 315. Thus, the rates which the licensee may charge to other legally qualified candidates will be governed by the rate which the stockholder candidate actually pays to the licensee. If no charge is made to the stockholder candidate, it follows that other legally qualified candidates are entitled to equal time without charge. (Letter to WKOA, 40 F.C.C. 288 (1957).)

12. Q. A station adopted and maintained a policy under which commissions were not paid to advertising agencies in connection with political advertising although it did pay such commissions in connection with commercial advertising. Further, in the case of commercial advertisers who did not use advertising agencies, the station performed those functions which the advertising agency would normally perform, but in the case of political advertisers, the station performed no such services. An agency which had placed political advertising over the station in a recent election made a demand of the station for payment of the agency commission. Was the station's policy consistent with section 315 of the Communications Act?

A. No. *The Commission held that such a policy violated both section 315(b) of the Act and § 73.120(c) of the rules; that the benefits accruing to a candidate from the use of an advertising agency were neither remote, intangible nor insubstantial; and that while under the station's policy, a commercial advertiser would, in addition to broadcast time, receive the services of an advertising agency merely by paying the station's established card rate, the political advertiser, in return for payment of the same card rate, would receive only broadcast time. The Commission held that such a resultant inequality in treatment vis-a-vis commercial advertisers is clearly prohibited by the Act and the rules. (Noe Enterprises, Inc., 40 F.C.C. 388 (1964); compare letter to KTRM, 40 F.C.C. 331 (1962), and Q. and A. VIII.19, infra.)

*13. Q. The Commission received a complaint on behalf of a member of the Pennsylvania House of Representatives running for reelection claiming that a local station was charging him more for his political spot announcements than it had charged him for commercial announcements on behalf of his business in the past. The station stated that the rates normally charged to the complainant for his commercial spot announcements on behalf of his business were based on an existing contract between the station and the complainant which had been entered into 8 years previously. The provisions of the contract had apparently been renewed with unchanged rates and the rates set at the time the contract was entered into were less than the present rates the local station charged to other commercial advertisers. The rates being charged to the complainant for his political announcements were the same rates the station currently charged to other commercial advertisers for a comparable use of the station's facilities. Under these circumstances is the station acting in compliance with the provisions of section 315(b) of the Communications Act and of the Commission's rules?

A. Yes. If the station were to allow the complainant to purchase political spot announcements at the rates charged to him for his commercial spot announcements, then the station would either be giving him treatment preferential to that given to his opponents or it would have to charge all candidates this lesser rate. This was not the intent of either section 315(b) of the Communications Act or the Commission's rules. In charging the complainant the rate for a political advertisement that was normally charged other commercial advertisers for a comparable use, the station was acting in compliance with both the Act and the rules. (Letter to Honorable J. Irving Whalley, 40 F.C.C. 428 (1964).)

*14. Q. The Commission received a complaint alleging that several stations were charging the national rate to a candidate for election to Congress but were charging a candidate for local office a local rate which was less than the national rate. The stations informed the Commission that this classification of national as against local rates for political broadcast purposes paralleled their commercial rate policy which provided that the local retail rate was applicable only to strictly local concerns whose products or services were confined to the immediate metropolitan area and that all other advertisers taking advantage of the station circulation and coverage outside and beyond the metropolitan area must pay the general or national rate. Is the stations' practice with respect to rates charged to political candidates consistent with the Act and the Commission rules?

A. Yes. The stations' action was not inconsistent with either the Act or its rules, since the rates charged to candidates (both for the local office and Congress) were the same as the rates charged to commercial advertisers whose advertising was directed to promoting their businesses within the same area as that encompassed by the political office for which such person is a candidate. (Letter to Mr. Waldo E. Spence, 40 F.C.C. 392 (1964).)

*15. Q. Five days prior to the election, a licensee changed its policy of not selling 30-minute program time to political candidates and offered them 30-minute programs. One candidate's representative complained to the Commission that the licensee had previously refused the candidate's earlier request for half-hour program and so the candidate had not produced any program of that length. Claiming that the production of an effective half-hour program so late in the campaign was impossible, he contended that the licensee should charge the candidate a proportionally reduced rate for the 5-minute programs which the representative had on hand. Is this required by section 315?

A. No. Neither the statute nor the rules require the sale of 5-minute periods to complainant at a rate lower than the licensee would charge if the candidate were a commercial advertiser. (In re Complaint by William V. Rawlings, 18 F.C.C. 2d 746 (1969).)

*16. Q. A licensee made "packages" of "run of schedule" (hereinafter ROS) spot announcements available to commercial advertisers at a reduced rate. These ROS spots were carried at the convenience and discretion of the licensee and were subject to preemption by a fixed position commercial. The licensee refused to sell ROS spots to candidates because it contended that if one candidate fortuitously had his ROS spots broadcast in prime time, his opponents could demand that their ROS spots also be broadcast in prime time and this would result in some candidates obtaining fixed rate spots at ROS spot prices. Was the licensee's refusal to sell ROS spots to candidates consistent with section 315 and the Commission's rules?

A. No. Since the licensee sells spots to political candidates and makes packages of ROS spots (discount privileges within the meaning of § 73.120(c)(1) of the rules) available to its commercial advertisers, it must make ROS spots available to political candidates on the same basis. However, if one candidate purchases ROS spots which are broadcast, equal opportunity does not require that the licensee sell his opponents fixed position spots for the same time periods at ROS spot rates. Equal opportunity requires that other candidates be permitted the opportunity to buy an equivalent number of ROS spots at the same price and on the same conditions as the first candidate, or that they be afforded comparable time periods to those actually used by the first candidate at the prescribed rates for such time periods. If ROS spots were chosen by the other candidates the licensee would be required to act in good faith and scrupulously follow normal procedures in the allotment

*An asterisk denotes a new question and answer.

of these ROS spots. (In re WFBG, 23 F.C.C. 2d 760 (1967); see the Commission's rules, 47 CFR, §§ 73.120(c)(1), 73.290(c)(1), 73.657(c)(1), and 74.1113(b)(1)(1970); Q. and A. VIII.6, supra.)

*17. Q. A licensee informed the Commission that it sold both preemptible and nonpreemptible spot announcements to commercial advertisers on time available basis and the purchase orders specify the times of their broadcast. However, nonpreemptible spot purchasers can select any time previously scheduled for preemptible time spots in addition to other available times. If the preemptible spots were subsequently preempted no charge was made for them. The licensee did not sell preemptible spots to candidates because it reasoned that if one candidate for public office purchased preemptible spot announcements and they were actually used by him, equal opportunity would require that his opponent be permitted to buy spots at preemptible spot prices and have them broadcast when scheduled regardless of whether or not a purchaser of nonpreemptible spots requested that availability. Could the licensee refuse to sell preemptible spot announcements to political candidates?

A. No. If the licensee sells both preemptible and nonpreemptible spot announcements to commercial advertisers it must make them both available to political candidates at the same rates charged commercial advertisers. However, section 315(b) of the Communications Act does not require the sale of nonpreemptible spots at preemptible spot rates. If one political candidate buys preemptible spots and they are broadcast, his opponents are entitled to buy preemptible or nonpreemptible spots. If the opponents desire to make certain that their spots will be broadcast, nonpreemptible spots at nonpreemptible rates should be made available to them. But if the opponents buy preemptible spots and they are preempted by nonpreemptible spots, these opponents are then entitled to buy this same number of spots equal to those broadcast by the first candidate but now they must pay the higher nonpreemptible rates. (Letter to WHDH, Inc., 23 F.C.C. 2d 763 (1967); compare Q. and A. VIII.6, supra.)

*18. Q. Two Democratic candidates and four Republican candidates were running in a special election for a Congressional House seat. A committee for one candidate purchased one-half hour of television time. The candidate then offered to debate the alleged principal opponent of the other party who agreed to debate if all of the other candidates were also invited to debate. All then were invited, and a second debate was held with the one other candidate who accepted which was also paid for by the committee for the candidate who first offered to debate. Would the other candidates not participating in the debates be entitled to *free* time because of their opponents' appearances?

A. No. Under the above facts, the other candidates would be entitled to equal opportunities, but only on a paid basis. (In re Station KTVU–TV, 23 F.C.C. 2d 757 (1967).)

*19. Q. A political candidate purchased time through an advertising public relations agency which he heads. Since he shares in the profit, would the 15-percent agency commission be a "rebate" and thereby become a violation of section 315?

A. No. There is no Commission rule or regulation which would prevent or forbid a political candidate from using the services of his own advertising agency. (Political Broadcast Rates, 23 F.C.C. 2d 770 (1966).)

20. Q. A licensee adopted and has consistently maintained a policy whereby agency commissions were not paid in connection with political advertising placed by recognized advertising agencies on behalf of a candidate for local office. It adopted and has consistently maintained a similar policy with respect to agency commission in connection with local commercial advertising. The stations most recent local retail rate card indicates that its established policy is " * * all rates net to station." Therefore, a candidate who utilized an advertising agency would pay the same station rate as one who did not, but the advertising agency would charge its client-candidate the station rate plus 15-percent agency commission. Is this policy consistent with the mandates of section 315 of the Act and the rules?

A. Yes. Because the station's rate policy is applicable to both commercial and political advertising, such policy does not contravene section 315 of the Act nor the rules. (In re KSEE, 23 F.C.C. 2d 762 (1968).)

*21. Q. A station increased in advertising rates 30 percent on August 1. Some legally qualified candidates had purchased time before the rate change for use in the month of August. If their opposing legally qualified candidates request "equal opportunities" based on the use of this time, can they be charged the increased rate for time?

A. No. The rate charged these opposing candidates must be the rate charged their political opponents. Therefore, they should pay the rate in effect before the price change.

IX. Period Within Which Request Must Be Made [5]

IX. 1. Q. When must a candidate make a request of the station for opportunities equal to those afforded his opponent?

A. Within 1 week of the day on which the prior use occurred. (Par. (e) of 47 CFR §§ 73.120, 73.290, 73.590, and 73.657 (1970), and 47 CFR § 74.1113(d) (1970); telegram to WWIN, 40 F.C.C. 338 (1962).)

2. Q. A U.S. Senator, unopposed candidate in his party's primary had been broadcasting a weekly program entitled "Your Senator Reports". If he becomes opposed in his party's primary, would his opponent be entitled to request "equal opportunities" with respect to all broadcasts of "Your Senator Reports" since the time the incumbent announced his candidacy?

A. No. A legally qualified candidate announcing his candidacy for the above nomination would be required to request "equal opportunities" concerning a particular broadcast of "Your Senator Reports" not later than 1 week after the date of such broadcast. Thus, any of the incumbent's opponents for the nomination who first announced his candidacy on a particular day, would not be in a position to request "equal opportunities" with respect to any showing of "Your Senator Reports" which was broadcast more than 1 week prior to the date of such announcement. (Letter to Honorable Joseph S. Clark, 40 F.C.C. 332 (1962).)

3. Q. A candidate for U.S. Senator in the Democratic primary, who was also the part owner and president of AM and FM stations in the State, wrote to his opponent, the incumbent Senator, and stated, in substance, that he was using a certain amount of time daily on his stations and that the incumbent was "entitled to equal time, at no charge" and was urged to take advantage of the time. A couple of weeks later, the incumbent, by letter, thanked the station owner for advising him "of the accumulation of time" on each station and stated that the station owner would be notified when incumbent decided to start using the accumulated time. The station owner did not respond to the incumbent's letter. About 6 weeks later, incumbent requested equal opportunities. Were the stations correct in advising incumbent that the Commission's 7-day rule was applicable, thereby precluding requests for "equal opportunities" for any broadcasts prior to 7 days before the request?

A. No. The Commission stressed that where, as here, the licensee, or a principal of the licensee, was also the candidate, there is a special obligation upon the licensee to insure fair dealings in such circumstances and held that the licensee was estopped in the circumstances from relying upon the 7-day rule. The Commission held that the incumbent's letter reasonably constituted a notification as required under the rules; that the licensee knew that equal opportunities were requested; and that he could have made, if he wished, reasonable scheduling plans. (Letters to Mr. Emerson Stone, Jr., 40 F.C.C. 385 (1964); In re KTTV–TV, 23 F.C.C. 2d 769 (1966); compare Legally Qualified Candidate, 40 F.C.C. 246 (1952).)

*4. Q. (See Q. and A. VII.9, supra, for additional facts.) The complainant demanded equal opportunity based on appearances by his political opponent. The licensee granted it but put restrictions on the content of the program which was ultimately determined by the Commission to be unreasonable. Between the time of the original complaint to the Commission and prior to its ruling, complainant's opponent appeared on additional programs, but complainant didn't request equal opportunities within 7 days of each appearance. Was the licensee correct in refusing to grant equal opportunity based on these appearances because complainant didn't comply with the 7-day rule?

A. No. The complainant was within his rights in refusing to appear on the program on which the licensee placed restrictions subsequently adjudged unreasonable. He was entitled to use of the facilities as he had proposed. The filing of the complaint apprised the licensee that if the complainant prevailed, he would be entitled to the time requested. Thus, after consideration of all the circumstances of the case, the Commission decided that complainant was entitled to "equal opportunities" based on all the appearances of his opponent. (In re Gray Communications System, Inc., 14 F.C.C. 2d 766, 767 (1968); Herald Publishing Co., 14 F.C.C. 2d 767 (1968); reconsideration denied in In the Matter of Gray Communications System, Inc., 19 F.C.C. 2d 532 (1969); Q. and A. VII.9, supra.)

*5. Q. Four days prior to an announced broadcast use by a political candidate, one of the candidate's opponents for the same office requested time based on that specific future use. The station denied the request because the opponent had not asked for equal opportunities within 1 week after the day on which the prior use occurred. Had the opposing candidate complied with the 7-day rule with his request made prior to the broadcast?

A. Yes. The Commission has always considered as valid and appropriate an equal opportunities request made prior to a section 315 broadcast if the request is based on a specific future use which was known or announced prior to the actual broadcast. (Socialist Workers Party, 15 F.C.C. 2d 96 (1968); other aspects of this ruling are now governed by the revised 7-day rule, 35 F.R. 7118 (1970).)

*6. Q. A, B, and C were all legally qualified candidates for the same public office as of August 29. A approached licensee for use of broadcast time over licensee's station and was afforded time on September 1. B requested equal time to respond to A's use on September 5, and C made a similar request on September 10, claiming his request to be timely made within 7 days of B's request. The licensee granted B's request but not C's. D became a legally qualified candidate for the same public office on October 10. On October 15, B was afforded time on licensee's station in compliance with his earlier request. The next day, October 16, D requested equal time to respond, which request was promptly rejected by the licensee, stating that the request was too late coming more than 7 days after A's first prior use. Both C and D appealed to the Commission to compel the licensee to afford each of them equal time. Must the licensee grant both requests?

A. The licensee properly refused C's request, that request being made more than 7 days after A's first prior use. There of course is no validity to the claim that the request was within 7 days of B's request for time. The licensee was incorrect in refusing D's request. D, who became a legal candidate after A's first prior use, may properly request equal time within 7 days of a subsequent use, here B's. (47 CFR §§ 74.1113(d), 73.120(e), 73.290(e), 73.590(e), and 73.657(e) (1970); In re Seven-Day Rule, 35 F.R. 7118 (1970); cf. In re Socialist Workers Party, 15 F.C.C. 2d 96 (1968), which was decided before the recent changes in the 7-ray rule; Telegram to Mr. Herbert Steimer, 10 F.C.C. 2d 966 (1962).)

X. Issuance of Interpretations of Section 315 by the Commission

X.1. Q. Under what circumstances will the Commission consider issuing declaratory orders, interpretive rulings, or advisory opinions with respect to section 315?

A. The Administrative Procedure Act, 80 Stat. 385 (1966), 5 U.S.C. § 554(e) provides that "The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty." However, agencies are not required to issue such orders merely because a request is made therefor. The grant of authority to agencies to issue declaratory orders is limited, and such orders are authorized only with respect to matters which are required by statute to be determined "on the record after opportunity for an agency hearing." (See Attorney General's Manual on the Administrative Procedure Act, pp. 59–60 (1947); 15 ICC Prac. J. 49–50 (February 1948 section II); In re Harry S. Goodman, 12 F.C.C. 678 (1948).) In general, the Commission limits its interpretive rulings or advisory opinions to situations where the critical facts are explicity stated without the possibility that subsequent events will alter them. It prefers to issue such rulings or opinions where the specific facts of a particular case in controversy are before it for decision. In response to general inquiries, the Commission limits itself to giving general guidelines to help an individual or station determine their rights and obligations under section 315. (WDSU Broadcasting Corp., 40 F.C.C. 295 (1958); Mr. Roy Anderson, 14 F.C.C. 2d 1064 (1968); aff'd. per curiam, Anderson v. Federal Communications Commission, 403 F. 2d 61 (C.C.A. 2, 1968).)

Adopted: August 7, 1970.

FEDERAL COMMUNICATIONS COMMISSION [1]

[SEAL] BEN F. WAPLE, *Secretary.*

[F.R. Doc. 70–10711; Filed, Aug. 14, 1970; 8:45 a.m.]

[1] Commissioner Cox absent.

*An asterisk denotes a new question and answer.

[5] See footnote 3, supra; substantive amendments were made to the rule so the present form of the rule should be examined in regard to any questions of timing.

THE WHITE HOUSE

WASHINGTON

July 26, 1975

MEMORANDUM

FOR: PHIL BUCHEN

FROM: DICK CHENEY

This is just a reminder that you have the action on this equal time problem and CBS filing at the FCC.

We had better look and see what the circumstances are from the standpoint of the President and whether or not the networks will be able to broadcast any of his events in the next year.

"Equal Time" Question

THE WHITE HOUSE

WASHINGTON

July 31, 1975

Dear Mr. Jencks:

Many thanks for promptly furnishing me with a copy of the CBS petition before the Federal Communications Commission seeking a declaratory ruling on the exemption of Presidential press conferences from the "equal time" provisions of Section 315 of the Communications Act of 1934, as amended.

I would appreciate your keeping me advised of each subsequent development, as we will be watching the outcome of this action with much interest.

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

Mr. Richard W. Jencks
Vice President, Washington
Columbia Broadcasting System, Inc.
1990 M Street, N. W.
Washington, D. C. 20036

Richard W. Jencks
Vice President, Washington

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Washington, D.C. 20036

(202) 296-1234

CBS

CBS Inc., 51 West 52 Street
New York, New York 10019
(212) 765-4321

Ralph Elliot Goldberg, General Attorney

Dear Mr. Mullins: July 16, 1975

Attached hereto for the consideration of the Commission is an original and eleven copies of a request by CBS that the Commission rule that Presidential press conferences are exempt from the "equal opportunities" provision of Section 315 of the Communications Act of 1934, as amended.

Because of the significance of the issue posed and for the reasons set forth in our request, we respectfully urge prompt consideration of this request by the Commission.

Very truly yours,

Ralph E. Goldberg

Honorable Vincent J. Mullins
Secretary
Federal Communications Commission
1919 "M" Street, N.W.
Washington, D.C. 20554

CBS PETITION FOR DECLARATORY RULING

As a result of President Ford's July 8 formal announcement of his candidacy for the Republican nomination for the Office of President of the United States, President Ford is now a "legally qualified candidate" for that nomination. Consequently, CBS and other licensees are confronted with the situation in which, as a result of a 1964 Commission decision,* the broadcast of press conferences for the next 15 months will give rise to "equal time" obligations for any additional Republicans who declare their candidacies for that nomination.

REQUEST FOR DECLARATORY RULING

We request, therefore, that the Commission issue a ruling 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 believes, for the reasons set forth in this letter, that in light of legal developments subsequent to the 1964 ruling and the facts here presented,

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* Columbia Broadcasting System, 40 FCC 395 (1964).

a Presidential press conference is not a "use" under Section 315.*

BACKGROUND

On August 27, 1964, after the major political parties' nominating conventions, CBS asked the Commission whether the broadcast of Presidential press conferences prior to the general election would constitute a "use" under Section 315, thereby requiring the giving of equal time, on proper demand, to all other Presidential candidates. The Commission decided, on September 30, 1964, 34 days before the 1964 election, that such a broadcast would constitute a "use" and would give rise to equal time obligations, since it did not fall within either the "bona fide news interview" or the "on-the-spot coverage of bona fide news events" exemptions to Section 315.**

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

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* This is now a real question facing all licensees. If a press conference is considered a "use," other Republican candidates may announce their candidacies within seven days of the press conference and demand "equal time."

** Columbia Broadcasting System, 40 FCC 395 (1964).

by a 15 months 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. President Ford, in his first 11 months in office, has called eight press conferences in Washington, all of which have been broadcast in full by CBS.* We believe that this vital channel of communication must be kept open -- and we strongly desire to see it remain open. We do not believe that Congress, when it enacted Section 315 intended to stifle the flow of news in this manner. We believe, instead, that Congress sought to ensure the free flow of news to the public. We believe this was the import of its 1959 amendments to Section 315, which exempted from Section 315 certain candidates' appearances which were, in a licensee's judgment, newsworthy and "bona fide" (i.e., not merely an attempt by a candidate to further his candidacy).

As noted above, the Commission's 1964 ruling was issued 34 days before the election and cut off coverage of press conferences for a shorter period than is here involved. Now,

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* CBS has also afforded broadcast coverage to Presidential press conferences held outside of Washington if, in the judgment of CBS, they were newsworthy. Thus, CBS broadcast in full -- and live -- the President's April 3, 1975 press conference in San Diego and presented a videotaped summary of Mr. Ford's November 14, 1974 press conference in Phoenix, Arizona.

however, the President's candidacy will effectively preclude live coverage of press conferences for 15 months, a significant portion of President Ford's term of office. Moreover, we suggest that the President's early declaration of candidacy is not atypical. New federal laws provide significant impetus for candidates to declare their candidacies even earlier than has heretofore been the case. The 1974 amendments* to the Federal Election Campaign Act of 1971, for example, provide that candidates who raise $5,000 in contributions of $250 or less in each of at least 20 states can receive matching public funds. These public funds will be available as early as January 1, 1976, thus encouraging candidates to declare early and begin accumulating the necessary threshold amount to be eligible for these public funds. Seven candidates have already announced their candidacy for the Democratic nomination. There is a real possibility that a number of Republicans will come forward as announced candidates for the Republican nomination,** thus making the broadcast of Presidential press conferences now impractical if such broadcasts are considered "uses."

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* PL 93-443.

** Some persons who have been recently discussed as possible Republican candidates include former Governor Reagan (California), former Governor Connolly (Texas), Governor Thompson (New Hampshire), and Senators Helms (North Carolina), Baker (Tennessee), and Buckley (New York). In addition, there is

We thus believe a reexamination of 1964 ruling is called for in light of developments subsequent to that ruling.* In addition to these legislative developments which have encouraged earlier announcements by the Commission's candidates to receive Federal financing, the courts and the Commission have since 1964 expressed on a number of occasions the importance and unique status of the Presidency and Presidential communications with the public.

(Footnote continued)

no way to predict if other candidates would announce, including a number of "fringe" candidates. Since candidates have within seven days of a "use" to become legally qualified candidates, there is no way for a broadcaster to assess his "equal time" risks in advance of a broadcast. Assuming additional Republicans do announce, a broadcaster may have to make available many additional time periods as the result of its broadcast of a Presidential press conference. In the event that President Ford becomes the Republican nominee, he will of course, be opposed by a number of candidates in the general election. Since news and program considerations would not justify these additional broadcasts the practical result will be that broadcasters will not cover the press conference live.

* We believe a reexamination is particularly appropriate in view of the fact that even in 1964 the Commission was split 4-3 on this important issue. Indeed, Commissioner Loevinger noted in his dissent that "no serious argument is made [in the majority opinion] on the basis of either statutory language or legislative history" that Presidential press conferences are not exempt as "on-the-spot coverage of bona fide news events." We suggest that the majority's reliance on a prior decision to the effect that a debate between two California gubernatorial candidates forms a questionable basis for concluding that live "on-the-spot coverage" of Presidential press conferences would not be exempt from Section 315.

NEWSWORTHINESS OF PRESIDENTIAL STATEMENTS

The Commission and the courts have consistently recognized the uniqueness -- and inherent newsworthiness -- of the Presidency. Indeed, it is significant to note that FCC Commissioner Loevinger, in his dissenting statement in Columbia Broadcasting System, supra, took note of the special role of the President in American politics in rendering his judgment that Presidential press conferences should be exempt from Section 315. In his dissent, he stated:

> "The basic issue here involves a Presidential press conference.... The President of the United States is the Chief of State of this sovereign nation. The position is wholly unique. To assimilate the President in the performance of his regular functions as Chief Executive to the role of a mere candidate for office, indistinguishable from a sheriff, coroner or mayor, is not merely disrespectful to the President and the nation but is inaccurate, unrealistic and unsound."*

The dissenting Commissioners in Columbia Broadcasting System, supra, correctly interpreted, in our view, the Congressional history of the 1959 amendments to Section 315 in determining that Presidential press conferences ought to be exempt from the "equal time" requirements of Section 315.

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* 40 FCC 395, 406.

Senator Pastore, Senate Manager of the bill to amend Section 315, used the Presidency as the prime example of why the amendments were needed. Thus, Senator Pastore stated, if the President were a candidate for reelection he "could not stand up in front of the American flag and report to the American people on an important subject without every other conceivable candidate standing up and saying 'I am entitled to equal time.'"*

Eight years after its decision in Columbia Broadcasting System, the Commission, in its First Report on Part V of the Fairness Doctrine,** characterized the Presidency as "the nation's most powerful and most important office," and stated, "[a]s the Court [of Appeals, D.C. Circuit] noted in Democratic National Committee v. FCC,...the President's status differs from that of other Americans and is of a superior nature, and calls for him to make use of broadcasting to report to the nation on important matters:

> 'While political scientists and historians may argue about the institution of the Presidency and the obligations and role of the nation's chief executive officer it is clear that in this day and age it is obligatory for the President to inform the public on his program and its progress from time to time. By the very nature of his position, the President is

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* Cong. Rec., July 28, 1959 at p. 13189.

** 36 FCC 2d 40 (1972).

> a focal point of national life. The people of this country look to him in his numerous roles for guidance, understanding, perspective and information. No matter who the man living at 1600 Pennsylvania Avenue is he will be subject to greater coverage in the press and on the media than any other person in the free world. The President is obliged to keep the American people informed and...this obligation exists for the good of the nation.... (Sl. Op. pp. 26-27)'"*

Thus, Commission and judicial statements and the legislative history of the 1959 amendments all suggest that the Presidency is a unique news source of significant importance.** While it is undisputable that he is also the leader of a political party, we believe that his actions in each role can -- and should -- be treated separately. In Democratic

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* 36 FCC 2d 40, 46.

** Journalists, especially, have recognized the critical need for frequent Presidential press conferences and their importance to the American public. Thus, for example, Washington newspapermen Stuart H. Loory and Jules Witcover, in a January 11, 1971 Letter to the Editors of The New York Times, stated "[b]etween quadrennial elections, [press conferences] are the only mechanism for Presidential accountability to the public"; Marquis Childs, writing in the April 27, 1974 Washington Post, stated that the press conference "is the only medium of exchange between the public and the President...." And such conferences became "all the more important as the claims of executive privilege and national security have narrowed the response of the executive to Congress"; and a May 8, 1975 editorial in Newsday stated that "[t]he press conference is virtually the only setting in which the President appears without absolute control over the way he appears to his audience. It's good for both the Presidency and the country...." The tragedy of Watergate merely underscores the importance of this type of Presidential accountability to the public through the searching questions of professional journalists.

National Committee, the Court 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. Some will proffer that a first term President is involved in his political re-election campaign from the date of his inauguration, however, we believe that adoption of this view would only serve to frustrate the ability of the President and the licensees to present authoritative Presidential reports to the public."*

As we interpret the Commission's 1964 ruling in Columbia Broadcasting System, supra, it is unimportant whether President Ford calls a press conference in furtherance of his candidacy or in furtherance of his duty, as Chief Executive Officer, to keep the people informed on important national and international issues. Any such press conference now called by President Ford -- for any reason -- will be effectively barred from live broadcast coverage by licensees. We believe the Court, in Democratic National Committee, supra, recognized the need to determine the capacity in which the President is acting when he calls a press conference, and we believe this determination is one properly left to the professional journalistic judgment of licensees. The responsibility of the Commission is simply to determine

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* 460 F.2d 891 (1972) at p. 905.

whether a licensee, in exercising this judgment, has acted reasonably.*

Congress, in our view, provided guidance for licensees to determine when a President, in calling a press conference, is acting to inform the American public of important national or international matters or is acting to further his candidacy. That guidance was provided by inserting the words "bona fide" in the 1959 Amendments to Section 315. To be exempt, a news interview must be "bona fide"; similarly, a news event must be "bona fide." If, for example, a candidate called several press conferences immediately prior to an election, the "bona fides" of these conferences would certainly be in question. Judgments as to the de facto purpose for these press conferences, however, are typical news judgments which ought to be made by professional journalists -- and those judgments should not be second-guessed by the Commission unless they are clearly unreasonable.**

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* National Broadcasting Company, 25 FCC 2d 735 (1970).

** See Columbia Broadcasting System v. Democratic National Committee, 402 U.S. 94 (1973). The Supreme Court there stated, "[f]or better or worse, editing is what editors are for; and editing is selection and choice of material. That editors--newspaper or broadcast--can and do abuse this power is beyond doubt, but that is no reason to deny the discretion Congress provided. Calculated risks of abuse are taken in order to preserve higher values" (at pp. 124-25).

In the next two sections we discuss why we believe that Presidential news conferences are exempt from Section 315 as "on-the-spot coverage of...bona fide news event[s]" and/or as "bona fide news interview[s]." We believe that Congress so intended, and we believe the public interest would be furthered -- not frustrated -- were the Commission to lodge such judgments with licensees by ruling that Presidential press conferences, subject to "bona fides," are exempt from Section 315.

"ON-THE-SPOT COVERAGE OF BONA FIDE NEWS EVENTS"

We believe that live broadcasts of Presidential press conferences constitute "on-the-spot coverage of bona fide news events" within the meaning of Section 315(a)(4).

In connection with the exemption for "on-the-spot coverage of bona fide news events," the Congressional Conference Committee Report stated that:

> "[I]n referring to on-the-spot coverage of news events, the expression 'bona fide news events'...is used to emphasize the intention to limit the exemptions from the equal time requirement to cases where the appearance of a candidate is not designed to serve the political advantage of that candidate."*

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* Conference Committee Report, Cong. Rec., September 3, 1959 at p. 16343.

Further, Congressman Harris explained the exemption of 315(a)(4) as follows:

> "This requirement regarding the bona fide nature of...news events was not included without careful thought.... It sets up a test which appropriately leaves reasonable latitude for the exercise of good faith news judgment on the part of broadcasters and networks."*

We believe that the Commission, in Columbia Broadcasting System, supra, has deprived licensees of this "reasonable latitude for the exercise of good faith news judgments" by ruling that Presidential press conferences are not "bona fide news events" within the meaning of Section 315(a)(4). All three dissenting Commissioners disagreed with this aspect of the ruling. Thus, Commissioner Hyde stated "[w]hether a press conference is newsworthy in whole or in part for the purposes of on-the-spot coverage is for the experts in the gathering and dissemination of news."** Commissioner Ford, dissenting, stated "[i]t is my view that the appearance of the President at a news conference attended by newsmen from all over the world is a spot news event, the broadcast of which constitutes an on-the-spot coverage of a bona fide news event within the meaning of Section 315(a)(4).***

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* Cong. Rec., September 2, 1959 at p. 16313.

** 40 FCC 395, 399.

*** 40 FCC 395, 400.

Finally, Commissioner Loevinger stated:

> "As to the fact that these press conferences are bona fide--and, indeed, bona fide news events--there can be no question from the viewpoint of common sense. It is a fact known to all that the press conference of the President of the United States is the source of some of the most important news, both national and international, in the world today. One of the purposes of the 1959 amendment to the Communications Act was to insure that such news would be available through the broadcasting media to the American people."*

The Commission has long recognized that some Presidential appearances are news "events" which ought to be exempt from Section 315. In 1956, for example, prior to the amending of Section 315 in 1959, President Eisenhower spoke to the nation on the so-called "Suez crisis." Although opposing candidates demanded "equal time," the Commission did not believe that Congress "when [it] enacted Section 315...intended to grant equal time to all Presidential candidates when the President uses the air lanes in reporting to the Nation on an international crisis."**

Indeed, in considering the validity of the majority rationale in its September 30, 1964 ruling on press conferences, it is significant to note that three weeks later the Commission

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* 40 FCC 395, 405.

** 14 RR 722 (1956).

held that a speech by President Johnson during the 1964 Presidential campaign was exempt as a "bona fide news event." Mr. Johnson's address concerned nuclear testing in China and a change in leadership in the Soviet Union. The Commission noted:

> "In short, we think that the networks could reasonably conclude that statements setting forth the foreign policy of this country by its chief executive in his official capacity constitute news in the statutory sense. Simply stated, they are an act of office of the President of the United States."*

The phrase "news in the statutory sense," in our view, deserves closer scrutiny. In Columbia Broadcasting System v. Democratic National Committee, supra, the Supreme Court stated:

> "[I]t would be anomalous for us to hold, in the name of promoting the constitutional guarantees of free expression, that the day-to-day editorial decisions of broadcast licensees are subject to the kind of restraints urged by respondents. To do so in the name of the First Amendment would be a contradiction. Journalistic discretion would in many ways be lost to the rigid limitations that the First Amendment imposes on government. Application of such standards to broadcast licensees would be antithetical to the very ideal of vigorous, challenging debate on issues of public interest."**

What is "news," then, "in the statutory sense," has been seen by the Supreme Court to be a judgment clearly within

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* 3 RR 2d 647, 650 (1964).

** 412 U.S. 94, 120-121 (1973).

the province of the licensee. And the Commission's role -- lest it impinge on First Amendment values, -- is restricted to a review of the "reasonableness" of these judgments.

While the Commission did characterize its decisions in President Eisenhower's "Suez crisis" speech and President Johnson's "foreign policy" address as "extraordinary reports," the Commission has also determined far less "extraordinary" reports to be "on-the-spot coverage of bona fide news events" within the meaning of Section 315(a)(4). Thus, in its Letter to Thomas R. Fadell, Esq.,* the Commission concluded that station WWCA's broadcast of the Gary City Court proceedings four times weekly constituted "on-the-spot coverage of [a] bona fide news event." The Commission there ruled that the appearance of presiding Judge A. Martin Katz, a candidate for Mayor of Gary, Indiana, in each of these broadcasts did not create equal time obligations. The broadcasts dealt, according to the ruling, with "the actual trial of traffic cases and all other cases on the agenda of an average city court."** The Commission believed it relevant that the court proceedings had been broadcast by the station long before the judge's candidacy and the Commission

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* 40 FCC 380 (1963).

** Id. at p. 380.

stated that it was "persuaded" that the broadcasts were exempt by the fact that the broadcasts concerned not only "the operation of an official government body" but also the "'news' interest of the court."

Is this Commission now prepared to state that the broadcast of traffic court proceedings can be exempt as "on-the-spot coverage of a bona fide news event" but a Presidential press conference covering Cambodia, the economy, the energy crisis, arms limitation negotiations, the CIA or other topics of national significance, is not exempt? We submit that such a decision cannot be rationally supported.

As noted above, President Ford has held eight Washington press conferences open for broadcast coverage in his 11 months in office. In each of these conferences, the President discussed topics relating to the security and foreign relations of the United States, as well as significant domestic matters. Such topics ranged from President Ford's discussions of the 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. Clearly, Presidential press conferences are regularly the source of major Presidential news announcements concerning both national and international issues. A few recent examples of significant

news reports emanating from press conferences are: the June 9, 1975, President Ford announcement that he was forwarding the Rockefeller Report on the CIA to the Justice Department for possible prosecution; the May 6 plea to the nation by the President asking it to "open its doors" to Vietnamese and Cambodian refugees; and his April 4 statement warning enemies of the U.S. not to mistake this nation's recent setbacks as a sign of weakness. In addition, we submit that Presidential press conferences are considered to be of great news value to all media -- not just broadcasters. We attach, for example, The New York Times' front page reports on each of President Ford's Washington press conferences broadcast by CBS. The Times also prints the text of each press conference in its entirety.*

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* Just as the Times publishes these texts, CBS News wishes to retain the right to determine, on the basis of newsworthiness, whether to broadcast the entire Presidential press conference.

BONA FIDE NEWS INTERVIEW

We believe that Presidential press conferences are "news interviews" within the meaning of Section 315(a)(2).

Presidential press conferences consist of an interrogation of the President by various representatives of the broadcast and print news media, and answers by the President to such questions. These conferences are held on a periodic basis throughout the year. In some instances, the President may make a short statement prior to the commencement of the question and answer session. The range of the questions posed by reporters is unlimited; often questions are penetrating; often they are adversary.

One factor to be considered in examining the applicability of the "bona fide news interview" exemption to Presidential press conferences is the Congress' principal concern with respect to news interviews -- possible attempts by local broadcasters to further the candidacy of local candidates. Thus, Congressman Harris, House Manager of the 1959 bill to amend Section 315 stated that "[t]he great problem is that on the local level a broadcaster might set up panel discussions or news interviews that are not regularly scheduled... [but are] an effort to...further the candidacy of some

political candidate."* In the Senate, Senator Engle stated that he had

> "[N]o objection to the programs 'Meet the Press' and 'Face the Nation,' which are nationwide affairs, because...there are only a few men of national prominence who would appear.... Those broadcasts could be carefully monitored. But I was afraid of...panel discussions at the local level."**

In addition, Senator Scott stated that the fear of the Senate Conference Committee was that "in some local areas, there would be rigged news interviews for the benefit of one candidate or the other."***

Nor do we believe that Congress intended the strict, mechanistic definition of the word "regular" that the Commission has applied in its rulings. As Commissioner Loevinger stated in his dissent in Columbia Broadcasting System, supra, the word regular has "a wide variety of meanings" and that "it seems most reasonable to construe 'regularly scheduled' as meaning 'recurrent in the normal and usual course of events' rather than as 'recurrent at fixed and uniform time intervals.'" And with respect to the regularity of Presidential press conferences, Commissioner Loevinger stated:

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* Cong. Rec., September 2, 1959 at p. 16309.

** Cong. Rec., September 3, 1959 at p. 16344.

*** Cong. Rec., September 3, 1959 at p. 16347.

> "There is not, and cannot be, any question that Presidential news conferences have been held over many years, are recurrent in the normal and usual course of events, and are regular in every meaning of the term except the most narrow."*

The second major requirement, the Commission has stated, for a news interview to be bona fide is that it be under the "exclusive control" of the network or station. In Columbia Broadcasting System, supra, the Commission held that press conferences are not under the control of the network or licensee since:

> "[N]ot 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."**

We believe that Congress' primary concern with "control" of news interviews was that such control be out of the hands of a candidate -- an "exercise of [a licensee's] bona fide news judgment and not for the political advantage of the candidate for public office."*** While a President, admittedly, occasionally makes a statement before opening the session

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* 40 FCC 395, 404.

** 40 FCC 395, 397.

*** Conference Committee Report, Cong. Rec., September 3, 1959 at p. 16343.

to questions, the crux of the conference is the questions and answers themselves.* And these questions are clearly out of the hands of the President.

As Commissioner Loevinger stated in his dissent:

> "What Congress did mean, as the legislative history shows, is that the questions were not to be controlled by the candidate. There is no ground for suspicion that the questions asked of the President at a press conference are anything other than bona fide questions put by the reporters at their own instance or that of their editors. Indeed, this is one of the elements that makes such an event newsworthy. Consequently, it seems clear... that the element of control by the news media which was contemplated by Congressional intent is present in such press conferences."**

In 1962 the Commission decided that a weekly press conference of a governor, during which reporters would phone in questions and the governor would answer over the air, was a "bona fide news interview." As Commissioner Loevinger pointed out, the only difference between this "interview" and a Presidential press conference is that the governor's conference was held weekly "whereas the Presidential press

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* There is, of course, no reason to support a holding that a short opening statement at a press conference on an important issue facing the public is not exempt, while a longer report to the public may be exempt. Yet this is the result flowing from the 1964 Commission decision.

** 40 FCC 395, 405.

conference is held only when the President believes that there is news."

Thus, while we believe that the regularity of a news interview and its control by the licensee are relevant considerations in determining whether or not such an interview is exempt from Section 315, we submit that the Commission's prior interpretation has been too narrow. We submit that Congress' primary concern was that such interviews be "bona fide" -- not merely a thinly guised vehicle for the political advantage of the candidate. Further, we believe that the judgment of "bona fides" is properly that of the licensee. In consequence, we urge the Commission to rule that Presidential press conferences, subject to "bona fides," are exempt from the "equal opportunities" provision of Section 315.

CONCLUSION

We urge the Commission to preserve -- not inhibit -- the free flow of news from the President to the people by ruling that Presidential press conferences are exempt from the "equal time" provision of Section 315. We believe such a ruling would serve to implement the intent of Congress when it passed the 1959 amendments and to enhance the prospect

of an informed public on major national and international issues of the day.

CBS requests this ruling from the Commission in view of the great and immediate importance of this matter which affects licensee obligations under Section 315.

Respectfully submitted,

CBS INC.

By /s/ Ralph E. Goldberg
Ralph E. Goldberg

/s/ Allen Y. Shaklan
Allen Y. Shaklan

/s/ Kevin P. Conway
Kevin P. Conway

Its Attorneys

51 West 52 Street
New York, New York 10019

July 16, 1975

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"All the News That's Fit to Print"

The New York Times

LATE CITY EDITION

Weather: Sunny today; clear and warmer tonight through tomorrow. Temp. range: today 54-72; Monday 55-71. Highest Temp.-Hum. Index yesterday: 66. Details on Page 78.

VOL. CXXIV . No. 42,871

NEW YORK, TUESDAY, JUNE 10, 1975

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20 CENTS

AN ACCORD NEAR ON PLAN TO BLOCK DEFAULT BY CITY

Legislature Is Called to Late Session to Consider New State Fiscal Agency

Return of Doctors Urged By Leaders of Slowdown

Crisis Group Acts After Carey Names Panel to Study Malpractice Issue —Quick Return Is Forecast

By LEE DEMBART

Leaders of the doctors' slowdown recommended early today that their job action be called

Dr. Jacobs said the suspension would last until the commission reports back, which

OPEC WILL SEVER LINK WITH DOLLAR FOR PRICING OF OIL

New Basis Is to Be Special Drawing Rights—Higher Charges Set This Fall

By United Press International

FORD WILL SUBMIT REPORT ON C.I.A. TO ATTORNEY GENERAL FOR REVIEW, WITH DATA ON ASSASSINATION ISSUE

CONGRESS TO ACT

"All the News That's Fit to Print"

The New York Times

LATE CITY EDITION

Weather: Mostly sunny today; cool tonight. Sunny, pleasant tomorrow. Temperature range: today 49-70; Tuesday 51-67. Details on Page 85.

VOL. CXXIV . . No. 42,837

NEW YORK, WEDNESDAY, MAY 7, 1975

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20 CENTS

AIRLINES SEEK END TO BASING RATES ABROAD ON DOLLAR

Job Favoritism Is Found In Study of U.S. Agencies

Rep. Moss Makes Public Data Kept Secret by

BEAME AND CAREY AND BANKERS SEE SIMON AND BURNS

FORD ASKS NATION TO OPEN ITS DOORS TO THE REFUGEES

"All the News That's Fit to Print"

The New York Times

LATE CITY EDITION

Weather: Cloudy today, chance of rain tonight. Cloudy, cold tomorrow. Temperature range: today 39-47; Thursday 35-58. Details on Page 70.

VOL. CXXIV .... No. 42,776

NEW YORK, FRIDAY, MARCH 7, 1975

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20 CENTS

Index of Wholesale Prices Declines 3d Month in Row

Downturn in February Is Seen as Further Indication of an Easing in Rate of Inflation as Recession Deepens

By EDWIN L. DALE Jr.

FORD BACKS SIMON ON CHALLENGING HOUSE ON TAX CUT

Asks More Help for People Who May Spend Readily —Optimistic on Economy

PRESIDENT WARNS CONGRESS IT MUST AID CAMBODIA NOW

Calls Help Vital to Assure Regime's Survival and to

"All the News That's Fit to Print"

The New York Times

LATE CITY EDITION

Weather: Partly cloudy, mild today; colder tonight. Fair, cold tomorrow. Temperature range: today 25-43; Tuesday 15-31. Details on Page 77.

VOL. CXXIV ... No. 42,732

NEW YORK, WEDNESDAY, JANUARY 22, 1975

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20 CENTS

BERGMAN LABELS ALL ALLEGATIONS AS TOTALLY FALSE

CONSUMER PRICES ROSE 12.2% IN '74, WORST SINCE '46

FORD ACTS TO BALK DRIVE IN CONGRESS FOR GAS RATIONING

E-71

“All the News That’s Fit to Print”

The New York Times

LATE CITY EDITION

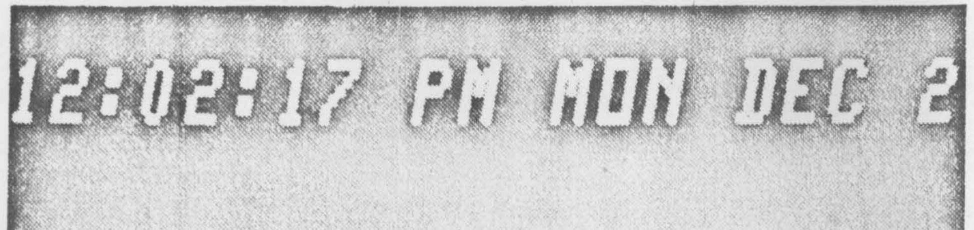
Weather: Cloudy, windy today; cold tonight. Partly sunny tomorrow. Temperature range: today 32-39; Monday 39-50. Details on Page 81.

VOL. CXXIV—No. 42,682 · NEW YORK, TUESDAY, DECEMBER 3, 1974 · Price higher in air delivery cities. · 20 CENTS

Pioneer Photographs Jupiter and Flies On

By WALTER SULLIVAN
Special to The New York Times

MOUNTAIN VIEW, Calif., Dec. 2—Pioneer II transmitted the first pictures of Jupiter's south polar region tonight and then, after a perilous journey



PRESIDENT WARNS OF UNDUE ALARMS ABOUT ECONOMY

Urges Congress to Act on

$600-Million in City Notes Sold at a Record 9.479%

Beame Blames Goldin for High Interest, Citing Comment on Deficit

Welfare Rolls Increased Sharply in September, Widening Budget Gap

HOUSE DEMOCRATS END MILLS'S RULE OVER COMMITTEES

Assignment to Panels, Major

01-01

"All the News That's Fit to Print"

The New York Times

LATE CITY EDITION

Weather: Sunny, milder today; cool tonight. Sunny and mild tomorrow. Temperature range: today 50-72; Wednesday 43-63. Details, Page 93.

VOL. CXXIV .... No. 42,628

NEW YORK, THURSDAY, OCTOBER 10, 1974

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Panel to Disclose Replies From Rockefeller on Gifts

Ford Asserts He Sees Nothing Improper in Ex-Governor's Acts

By LINDA CHARLTON

Byrne Seeks to Learn if Ronan's Port Role May Be Affected

By ROBERT LINDSEY

FORD SAYS HIS PLAN CAN CUT INFLATION BY EARLY IN 1975

Tells News Conference That He Is Confident Program Needs No Other Action

41-6

"All the News That's Fit to Print"

The New York Times

LATE CITY EDITION

Weather: Sunny and pleasant today; partly cloudy tonight, tomorrow. Temp. range: today 57-75; Monday range 50-75. Details on Page 67.

VOL. CXXIII ... No. 42,605

NEW YORK, TUESDAY, SEPTEMBER 17, 1974

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20 CENTS

President Publicly Backs Clandestine C.I.A. Activity

Confirms Chilean Involvement but Not in Coup—Senate Contempt Charge Urged for Helms and 3 Others

Special to The New York Times

WASHINGTON, Sept. 16—President Ford tonight publicly declared his support for the clandestine use of the Central

eign Relations subcommittee had recommended that contempt of Congress charges be placed against Richard Helms,

TOP BUSINESSMEN CALL FOR EASING OF MONEY POLICY

40 at Meeting Sponsored by White House Also Advise Cuts in Federal Spending

By MARYLIN BENDER

Special to The New York Times

FORD OFFERS AMNESTY PROGRAM REQUIRING 2 YEARS PUBLIC WORK; DEFENDS HIS PARDON OF NIXON

ANY 'DEAL' DENIED

'EARNED RE-ENTRY'

"All the News That's Fit to Print"

The New York Times

LATE CITY EDITION

Weather: Rain likely today and tonight. Chance of rain tomorrow. Temp. range: today 72-82; Wed. 74-87. Highest Temp.-Hum. Index yesterday: 80. Details on Page 82.

VOL. CXXIII ... No. 42,586

NEW YORK, THURSDAY, AUGUST 29, 1974

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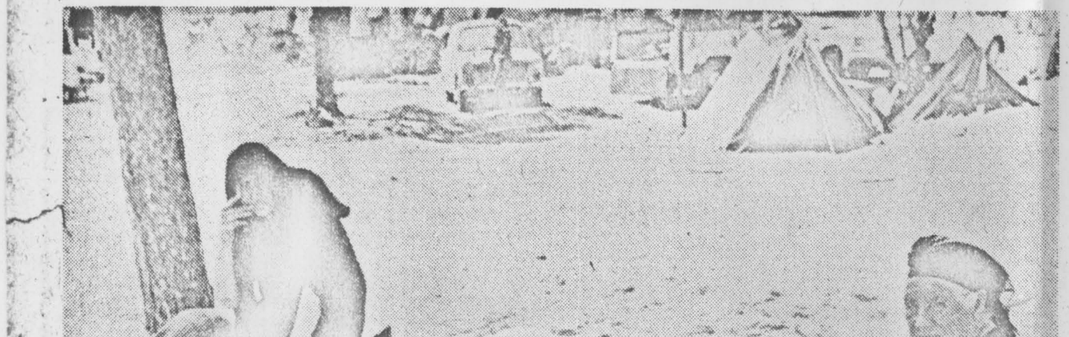

PRESIDENT BARS USE OF CONTROLS TO CURB INFLATION

Says He Would Look With 'Compassion' on Program for Public Employment

FORD SAYS HE VIEWS NIXON AS PUNISHED ENOUGH NOW; PARDON OPTION KEPT OPEN

DECISION PUT OFF

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

*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.

"Equal Time" Question

THE WHITE HOUSE

WASHINGTON

July 31, 1975

MEMORANDUM FOR: DICK CHENEY

FROM: PHILIP BUCHEN P.W.B.

Following your memo of July 26, I obtained a copy of the CBS filing before the FCC for a declaratory ruling to exempt the press conferences of this President from the "equal time" provisions of Section 315 of the Communications Act of 1934, as amended.

At present, the petition filed on July 16 has brought no response from the FCC. If the FCC should open up the matter for comments, we may want to get involved, but if we were to make a move now we would only stimulate reactions from parties opposed to the position taken by CBS that such press conferences should be declared exempt.

I will keep you advised of developments.

THE WHITE HOUSE

WASHINGTON

July 26, 1975

MEMORANDUM

FOR: PHIL BUCHEN

FROM: DICK CHENEY

This is just a reminder that you have the action on this equal time problem and CBS filing at the FCC.

We had better look and see what the circumstances are from the standpoint of the President and whether or not the networks will be able to broadcast any of his events in the next year.