

POLITICAL
BROADCAST
CATECHISM
&
THE FAIRNESS
DOCTRINE

(Fifth Edition)



Mar 1966



NATIONAL ASSOCIATION OF BROADCASTERS

1771 N STREET N.W., WASHINGTON, D.C. 20036 DECATUR 2-9300

IMPORTANT

STAPLE THIS TO YOUR COPY OF THE NAB POLITICAL BROADCAST CATECHISM (FIFTH EDITION)

In its recent publication "Use of Broadcast Facilities by Candidates for Public Office" the FCC appears to have modified its interpretation of some previous rulings. This necessitates clarification of some of the material contained in our Fifth Edition of the Political Broadcast Catechism. These are set forth below. We urge you to staple this addendum to your booklet for easy reference.

WHAT CONSTITUTES A "USE" OF BROADCAST FACILITIES ENTITLING OPPOSING CANDIDATES TO "EQUAL OPPORTUNITIES?"

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, non-commercial and station identification announcements would not constitute a "use" where the announcer himself was neither shown nor identified in any way. (In re WNEP, letter of March 16, 1965.)

It would appear from this ruling that it creates an exception to our interpretation of the WMAY ruling (see question 43, p. 10). In the opinion of the NAB legal department, the key to all such questions concerning an employee-candidate is whether or not he was identified either aurally or visually. For example, if the employee-candidate in this case had given a commercial announcement while "on camera," it would have constituted a "use" entitling opposing candidates to equal time. If the employee is identified in any way, it will probably be interpreted as a "use" within the meaning of Section 315.

WHAT CONSTITUTES EQUAL OPPORTUNITIES

The answers to questions 52 on page 12 and 60 on page 13 appear to be inconsistent. This same inconsistency appears in the FCC publication recently released. The answer to question 52 is predicated on an FCC letter to Nicholas Zapple dated October 5, 1962. In our opinion, this answer overrules the answer to question 60 which was based on a 1958 ruling. Therefore, the answer to 60 should be disregarded. We have requested further clarification from the Commission on this point and will notify the membership just as soon as it is received.

WHAT LIMITATIONS CAN BE PUT ON THE USE OF FACILITIES BY A CANDIDATE?

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. No. 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.'" Letter of Nicholas Zapple, October 5, 1962, FCC 62-1031. (See also *Farmers Educational and Cooperative Union of America v. WDAY, Inc.* 360 U.S. 525 (1958), but cf. letter to H.A. Rosenberg, Louisville, Ky., July 9, 1952, 11 R.R. 236, for a ruling antedating the WDAY decision.)

This question reverses the answer we give to question 71 on page 14 of our booklet.

May 19, 1966
NAB Legal Department

Political Broadcast Catechism

and

The Fairness Doctrine

(Fifth Edition)

March 1966

**Prepared for the Members of the
National Association of Broadcasters
by its
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POLITICAL BROADCAST CATECHISM

and

THE FAIRNESS DOCTRINE

Foreword

With each new election year, with each new controversial issue, the broadcaster is confronted with new factual situations which necessitate a good faith interpretation of Section 315 and the "fairness doctrine." Because of the ever-increasing importance placed on these matters by the FCC, the Legal Department of NAB has prepared this fifth edition of "Political Broadcast Catechism" in an effort to assist the radio and television broadcaster in achieving judicious solutions to the problems which may arise.

In using this "Catechism" as a guide, it should be noted that the contents are divided into two main sections. The major portion still relates to the obligations of broadcast licensees for radio and television appearances of political candidates under Section 315 of the Communications Act. However, since 1959 the "fairness doctrine" has assumed more and more importance in any discussion of political broadcasting. It is included here primarily to clarify the fact that the obligations imposed thereunder are separate and dis-

tinct from the obligations to afford "equal opportunities" to political candidates.

Where possible, actual Federal Communications Commission and Court answers to specific questions are presented. In this regard, it should be noted that while some of the decisions may seem to be contrary to a broadcaster's interests, these decisions are nonetheless official pronouncements by which the situations covered must be governed. They also provide guidance in the resolution of new problems as they may arise.

The FCC is generally cognizant of the difficult decisions broadcasters frequently must make with respect to both Section 315 and the "fairness doctrine." It would thus appear that the FCC would be sympathetic to any broadcast licensee who, after the exercise of reasonable care, errs while acting in good faith. The material which follows has been prepared with only one purpose in mind—to assist you in making good faith determinations of your obligations with respect to political broadcasting and controversial issues.

I. POLITICAL BROADCASTS

A

Introduction

The information contained in previous editions of the "Catechism" has been retained insofar as it represents, in the opinion of the NAB Legal Department, the current FCC determination of the Communications Act and its rules pertaining to political broadcasting. There are, however, some significant new rulings in the area of the 1959 amendment interpretations. Of particular interest is question and answer number 43 on

page 11 which in the opinion of the NAB Legal Department makes each appearance by an announcer-employee of a broadcast station who is also a candidate for political office a "use" under the "equal opportunity" provision of Section 315. Most of the significant FCC rulings since our last publication have involved an interpretation of a "use" within Section 315.

B

The Communications Act and FCC Political Broadcast Rules and Regulations

1. Q. What does the Communications Act say about political broadcasts?

A. Section 315 of the Communications Act of 1934, as amended, is the only provision in that Act specifically referring to political broadcasts. It reads as follows:

“(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 hereby 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,
- (2) bona fide news interview,
- (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
- (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.

“Sec. 2. (a) The Congress declares its intention to reexamine from time to time the amendments to Section 315(a) of the Communications Act of 1934 made by the first section of this Act,

to ascertain whether such amendment has proved to be effective and practicable.

“(b) To assist the Congress in making its re-examinations of such amendment, the Federal Communications Commission shall include in each annual report it makes to Congress a statement setting forth (1) the information and data used by it in determining questions arising from or connected with such amendment, and (2) such recommendations as it deems necessary in the public interest.”

In addition, Section 317 of the Act, while not specifically referring to political broadcasts, is applicable thereto. This section reads as follows:

“Sec. 317. All matter broadcast by any radio station for which service, money, or any other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person.”

2. Q. What Commission rules and regulations implement Section 315 of the Communications Act?

A. Sections 3.120 (AM), 3.290 (FM), 3.590 (Non-commercial Educational FM), and 3.657 (TV) of the Commission's Rules and Regulations implement Section 315. These rules are identical (except for the elimination of any discussion of charges in Section 3.590) 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:

“(1) Has qualified for a place on the ballot or

“(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 other such 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 record shall be retained for a period of two years.

“(e) A request for equal opportunities must be submitted to the licensee within one week of the day on which the prior use occurred.

“(f) A candidate requesting such equal opportunities of the licensee, or complaining of non-compliance to the Commission shall have the burden of proving that he and his

opponent are legally qualified candidates for the same public office.”

3. Q. Is the licensee required to keep a script or recording of political speeches?

A. No. However, many stations keep recordings or scripts of political speeches as a safety factor in the event that the station should be drawn into any controversy which might subsequently arise pertaining to the political broadcast. As for the actual legal requirements for political broadcast records, when a speech is made by a political candidate, the program log is required to reflect the name and political affiliation of the speaker. Also, an entry must be made showing that each sponsored program broadcast has been announced as sponsored, paid for, or furnished by the sponsor. (See Rules and Regulations 3.111 (AM), 3.281 (FM), and 3.663 (TV).) Under the 1959 amendment to Section 315, though, no political broadcast log requirements would be required for appearances by political candidates on bona fide news programs enumerated in the amendment. In other words, for exempt appearances by political candidates, only the ordinary program log requirements are applicable.

4. Q. Must a station keep a record of all requests for time by or on behalf of political candidates?

A. Yes. Section 3.120(d) requires that such record shall be retained for a period of two years.

5. Q. What announcements must the station make with respect to political broadcasts?

A. Section 3.119 (a), (b), (c), (d), (e) and (f) provides as follows:¹

Sponsored programs, announcement of.—(a) When a standard 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.

¹ The equivalent rules for FM and TV may be found under Sections 3.289 and 3.654.

(b) The licensee of each standard 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 standard 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 standard 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 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.

(e) The announcement required by this section shall fully and fairly disclose the true identity of the person or persons by whom or in whose behalf such payment is made or promised, or from whom or in whose behalf such services or other valuable consideration is received, or by whom the material or services referred to in paragraph (d) of this section are furnished. Where an agent or other person contracts or otherwise makes arrangements with a station on behalf of another, and such fact is known to the station, the announcement shall disclose the identity of the person or persons in whose behalf such agent is acting instead of the name of such agent.

(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.

Under this rule requiring that announcements be made as to the sponsorship of political broadcasts, it should be noted that a station licensee does not fulfill his obligation merely by announcing that "this is a paid political broadcast." The announcement must go further and specifically state *by whom* the broadcast is sponsored. (See 3.119 (e) above.) It should also be noted that the rule for announcing the source or sponsorship of program material applies to all programs including newscasts. For example, if a station were to accept free recordings or kinescopes of legitimate news events for use in a newscast, the station must so inform the listening and viewing audience. The fact that the material is in fact news and that the station would have covered the events at its own expense had not the free recordings and kinescopes been made available is immaterial. The announcement still must be presented. (*Westinghouse Broadcast Co., Inc.*, 17 R.R. 556d, September 24, 1958.)

6. Q. What new rules and regulations can broadcast station licensees expect to be promulgated by the FCC as a result of the 1959 amendment to Section 315?

A. It is expected that the FCC may promulgate new rules and regulations which will have the effect of defining the specific terms employed in the 1959 amendment to Section 315. Also, the FCC may issue new rules and regulations requiring station licensees to file with the FCC certain information which will aid the Commission in reporting to the Congress as to whether or not the FCC has found the amendment to Section 315 to be effective and practicable.

The amended Section 315 now requires that the FCC, in its annual report to Congress, make a statement setting forth (1) "the information and data used by it in determining questions arising from or connected with such amendment, and (2) such recommendations as it deems necessary in the public interest." This new requirement of the

FCC has prompted one Commissioner to express the unofficial opinion that the FCC may now require considerable information from broadcasters to assist the FCC in fulfilling its reporting obligations.

No indication has as yet been given as to when the new rules and regulations, if any, will be forthcoming. However, as soon as additions are made to the political broadcast rules, a supplement to this catechism will be issued.

C

The "Legally Qualified" Candidate

7. 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. (See Question and Answer 2)

8. 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. (Sections 3.120, 3.290, 3.657; *Socialist Labor Party*, 7 R. R. 766; *Columbia Broadcasting System, Inc.*, 7 R. R. 1189; *Press Release* of November 26, 1941 (Mimeo 55732).)

9. Q. Who has the burden of proof in establishing whether a person is a legally qualified candidate?

A. A candidate requesting equal opportunities of a licensee, or a candidate complaining to the FCC of a licensee's non-compliance with Section 315, has the burden of proving that he and his opponent are legally qualified candidates for the same public office. (Section 3.120 (AM), 3.290 (FM), 3.590 (Non-commercial Educational FM) and 3.657 (TV).)

10. Q. May a station deny a candidate "equal opportunity" 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, (*Columbia Broadcasting System, Inc.*, 7 R.R. 1189).

11. 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. (FCC Letter to *Senator Earle C. Clements*, dated February 2, 1954.)

12. Q. Must a station make time available, upon demand, to a candidate of the Communist Party if it is affording time to that candidate's opponents for the office in question?

A. No. The Commission has stated that the Communist Control Act of 1954, which denies to the Communist Party all "rights, privileges, or immunities attendant upon legal bodies created under existent laws of the United States . . .," presumably affects the legal capacity of the Communist Party or representative thereof to contract for broadcast time. (*Comments of the FCC on H.R. 3789*, Release No. 21879, March 9, 1955.)

13. 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. (FCC Letter of May 28, 1952 to *Julius F. Brauner*.)

14. Q. If a person claiming to be a legally qualified candidate fails to prove his legal qualifications prior to the date set for nomination or the election for the office for which the claimant is contending, is the claimant entitled to equal opportunities which would have been available had he successfully established his legal qualification prior to the date of nomination or the election?

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*, dated December 13, 1956; letter to *Lar Daly*, 14 R.R. 713, appeal sub. nom. *Daly v. U.S.*, Case No. 11,946 (C.A. 7th Cir.) dismissed as moot Mar. 7, 1957; *cert. denied* 355 U.S. 826.)

In any event, under a recent addition to the FCC's political broadcast rules, all requests by political candidates for "equal opportunities" under Section 315 must be submitted to the licen-

see within one week of the day on which the prior use occurred. (Section 3.120 (e), AM, 3.290 (e), FM, 3.590 (e), Non-commercial Educational FM, and 3.657 (e), TV.)

15. 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 Section 315 by waiting until an election has been held and only then disposing of demands for "equal opportunities."

If a station seeks to avoid its statutory obligation by waiting until after the date set for nomination or the date of an election to dispose of requests for "equal opportunities," the FCC could take such conduct into consideration in ruling on a station's application for renewal of its license. The application for renewal could be denied on the ground that the station violated its statutory obligation. However, should a station make a bona fide mistake in judgment, as to the legal qualifications of a candidate, the FCC in all probability would not penalize the station. Should a station make frequent "mistakes" in judgment, though, the FCC could consider this as strong evidence of not acting in good faith.

16. 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 person "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*, November 5, 1954; letter to *Socialist Workers' Party*, dated November 23, 1956.)

D

When Are Candidates Opposing Candidates?

17. 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 as a candidate for such an office.

18. 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 opportunity" requirement of Section 315 is limited to all legally qualified candidates for the same office.

19. 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. (*KWFT, Inc.*, 4 R.R. 885; FCC Letter to *Arnold Petersen*, May 13, 1952; FCC Letter to *WC DL*, April 3, 1953.)

20. Q. If there is only one candidate for each party's nomination for a particular office in the primary and one candidate makes a use of a station's facilities, must the station afford equal opportunities to the other candidates prior to the actual primary election?

A. The answer must depend on an interpretation

of state law as to when a candidate is deemed nominated. For example, if a state has a provision to the effect that all persons designated for uncontested offices in a primary election will be deemed nominated without balloting, the two candidates of opposing parties would become opposing candidates before the ballots were cast in a primary election. However, the FCC has interpreted one such situation in New York and refused to grant "equal opportunities" since at the time the candidate used the station's facilities it was still possible under New York law to file petitions requesting the opportunity to write-in the name of an undesignated candidate and thus the candidates were not deemed nominated. (Letter to Mrs. Eleanor Clark French; October 28, 1964.)

21. 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 #19 above. (*KWFT, Inc.*, 4 R.R. 885.)

E

Programs Within The Scope of Section 315

22. Q. Do the political broadcast rules require that a station sell or give time to any candidate who seeks it?

A. No. The law is specific in providing that a broadcaster may legally refuse time to *all* candidates. Also, time may be made available to all candidates for one office and refused all candidates for another office. The requirement is that, if time is made available to one candidate, "equal opportunity" must be made available to all other candidates for the *same office*. (It is possible, however, that the FCC might regard the refusal to schedule *any* candidate's speeches as an operation not in the public interest. See *Editorializing By Broadcast Licensees*, paragraph 18, FCC Release No. 215, June 2, 1949; *The Matter of the City of Jacksonville*, 12 R.R. 113.)

23. 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 (1950), *cert. denied*, 341 U.S. 909 (1951).)

However, if a political spokesman, other than a legally qualified candidate, should discuss issues

of public importance or controversial issues, then a broadcast licensee would be required to afford reasonable opportunity for the presentation of conflicting viewpoints. This obligation, though, arises under the "fairness doctrine" and is separate and distinct from the obligation to afford "equal opportunities" for political candidates.

24. Q. Does Section 315 confer rights on a political party as such?

A. No. It applies only to legally qualified candidates for public office, and is not concerned with the rights of political parties, as such. (Letter to *National Laugh Party*, dated May 8, 1957.)

25. Q. May the licensee censor the speeches of the supporters of a political candidate?

A. Yes. The no censorship provision of Section 315 applies only to the speeches made by candidates themselves and not to speeches on their behalf. (*Felix v. Westinghouse Radio Stations, Inc.*, *supra*.)

26. 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. (Letter to *Gregory Pillon*, dated July 19, 1955.)

F

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

27. Q. What *use* of broadcast facilities by a legally qualified candidate for public office imposes an obligation on broadcast station licensees to afford equal opportunities to all other candidates for the same office?

A. As a general rule, any use of broadcast facilities by a legally qualified candidate for public office imposes an obligation on broadcast station licensees to afford equal opportunities to all other candidates for the same office. However, Congress amended Section 315 on September 14, 1959, so as to exclude appearances by a legally qualified candidate on any—

- (1) bona fide newscast,
- (2) bona fide news interview,
- (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
- (4) on-the-spot coverage of bona fide news events (including, but not limited to, political conventions and activities incidental thereto).

In providing for this exemption from the general rule, though, Congress specifically provided in Section 315 that nothing in the exemption would relieve broadcasters, in connection with the

presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from their obligation to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

28. 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 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.

29. 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 other than on a bona fide news program under amended Section 315, no matter how brief or perfunctory, are a "use" of a station's facilities within Section 315.

G

What Constitutes an Appearance Exempt from the Equal Opportunities Provisions of Section 315?

Section 315 of the Act was amended by the Congress in 1959 to provide that appearances by legally qualified candidates on specified newstype 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 newstype programs, the basic question is whether the program meets the standard of "bona fide." 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 program; (2) whether the format, nature and content of the program has changed since its inception and, if so, in what respects; (3) who initiates the program; (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 regu-

larly scheduled, specify the time and day of the week when it is broadcast.

30. Q. If a station arranges for a debate between the candidates of two parties or presents the candidates of two parties on a program with a press conference format or so-called forum program, is the station required to make equal time available to other candidates?

A. It would appear that Section 315, as amended, would not require that opponents of legally qualified candidates who appear on such programs be afforded equal opportunities if such programs are kept within the confines of a *bona fide* news interview. As yet, the FCC has not spelled out the scope of the term "news interview." However, the legislative history of the 1959 amendment to Section 315 shows that Congress intended that for a program to be considered a bona fide news inter-

view, it must be regularly scheduled. Also, the content, format, and participants must be determined by the station licensee or network—which ever originates the news interview—and, the determination must be made in the exercise of bona fide news judgment. (Conference Report, H. Rept. 1069, August 27, 1959.) While not specifically set forth in the language of the 1959 amendment to Section 315, it would appear from the debates in Congress preceding enactment of the amendment, that appearances by political candidates on such programs as “Meet the Press” and “Face the Nation” would be exempt from the “equal opportunities” requirements of Section 315.

31. 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 Andrew J. Easter, April 28, 1960; letters to Charles V. Falkenberg, May 12 and June 13, 1960; and letter to Congressman Frank Kowalski, July 10, 1962.)

32. 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. Generally no. If an acceptance speech is on-the-spot coverage of a bona fide news event such as a political convention, then opponents of the candidate would not be entitled to equal opportunities based on broadcast of the acceptance speech. However, should a candidate buy broadcast time for his acceptance speech, then it would appear that the speech would not be exempt from Section 315, and equal opportunities would have to be afforded to his opponents.

33. Q. When a station, as part of a bona fide 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. While we believe that this type of an appearance on a program by a political candidate has always been exempt from the provision of Section 315, there is now no question but that such appearances are exempt under the 1959 amendment to Section 315.

34. 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 Congressman Clark W. Thompson, February 9, 1962, 23 R.R. 178.)

35. Q. Are appearances by an incumbent-candidate in film clips prepared and supplied by him to the stations and broadcast as part of station’s regularly scheduled newscasts, “uses” within the meaning of Section 315?

A. Yes. Broadcasts 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 34 above. (Letter to Congressman Clem Miller, June 15, 1962.)

36. Q. Is a press conference held by the President or by another candidate for the Presidency subject to the equal time requirements of Section 315 of the Act?

A. Yes, a press conference is not exempted as a bona fide news interview nor as on-the-spot coverage of a bona fide news event. (Letter to CBS, Inc.; September 30, 1964, 3 R.R. 2d 623.)

37. Q. Would the use of a portion of a news conference of a candidate as a part of a bona fide newscast subject the station to the equal time requirements of Section 315?

A. No. Such a broadcast is within the licensee’s exercise of his bona fide news judgment and in this instance would clearly not constitute a “use” of station facilities by reason of the 1959 amendment to Section 315. (Letter to CBS, Inc.; September 30, 1964, 3 R.R. 2d 623.)

38. 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 followed the usual program format. (Telegram to Ethel B. Lobman, November 1, 1961.)

39. Q. On September 30, 1962, two candidates for the office of Governor of California held a one-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 "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. (Telegrams to NBC and KFMB-TV, October 19, 1962; Letters to NBC and CBS, October 26, 1962, FCC 62-1132; see also Letter to The Goodwill Stations, Inc. (WJR), October 19, 1962).

40. Q. Is a broadcast of a report of the President to the American people concerning specific, current, and extraordinary international events a "use" entitling other Presidential candidates to equal time?

A. No. A 1956 ruling held that President Eisenhower's address on the Suez Crisis was exempt because the "equal time" provision is not applicable when the President uses the air lanes in reporting to the Nation on an international crisis. The Commission found that there was nothing in the legislative history of the 1959 amendment to change this holding and in this instance found that President Johnson's report on the replacement of the head of the Soviet Union and the explosion of a nuclear device by Communist China was a bona fide news event of an extraordinary nature within the exemption of Section 315(a)(4) of the Act. (Letter to Dean Burch; October 21, 1964, 3 R.R. 2d 647.)

41. Q. If a station owner, or a station advertiser, or a person regularly employed as a station announcer were to make any appearances other than on a bona fide news program 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, dated April 9, 1958; to KTTV, 14 R.R. 1227; and to Kenneth Spengler, 14 R.R. 1226b, respectively.)

42. 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 a type intended by Congress to be exempt from the "equal opportunities" requirement of Section 315. (Letter to Station WCLG, April 27, 1960.)

43. Q. If a station's news director, who prepares news material and presents it on regularly scheduled news programs, becomes a candidate for the local school board, must the station afford equal time to the opponents even though he has not been identified by name or otherwise on the program since becoming a candidate?

A. Yes. The main purpose of the 1959 amendment was to allow greater freedom to the broadcaster in reporting *news* to the public, that is to say, in inserting appearances 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 context 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). The legislative history would indicate 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. (Letter to WMAY; March 31, 1965.)

Prior to this ruling the FCC had ruled that the regular appearance of a station weathercaster who was a candidate for re-election to the Texas Legislature was not a "use" since it did not involve anything but a bona fide effort to present the news since he was not identified, his employment did not arise out of the election campaign and there was no evidence of favoritism or discrimination.

It is the opinion of the NAB legal department that the decision in WMAY indicates that the FCC does not intend to follow the weathercaster case. The effect, therefore, is that each appearance by an announcer-employee of a broadcast station who is also a candidate for political office is a "use" under the "equal opportunity" provision of Section 315.

44. Q. An Indiana station presented the County Court Judge, who was a candidate for the Demo-

cratic mayoralty nomination in Gary, Indiana, 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 10:00 a.m. Was the opponent entitled to "equal opportunities"?

A. No. The Commission concluded that the program fell within the "news event" exemption of Section 315 (2) (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 fourteen years, with this particular judge for seven and one-half 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., April 10, 1963 (FCC 63-331); affirmed by Order entered April 29, 1963, Thomas R. Fadell v. U.S., FCC and WWCA Radio Station, Case No. 14, 142 (USCA, 7th.))

Whether or not the Commission would follow this case in the light of the answer to #43 is problematical.

H

What Constitutes Equal Opportunities?

45. Q. Generally speaking, what constitutes equal opportunities?

A. Under Section 315 of the Act and Sections 3.120, 3.290 and 3.657 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.

46. Q. Is a licensee required or allowed to give time free to one candidate where it has 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 adopt 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.

47. 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.

48. 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*, dated July 3, 1958.)

49. **Q.** Is it necessary for a station to advise a candidate of 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. (Sections 3.120 (d), 3.290 (d), 3.657 (d).)

50. **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 "equally opportunities" would depend on all the facts and circumstances. (Letter to *Leonard Marks* 14 R.R. 65).

51. **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 four 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 Jack Neil, Station KTRM, April 18, 1962.)

52. **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.'"

53. **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 unbalance?

A. No. Section 315 requires only that all candidates be afforded an equal opportunity to use the facilities of the station. (FCC Letter to *Mrs. M. R. Oliver*, dated October 23, 1952).

54. **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 cancelling commercial programs in favor of political broadcasts?

A. No. The station cannot rely upon its policy if the latter conflicts with the "equal opportunity" requirement of Section 315. (*Stephens Broadcasting Co.*, 3 R.R. 1.)

55. **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 opportunity 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. (FCC Letter to *Thomas W. Wilson*, dated October 31, 1946.)

56. **Q.** If a station broadcasts a non-news type 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 non-news type programs

sponsored by commercial advertisers, opposing candidates are entitled to receive comparable time, also, at no cost. (FCC Letter to *Senator Monroney*, dated October 9, 1952.)

57. **Q.** Where time charges for a 15-minute special program featuring speeches by political candidates are not paid for by the candidates but by a labor union, what are a station's obligations with respect to affording "equal opportunities" to other candidates for the same office?

A. Precedent cited in Question 56 is not applicable in these circumstances where a political committee organization, such as here involved, purchases time specifically on behalf of candidates. Thus, opposing candidates are not entitled to free time. (Telegram to Thomas J. Dougherty; October 29, 1964.)

58. **Q.** Where a candidate for office in a state or local election appears on a national network non-news program, is an opposing candidate for the same office entitled to equal facilities over stations which carried the original program and serving 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. (FCC Letter to *Senator Monroney*, dated October 9, 1952.)

59. **Q.** Where a candidate appears on a particular program—such as a regular series of forum programs which are not bona fide news programs—are opposing candidates entitled on 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 established 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*. (FCC Letter to *Harold Oliver*, dated October 31, 1952; FCC Letter to *Julius F. Brauner*, dated October 31, 1952.)

60. **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 determined by the station 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?

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. (Letter to *Congressman Bob Wilson*, dated August 1, 1958.)

61. **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*, dated July 3, 1958.)

62. **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 *Congressman Karsten*, dated November 25, 1955.)

63. **Q.** May a station "editorialize" in behalf of its favorite candidate or party?

A. Yes. A station may lend its prestige to any public issue. The Commission, however, expects the station to seek out and present proponents of the other side of the issue.

64. **Q.** May a licensee request that a candidate for office provide bonds and insurance?

A. The Commission has stated that it is "extremely doubtful whether it would be lawful under Section 315(b) of the Communications Act for a station to impose upon candidates for public office such an obligation to provide bonds or insurance unless they also require other users of their stations to post similar indemnity bonds or insurance." (11 R.R. 1501.) In view of the United States Supreme Court decision in the *WDAY* case (See Answer 66) it would appear needless to request indemnity bonds from candidates since broadcast licensees are not liable for libelous statements broadcast by a candidate.

I

What Limitations Can Be Put On The Use of Facilities By A Candidate?

65. Q. May a station delete material in a broadcast by a legally qualified candidate 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. (*Farmers Educational and Cooperative Union of America v. WDAY, Inc.*, 360 U.S. 525, 3 L. ed. 2d. 1407, June 29, 1959.)

66. Q. If a legally qualified candidate does make libelous or slanderous remarks, is the station liable therefor?

A. No. A broadcast station licensee who does not directly participate in the libel is free from liability which might otherwise be incurred under state law, because of the operation of Section 315, which precludes a licensee from preventing a candidate's utterances. The United States Supreme Court has ruled that since a licensee could not censor a broadcast under Section 315, Congress could not have intended to compel a station licensee to broadcast libelous statements of a legally qualified candidate and at the same time subject the licensee to the risk of damage suits. (*Farmers Educational and Cooperative Union of America v. WDAY, Inc.*, *supra.*)

67. 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. The no censorship provision of Section 315 applies only to speeches by legally qualified candidates. Therefore, since a station may censor the political speeches of persons other than legally qualified candidates, the licensee may be held liable for slanderous or libelous statements of a non-candidate if he does not require that the offensive statements be deleted. (*Felix v. Westinghouse Radio Stations*, 186 F. 2d. 1, cert. den. 341 U.S. 909.)

68. Q. What can a station do if a candidate contemplates a speech including obscene or defamatory passages?

A. If obscene or defamatory material is included, the broadcast licensee should attempt to *persuade* the candidate to delete it. However, if the candidate insists, the broadcast licensee, under the no censorship provisions of Section 315, must allow the candidate to go on the air with his material uncensored.

69. 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. (*WMCA, Inc.*, 7 R.R. 1132.)

70. 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. (FCC Letter to *Congressman Allen Oakley Hunter*, May 28, 1952.)

71. Q. May a station require an advance script of a candidate's speech?

A. Yes, provided that the practice is uniformly applied to all candidates for the same office using the station's facilities, and the station does not undertake to censor the candidate's talk. (FCC Letter of July 9, 1952, to *H. A. Rosenberg*, Louisville, Kentucky.)

72. Q. May a station have a practice of requiring a candidate to record his proposed broadcast at his own expense?

A. Yes, provided, again, that the procedures adopted are applied without discrimination as between candidates for the same office and no censorship is attempted. (FCC Letter of July 9, 1952, to *H. A. Rosenberg*, Louisville, Kentucky.)

What Rates Can Be Charged Candidates For Programs Under Section 315?

73. 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 station for other purposes."

74. 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. (Letter to *Congressman Diggs, Jr.*, dated March 16, 1955.)

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

A. No. Under Sections 3.120, 3.290 and 3.657 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.

76. 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. (Letter to *Congressman Simpson*, dated February 27, 1957.)

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

A. Yes. Under Sections 3.120, 3.290 and 3.657 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 non-discriminatory basis.

78. 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 a single advertiser?

A. Yes. Section 315 specifically provides that a station need not permit 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. (Letter to *WKBT-WKBH*, dated October 14, 1954.)

79. Q. If candidate A purchases ten 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.

80. Q. If a station has a "spot" rate of two dollars per "spot" announcement, with a rate reduction to one 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 one dollar rate, is the station obligated to sell the candidates of other parties for the same office time at the same one dollar rate?

A. Yes. Other legally qualified candidates are entitled to take advantage of the same reduced rate. (FCC Letter to *Senator Monroney*, dated October 16, 1952.)

81. 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 candidates themselves and they are en-

titled to be treated equally with their individual opponents. (*FCC Report and Order*, Docket 11092, 11 R.R. 1501.)

82. 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 fund was derived from sources other than the candidates' contributions. (Letter to *Edward de Grazia*, dated October 14, 1954.)

83. 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 *Charles W. Stratton*, dated March 18, 1957.)

84. Q. If a station sells time to candidate A at the regular commercial rate, must the station give free time to all other candidates who request it?

A. No. The law requires "equal opportunities" for candidates—not "equal time." This means that the other candidates must be allowed to purchase comparable time at an equal rate.

85. Q. A station regularly does business through advertising agencies and gives its customary commission. For example, candidate A purchases \$100 worth of time through an agency. The station received \$85. Candidate B, not utilizing an agency, demands the same amount of time from the station for \$85. Is he entitled to it?

A. No. The law requires that each candidate be afforded time upon equal terms. Here, following its customary practice, the station has accepted A's time purchase through a recognized agency.

The fact that the station receives only \$85 has no bearing on the fact that the cost to A was \$100. B is entitled to the same terms, no more, no less.

86. Q. Do the rate provisions of the Commission's Rules and Regulations apply to broadcasts by spokesmen for a candidate or to spot announcements when someone other than the candidate does the speaking?

A. No.

87. Q. Time is sold to candidate A for a "talkathon." Candidate B demands an equal allotment of time, and arrangements are made to sell comparable time to him at the same rate as it was sold to A. B uses part of his time and then cancels his order for the remainder. When billed for time, B insists that he was under no obligation to pay for unused time on the theory that the station has suffered no loss because, under Section 315, the station was required to keep time available to him on call. Is B correct?

A. No. It is true that a station having sold time to one candidate should stand ready to sell comparable time to his opponent. But it does not follow that a candidate, having committed himself to paying for the use of specific time, can break a contract and renege on the ground that the station was obligated to hold it open for him. Under these circumstances, the station is not obligated to hold any specific time segment open and is entitled to require the same contract and the same provisions for cancellation as in the case of commercial users.

88. 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 Section 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. (Letter to Marcus Cohn, Esq., May 13, 1964, FCC 64-430.)

K

Period Within Which Request Must Be Made

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

A. Within one week of the day on which the prior use occurred. (Subsection (e) of §§3.120, 3.290, and 3.657 of the Commission rules; and telegram to WWIN, May 3, 1962.)

90. Q. A United States 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 one 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 one week prior to the date of such announcement. (Letter to Senator Joseph S. Clark, April 16, 1962.)

91. 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 six weeks later, incumbent requested equal opportunities. Were the stations correct in advising incumbent that the Commission's seven-day rule was applicable, thereby precluding requests for equal opportunities for any broadcasts prior to seven 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 seven-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. (Letter to Mr. Emerson Stone, Jr., April 22, 1964, FCC 64-363.)

L

FCC Acceptance of Political Broadcast Cases

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

A. Section 5(d) of the Administrative Procedure Act, Title 5, U.S.C.A. provides that, "The agency is authorized in its sound discretion, with like effect as in the case of other orders, to 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; also, *In re Goodman*, 4 Pike & Fischer R.R. 98. In general, the Commission limits its interpretive rulings or advisory opinions to situations where the critical facts are explicitly stated without the possibility that subsequent events will alter them. Rather, it prefers to issue such rulings or opinions where the specific facts of a particular case in controversy are before it for decision. (Letter to Pierson, Ball & Dowl, dated June 18, 1958.)

M

Political Broadcast Agreement Form

93. Q. Where can I obtain a suggested agreement form to use for political broadcasts?

A. The National Association of Broadcasters has prepared a suggested form, a copy of which appears hereinafter. Additional copies may be obtained, upon request, from the Association at a cost of \$1.50 per pad of 100 forms.

94. Q. When should this agreement form be used?

A. This form, or a similar one, should be used for all political broadcasts. In every case, it should be clearly spelled out who will actually use the time, since the provisions of Section 315 only apply when the candidate, himself, uses the time, irrespective of who buys the time, pays for it, or signs the contract.

AGREEMENT FORM FOR POLITICAL BROADCASTS

STATION and LOCATION _____ 19____

I, _____ (being) _____ (supporting) _____,

a legally qualified candidate for the office of _____ in the _____ election, do hereby request station time as follows:

____LENGTH OF BROADCAST____ ____HOUR____ ____DAYS____ ____TIMES PER WEEK____ ____TOTAL NO. WEEKS____ ____RATE____

DATE OF FIRST BROADCAST	DATE OF LAST BROADCAST
-------------------------	------------------------

The broadcast time will be used by _____

I represent that the advance payment for the above-described broadcast time has been furnished by _____ and you are authorized to so describe the sponsor in your log, or otherwise, and to announce the program as paid for by such person(s).

The entity furnishing the payment, if other than an individual person, is: () (1) a corporation; () (2) a committee; () (3) an association; or () (4) other unincorporated group.

(a) The corporation or other entity is organized under the laws of _____

(b) The officers, board of directors and chief executive officers of the entity are: _____

It is my understanding that: The above is the same uniform rate for comparable station time charged all such other candidates for the same public office described above; the charges above do not exceed the charges made for comparable use of said station for other purposes; and the same is agreeable to me.

In the event that the facilities of the station are utilized for the above-stated purpose, I agree to abide by all provisions of the Communications Act of 1934, as amended, and rules and regulations of the Federal Communications Commission governing such broadcasts, in particular those provisions reprinted on the back hereof, which I have read and understand. I further agree to indemnify and hold harmless the station for any damages or liability that may ensue from the performance of the said broadcasts.

For the above broadcast, I agree to prepare a script or transcription, which will be delivered to the station at least _____ before the time of the scheduled broadcast.

(Candidate, Supporter or Agent)

Accepted) _____
Rejected) by _____ Title _____

If rejected, the reasons therefore are as follows:

This application, whether accepted or rejected, will be available for public inspection for a period of two years, in accordance with FCC Regulations (AM, Section 3.120; FM, Section 3.290; TV, Section 3.657).

LAWS AND REGULATIONS GOVERNING POLITICAL BROADCASTS*

From the Communications Act of 1934, as amended:

Section 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 station: *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—

- (1) bona fide newscast,
- (2) bona fide news interview,
- (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
- (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. (The 1959 amending legislation also contains the following section known as Section 8(a).)

Sec. 2(a) The Congress declares its intention to reexamine from time to time the amendments to section 315(a) of the Communications Act of 1934 made by the first section of this Act, to ascertain whether such amendment has proved to be effective and practicable.

(b) To assist the Congress in making its reexaminations of such amendment, the Federal Communications Commission shall include in each annual report it makes to Congress a statement setting forth (1) the information and data used by it in determining questions arising from or connected with such amendment, and (2) such recommendations as it deems necessary in the public interest.

From the Rules of the Commission Governing Radio Broadcast Services:

Section 3.119. Sponsored programs; announcement of. (a) In the case of each program for the broadcasting of which money, services, or other, valuable consideration is either directly or indirectly paid or promised to, or charged or received by, any radio broadcast station, the station broadcasting such program shall make, or cause to be made, an appropriate announcement that the program is sponsored, paid for, or furnished, either in whole or in part.

(b) 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 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 five minutes' duration or less, which announcement may be made either at the beginning or the conclusion of the program.

(c) The announcement required by this section shall fully and fairly disclose the true identity of the person or persons by whom or in whose behalf such payment is made or promised, or from whom or in whose behalf such services or other valuable consideration is received, or by whom the material or services referred to in paragraph (b) of this section are furnished. Where an agent or other person contracts or otherwise makes arrangements with a station on behalf of another, and such fact is known to the station, the announcement shall disclose the identity of the person or persons in whose behalf such agent is acting instead of the name of such agent. (d) 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 (b) 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 one of the radio stations carrying the program.

(Corresponding Rules—FM, 3.289; TV 3.654.)

Section 3.120. 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:

- (1) has qualified for a place on the ballot or
- (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 other such 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 two years.

(e) A request for equal opportunities must be submitted to the licensee within one week of the day on which the prior use occurred.

(f) A candidate requesting such equal opportunities of the licensee, or complaining of non-compliance to the Commission shall have the burden of proving that he and his opponent are legally qualified candidates for the same public office.

(Corresponding Rules—FM, 3.290; TV, 3.657.)

Section 3.111. Logs. The licensee or permittee of each standard broadcast station shall maintain program and operating logs and shall require entries to be made as follows:

(a) In the program log:

* * *

- (2) * * * If a speech is made by a political candidate, the name and political affiliations of such speaker shall be entered.
- (3) An entry showing that each sponsored program broadcast has been announced as sponsored, paid for, or furnished by the sponsor.

(Corresponding Rules—FM, 3.281; TV, 3.663.)

* For further details see NAB's "A Political Broadcast Catechism" (5th Ed.). Available on request.

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II. THE FAIRNESS DOCTRINE

A

Introduction

Any discussion of political broadcasting must involve consideration of the "fairness doctrine." Essentially, this states that when a licensee permits his facilities to be used to air a controversial issue of public importance, he must afford reasonable opportunity for the presentation of contrasting points of view.

Although the "fairness doctrine" has been in existence since 1949, it continues to be fraught with uncertainties and must be approached in broad, rather than specific, terms. The Commission, aware of this, has attempted to give some clarification of the effect of the "fairness doctrine" vis-a-vis the "equal opportunities" requirements of Section 315.

The fairness doctrine deals with the broader question of affording reasonable opportunity for the presentation of contrasting viewpoints on controversial issues of public importance. Generally speaking, it does not apply with the precision of the "equal opportunities" requirement. Rather, the licensee, in applying the fairness doctrine, is called upon to make reasonable judgments in good faith on the facts of each situation—as to whether a controversial issue of public importance is involved, as to what viewpoints have been or should be presented, as to the format and spokesmen to present the viewpoints, and all the other facets of such programming. In passing on any complaint in this area, the Commission's role is not to substitute its judgment for that of the licensee as to any of the above programming decisions, but rather to determine whether the licensee can be said to have acted reasonably and in good faith. There is thus room for considerably more discretion on the part of

the licensee under the fairness doctrine than under the "equal opportunities" requirement. (See "Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance." FCC 64-611 (July 6, 1964)).

It is important to keep in mind the distinction between appearances by candidates which involve the precise formula of equal opportunity under Section 315, and the discussion of controversial issues by persons other than candidates, which brings into play the very imprecise formula of the "fairness doctrine." When a candidate appears, equal opportunity is mandatory and Section 315 permits no discretion. When issues are discussed by persons other than candidates, reasonable opportunity comes into play, and the licensee is permitted wide discretion.

While the question as to whether the 1959 amendments to the Communications Act by which certain types of programs were made exempt from Section 315 also incorporated the "fairness doctrine" might make for interesting conversation among lawyers as to whether the obligation is statutory or merely a statement of Commission policy, it makes little difference to the broadcaster. Either way until the doctrine has been stricken down by the courts or withdrawn by the Commission, the broadcaster must live with it. For this reason, therefore, we assume, albeit reluctantly, that for the purposes of this pamphlet the doctrine is valid.

At the risk of oversimplification, the relatively few cases that have been decided by the Commission in this area may be broken down into two basic categories: Those involving personal attack and those that concern matters of general interest.

B

Personal Attack

1. Q. When is the personal attack principle applicable?

A. It applies only when the *integrity, character or honesty* of an individual or group is questioned. It does not apply when an individual or group is merely named or referenced in the course of a broadcast. (Lar Daly, 19 R.R. 1103 (1960)).

2. Q. What must a broadcaster do if a personal attack is made over his station?

A. The Commission has said that the "fairness doctrine" requires that a copy of the script be forwarded to the person attacked either prior to or at the time of the broadcast and that a reasonable opportunity be afforded that person or a spokesman designated by him to reply. (See Letter to Station WJBS; October 6, 1965.)

In this connection, while the Commission has not ruled on the question, it is our opinion that the "fairness doctrine" and the issue of personal attack is not raised when a political *candidate* makes the attack in a *Section 315* broadcast. This opinion is based on the fact that under Section 315, a broadcaster has no power of censorship and hence cannot be held accountable for what is said.

3. Q. What must a broadcaster do if there is no transcript of the program containing the personal attack?

A. Where no script or tape is available, the broadcaster is to send as accurate a summary as possible of the substance of the attack to the person or group involved. (Letter of September 18, 1963, to *Douglas A. Anello*, FCC 63-850.)

4. Q. Must free time be afforded to answer a personal attack?

A. The Commission has stated that if a "fairness doctrine" has any validity, its fulfillment cannot be predicated upon the ability to pay. (Letter to *Cullman Broadcasting Co., Inc.*, FCC 63-849, (September 18, 1963).)

However, this does not mean that the licensee may not inquire whether the attacked individual is willing to pay to appear but that the person entitled to make a response cannot be denied time because he refuses to pay for it. The licensee is also free to obtain a sponsor for the program in which the reply is broadcast, but having presented a personal attack, the licensee cannot bar the individual's response simply because sponsorship

is not forthcoming. (Letter to *Station WJBS*, October 6, 1965; *Red Lion Broadcasting Company* 5 R.R. 2d. 503 (1965).)

5. Q. When someone other than a candidate makes personal attacks on individuals and groups involved in an election, does a licensee look to the "fairness doctrine" or to Section 315 in order to discharge his responsibilities?

A. The "fairness doctrine" and not Section 315 covers all cases of personal attacks by individuals other than candidates.

6. Q. What is the best course to follow when an individual who is not a candidate makes a personal attack upon a legally qualified candidate?

A. Since a response by a candidate would, in turn, require that equal opportunities under Section 315 be afforded to the other legally-qualified candidates for the same office, the "fairness doctrine" requires only that the licensee afford the attacked candidate an opportunity to respond through an appropriate spokesman. The candidate should, of course, be given a substantial voice in the selection of the spokesman to respond to the attack. (*Times Mirror Broadcasting Co.*, 24 R.R. 404 (1962).)

7. Q. Does the "fairness doctrine" apply when a candidate appears on a program exempt from Section 315 requirements and discusses a controversial issue or makes a personal attack?

A. Yes. Whenever Section 315 does not apply to a particular broadcast, the "fairness doctrine" is invoked. (Letter to *Dean Burch*, October 31, 1964.)

C

Controversial Issues in General

8. Q. What obligation does a licensee have in this area?

A. Where a program is directed at issues rather than individuals, the obligation is much more general. Here, the licensee is under no obligation to send copies to any particular person or to afford time to any particular group. His obligation is to determine whether opposing points of view have, in fact, been presented over his facilities. This may be achieved in any number of ways; as for example, round-table discussions, news programs, documentaries, etc.

With regard to discharging this obligation, the Commission has said:

The licensee, in applying the fairness doctrine, is called upon to make reasonable judgments in good faith on the facts of each situation—as to whether a controversial issue

of public importance is involved, as to what viewpoints have been or should be presented, as to the format and spokesman to present the viewpoints, and all the other facets of such programming . . . in passing on any complaint in this area, *the Commission's role is not to substitute its judgment for that of the licensee as to any of the above programming decisions, but rather to determine whether the licensee can be said to have acted reasonably and in good faith.*

9. Q. What constitutes a "controversial issue"?

A. While an answer to this question would greatly simplify the "fairness doctrine," the unfortunate fact is that there is no answer that can be applied to every situation. A determination should be made by the licensee who must take into account the factors surrounding the particu-

lar case. Such things as public sentiment, previous debate, editorial comment, and other facts which indicate a difference of opinion regarding the issue in question should help the licensee to make a good faith determination as to whether the "fairness doctrine" applies.

10. Q. Does the "fairness doctrine" apply only to local controversial issues?

A. No. The keystone of the fairness doctrine and of the public interest is the right of the public to be informed—to have presented to it the "conflicting views of public importance." Where a licensee permits the use of its facilities for the expression of views on controversial local, regional or national issues of public importance, he must afford reasonable opportunities for the presentation of contrasting views by spokesmen for other responsible groups. (Letter to *Cullman Broadcasting Co., Inc.*, FCC 63-849 (1963).)

11. Q. Which principle is applied to political spot announcements when candidates do not appear therein?—The "fairness doctrine" or Section 315?

A. The fairness doctrine. The "equal opportunities" provision of Section 315 applies only to uses by candidates and not to those speaking in behalf of or against candidates. When spot announcements do not contemplate the appearance of a candidate, the "equal opportunities" provision of Section 315 would not be applicable. The "fairness doctrine" is, however, applicable. (Letter to *Lawrence M.C. Smith*, FCC 63-358, 25 R.R. 291, April 17, 1963.)

12. Q. Does the "fairness doctrine" require that equal time be afforded to all viewpoints?

A. No. The licensee must provide a reasonable opportunity for the presentation of contrasting viewpoints. Equal time is not a requisite.

13. Q. Must all sides of a controversial issue be presented on the same program?

A. No. The licensee is given wide discretion in choosing the methods by which discussion of controversial issues is presented. The Commission concluded that any rigid requirement in this respect would seriously limit the ability of the licensee to serve the public interest. "Forum and roundtable discussions, while often excellent techniques of presenting a fair cross section of differing viewpoints on a given issue, are not the only appropriate devices for . . . discussion, and in some circumstances may not be particularly appropriate or advantageous." (Par. 8., Editorializing Report 25 R.R. 190, (1960).)

14. Q. How, then, does the Commission determine whether fairness has been achieved on a specific issue?

A. The licensee's overall performance is considered. Thus, where complaint is made, the licensee is afforded the opportunity to set out all the programs, irrespective of the programming format, which he has devoted to the particular controversial issue during the appropriate time period. Regular news programs and in some cases even entertainment programs may contain discussion of one side of a controversial issue. (Letter to *Cullman Broadcasting Co.*, FCC 63-849 (1963), Letter to *Hon. Oren Harris*, FCC 63-851 (1963).)

15. Q. Does the licensee have any discretion in choosing a spokesman?

A. Yes. As the Editorializing Report makes clear, the licensee, except in cases of personal attack, has considerable discretion as to the techniques or formats to be employed and the spokesman for each point of view. In the good faith exercise of his best judgment, he may, in a particular case, decide upon a local rather than a regional or national spokesman—or upon a spokesman for the group which also is willing to pay for the broadcast time. Thus, with the exception of the broadcast of personal attacks, there is no single group or persons entitled as a matter of right to present a viewpoint differing from that previously expressed on the station. (Letter to *Cullman Broadcasting Co., Inc.*, FCC 63-849, September 18, 1963.)

16. Q. If one side of a controversial issue is presented, must free time be given for the discussion of the other side?

A. The Commission has stated that if a "fairness doctrine" has any validity, its fulfillment cannot be predicated upon the ability to pay although the licensee may explore the possibility of payment for the time used to respond. Thus, where the licensee has chosen to broadcast a sponsored program which for the first time presents one side of a controversial issue, he cannot reject a presentation otherwise suitable—and thus leave the public uninformed—on the grounds that he cannot obtain paid sponsorship for that presentation. (Letter to *Cullman Broadcasting Co., Inc.*, FCC 63-849, September 18, 1963.) However, as noted above, except in cases of personal attack, since a licensee has wide latitude as to how this obligation is to be discharged and no particular person or group is entitled to answer as a matter of right, the question is often academic.

17. Q. If a syndicated program is presented and a fairness question is raised therein, who has the prime responsibility for assuring that all the requirements of the "fairness doctrine" are met?

A. The licensee of every station carrying the particular program in question. The licensee may not delegate his responsibilities to others, and partic-

ularly to an advocate of one particular viewpoint. (Report on "Living Should Be Fun" Inquiry 23 R.R. 1599, July 18, 1962.)

18. Q. If one side of a controversial issue is presented, does the licensee have any duties prior to a demand for an opportunity to present the other side?

A. Yes. The Commission stated that "... The licensee's obligations to serve the public interest cannot be met merely through the adoption of a general policy of not refusing to broadcast opposing views where a demand is made of the station for broadcast time. (He has a duty) generally to encourage and implement the broadcast of all sides of controversial public issues over his facilities." (Tri State Broadcasting Co., Inc., 3 R.R. 2d. 175 (1962).)

19. Q. Is there any policy which a licensee can follow to meet his responsibilities under the "fairness doctrine"?

A. Since compliance with the "fairness doctrine" is left to each individual broadcaster, and since so many cases depend on their own particular facts, no one policy can be uniformly recommended. However, the Commission has written to one broadcaster stating that the following policy indicates that the broadcaster is fulfilling the obligations

set forth in the *Report on Editorializing by Broadcast Licensees*, 25 R.R. 1901:

(a) By presenting discussion programs for which participants are sought out who will present contrasting viewpoints;

(b) By offering other time periods to specific persons who have viewpoints contrasting with those expressed on the station's editorials, "where in the opinion of the station the issue warrants it";

(c) By broadcasting the "Editorial Mailbag" for which members of the public with opposing viewpoints are encouraged to send in their views;

(d) By sending a copy of editorials attacking persons or organizations to the person or organization attacked with a specific offer for rebuttal time; and

(e) By concluding each editorial with an announcement which makes known to members of the public that the station invites rebuttals by responsible groups and individuals. (Letter to WFTV-TV, December 3, 1964, Public Notice 60503.)

This does not mean that all of the above are necessary in order to achieve compliance. Rather licensees should use the examples set forth as guides for the formulation of their own policies.

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