

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.

PUBLIC NOTICE

April 27, 1966

USE OF BROADCAST FACILITIES BY CANDIDATES FOR PUBLIC OFFICE

BY THE COMMISSION: COMMISSIONER LOEVINGER ABSENT.

This public notice is a compilation of the Commission's interpretive rulings under section 315 of the Communications Act of 1934, as amended, and the Commission's rules implementing that section of the act and brings up to date and supersedes all prior public notices issued by the Commission entitled "Use of Broadcast Facilities by Candidates for Public Office." The Commission has reviewed both its public notice (Oct. 9, 1962; FCC 62-1019) and its supplement thereto (July 31, 1964; FCC 64-733) which contained section 315, as amended, the Commission's rules, additional rulings, and recommended complaint procedures. Significant rulings made subsequent to the 1964 supplement have been added, and editorial and other revisions have been made with respect to some of the interpretations previously published. Where appropriate, cumulative rulings have been cited. Included herein are the determinations of the Commission with respect to problems which have been presented to it and which appear likely¹ to be involved in future campaigns. While the information contained herein does not purport to be a discussion of every problem that may arise in the political broadcast field, experience has shown that these documents have been of assistance to candidates and broadcasters in understanding their rights and obligations under section 315.

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

This discussion relates solely to obligations of broadcast licensees toward candidates for public office under section 315 of the act. It

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

is not intended to include the question of the treatment by broadcast licensees of political or other controversial programs not governed by the "equal opportunities" provisions of that section. As to the responsibilities of broadcast licensees with respect to controversial issues of public importance included in political broadcasts, licensees are referred to the Commission's "fairness doctrine," and the current public notice entitled "Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance."

We have continued the question-and-answer format as an appropriate means of delineating the section 315 problems. Wherever possible, reference to Commission's decisions or rulings are made so that the researcher may, if he desires, review the complete text of the Commission's ruling. Copies of rulings may be found in a "Political Broadcast" folder kept in the Commission's reference room. Citations in "R.R." refer to Pike & Fischer, radio regulations. To facilitate future additions a new numbering system for question and answers has been inaugurated with this public notice. A correlation table indicating the new numbers of question and answers retained from the 1962 public notice and supplement thereto is found in appendix A.

RECOMMENDED COMPLAINT PROCEDURES

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

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

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

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

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

I. THE STATUTE

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

Sec. 315. (a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting stations: *Provided*, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is hereby imposed upon any licensee to allow the use of its station by any such candidate. Appearance by a legally qualified candidate on any—

(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.

II. THE COMMISSION'S RULES AND REGULATIONS WITH RESPECT TO POLITICAL BROADCASTS

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

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.

(b) The licensee of each television broadcast station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program matter for broadcast, information to enable such licensee to make the announcement required by this section.

(c) In any case where a report (concerning the providing or accepting of valuable consideration by any person for inclusion of any matter in a program intended for broadcasting) has been made to a television broadcast station, as required by section 508 of the Communications Act of 1934, as amended, of circumstances which would have required an announcement under this section had the consideration been received by such television broadcast station, an appropriate announcement shall be made by such station.

(d) In the case of any political program or any program involving the discussion of public controversial issues for which any films, 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 films, records, transcriptions, talent, scripts, or other material or services have been furnished to such station in connection with the broadcasting of such program: *Provided, however,* That only one such announcement need be made in the case of any such program of 5 minutes' duration or less, which announcement may be made either at the beginning or conclusion of the program.

* * * * *

(f) 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.

(g) 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 television broadcast stations carrying the program in each community in which the program is broadcast.

* * * * *

(i) Commission interpretations in connection with the foregoing rules may be found in the Commission's public notice entitled "Applicability of Sponsorship Identification Rules" (FCC 63-409; 28 F.R. 4732, May 10, 1963) and such supplements thereto as are issued from time to time. (Sec. 317, 48 Stat. 1089, as amended; 47 U.S.C. 317.)

§ 73.590 relating to noncommercial educational FM stations) and read as follows:

Broadcasts by candidates for public office—(a) *Definitions.* A “legally qualified candidate” means any person who has publicly announced that he is a candidate for nomination by a convention of a political party or for nomination or election in a primary, special, or general election, municipal, county, State or National, and who meets the qualifications prescribed by the applicable laws to hold the office for which he is a candidate, so that he may be voted for by the electorate directly or by means of delegates or electors, and who:

(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 such other candidates for that office to use such facilities: *Provided*, That such licensee shall have no power of censorship over the material broadcast by any such candidate.

(c) *Rates and practices.* (1) The rates, if any, charged all such candidates for the same office shall be uniform and shall not be rebated by any means direct or indirect. A candidate shall, in each case, be charged no more than the rate the station would charge if the candidate were a commercial advertiser whose advertising was directed to promoting its business within the same area as that encompassed by the particular office for which such person is a candidate. All discount privileges otherwise offered by a station to commercial advertisers shall be available upon equal terms to all candidates for public office.

(2) In making time available to candidates for public office no licensee shall make any discrimination between candidates in charges, practices, regulations, facilities, or services for or in connection with the service rendered pursuant to this part, or make or give any preference to any candidate for public office or subject any such candidate to any prejudice or disadvantage; nor shall any licensee make any contract or other agreement which shall have the effect of permitting any legally qualified candidate for any public office to broadcast to the exclusion of other legally qualified candidates for the same public office.

(d) *Records; inspection.* Every licensee shall keep and permit public inspection of a complete record of all requests for broadcast time made by or on behalf of candidates for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if request is granted. Such records shall be retained for a period of 2 years.

NOTE.—See § 1.526 of this chapter.

(e) *Time of request.* A request for equal opportunities must be submitted to the licensee within 1 week of the day on which the prior use occurred.

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

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

(a) When a television 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,

III. "USES," IN GENERAL

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

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

III.A. TYPES OF USES

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

A. No. The section applies only to legally qualified candidates. Candidate A has no legal right under section 315 to demand time where B, not a candidate, has spoken against A or in behalf of another candidate. (*Felix v. Westinghouse Radio Stations*, 186 F. 2d 1 (3d Cir. 1950), cert. den. 341 U.S. 909.)

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

A. No. It applies in favor of legally qualified candidates for public office, and is not concerned with the rights of political parties, as such. (Letter to National Laugh Party, May 8, 1957; see also in re WPRO-TV, letter of Oct. 20, 1964.)

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

A. No. Section 315 has no application to the discussion of political issues, as such, but is concerned with the use of broadcast stations by legally qualified candidates for public office. In the 1959 amendment of section 315, relating to certain news-type programs, Congress

stated specifically that its action was not to be construed “* * * as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.” The Commission has considered this statement to be an affirmation of its “fairness doctrine,” as enunciated in its report on editorializing by broadcast licensees.

III.B. WHAT CONSTITUTES A “USE” OF BROADCAST FACILITIES ENTITLING OPPOSING CANDIDATES TO “EQUAL OPPORTUNITIES”?

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

A. Yes. Section 315 does not distinguish between the uses of broadcast time by a candidate, and the licensee is not authorized to pass on requests for time by opposing candidates on the basis of the licensee’s evaluation of whether the original use was or was not in aid of a candidacy. (Letter to WMCA, Inc., May 15, 1952, 7 R.R. 1132.)

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

A. Yes. For example, a weekly report of a Congressman to his constituents via radio or television is a broadcast by a legally qualified candidate for public office as soon as he becomes a candidate for reelection, and his opponent must be given “equal opportunities” for time on the air. Any “use” of a station by a candidate, in whatever capacity, entitles his opponent to “equal opportunities.” (Letter to station KNGS, May 15, 1952, 7 R.R. 1130; see Q. and A. III.C. 1, for a joint congressional report; see also letter to Senator Joseph S. Clark, Jan. 31, 1962; and for a judge’s report, see also telegram to station KSHO-TV, Apr. 24, 1961; see also Q.’s and A.’s III.B. 10, III.C. 4; for recent rulings see Q.’s and A.’s III.B. 11, 12, and 13.)

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

A. Yes. All appearances of a candidate, no matter how brief or perfunctory, are a “use” of a station’s facilities within section 315.

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

A. Yes. Section 315 contains no exception with respect to broadcasts by legally qualified candidates carried “in the public interest” or as a “public service.” It follows that the station’s broadcasts of the candidate’s speech was a “use” of the facilities of the station by a legally qualified candidate giving rise to an obligation by the station under section 315 to afford “equal opportunities” to other legally qualified candidates for the same office. (Letter to CBS (WBBM), Oct. 31, 1952; letter to KFI, Oct. 31, 1952.)

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

A. The Commission held that section 315 contains no exceptions with respect to broadcasts by legally qualified candidates carried "in the public interest" or as a "public service" and that a candidate's speech in connection with a ceremonial activity is a section 315 "use." It is immaterial whether or not the candidate uses the time to discuss matters related to his candidacy, and the fact that the appearance of the candidate is nonpolitical is not determinative of whether his appearance is a "use." Whether the presentation of the special message in connection with a particular news-type program would meet the criteria for exemption specified in the 1959 amendment is a question initially for the exercise of the good faith judgment of the broadcast licensee. (In re United Community campaigns, letter of Sept. 2, 1964, 3 R.R. 2d 320; but see Q. and A. III.B. 14.)

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

A. Yes. Unless the candidate's appearance comes within the category of broadcasts exempt from section 315's "equal opportunities" provision, equal time must be granted. The use to which the candidate puts this broadcast time is immaterial. (See Q. and A. III.B. 1, supra.) (Telegram to station WFUV-FM, Oct. 27, 1961.)

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

A. Where the successful candidate for nomination becomes legally qualified as a candidate for election as a result of the nomination, his acceptance speech constitutes a use. (Letter to Progressive Party, July 2, 1952, 7 R.R. 1300.) However, after 1959, acceptance speeches in connection with *political conventions* are governed by section 315 (a)(4). (For rulings after the 1959 amendments see telegram in re CBS and NBC, July 7, 1960, Q. and A. III.C. 22; and letter to Deberry-Shaw Campaign Committee, Sept. 11, 1964, Q. and A. III.C. 23.)

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

A. No. Section 315 applies only to stations licensed by the FCC. (In re CKLW-TV, letter of July 19, 1955.)

*An asterisk denotes a new question and answer.

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

A. Yes, since the appearance of the first candidate was on a program which was not exempt from the "equal opportunities" requirement of section 315 and the claimant had shown that he was a "legally qualified" candidate for the nomination for the same office. (Telegram to NBC, July 6, 1960.)

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

A. Yes. Such appearances of a candidate are a "use" under section 315. (Letters to KUGN, Apr. 9, 1958; to KTTV, Jan. 23, 1957, 14 R.R. 1227; in re WCVS, letter of Nov. 19, 1956, 14 R.R. 1226b, respectively; and letter to Georgia Association of Broadcasters, May 18, 1962. See also Q.'s and A.'s III.B. 11, 12, and 13. But cf. letter to KWTX Broadcasting Co., Mar. 16, 1960; *Brigham v. FCC*, 276 F. 2d 828 (C.A. 5), Apr. 19, 1960, and Q. and A. III.C. 4.)

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

A. No. The employee's appearance for purposes of making commercial, noncommercial, and station identification announcements would not constitute a "use" where the announcer himself was neither shown nor identified in any way. (In re WNEP, letter of Mar. 16, 1965.)

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

A. Yes. The employee's appearance as host of the dance party program would entitle other candidates for the same office to "equal opportunities" for the amount of time he appeared on the program. The deletion of the announcer's identity would not exempt his appearances from the "equal opportunities" provision, since in the case of television it is the appearance itself which constitutes the "use" of the facilities without regard to the format of the program. If an appear-

* An asterisk denotes a new question and answer.

ance of this nature were made, other candidates would be entitled to free time since the announcer would not have paid for the time he appeared. (In re WNEP, letter of Mar. 16, 1965.)

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

A. Yes. In cases where the newscaster is identified up to the date of his candidacy and prepares and broadcasts the news, including that of a local nature, the general line of rulings prior to the 1959 amendments to section 315 would be applicable and such appearances would constitute a "use" of the station's facilities. (In re WMAY, letter of Mar. 31, 1965, 4 R.R. 2d 849.)

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

A. No. Since the facts clearly showed that the candidate had in no way directly or indirectly initiated either filming or presentation of the event, and that the broadcast was nothing more than a routine newscast by the station in the exercise of its judgment as to newsworthy events. (Letter to Allen Blondy, Feb. 6, 1957, 14 R.R. 1199; cf. CBS, Inc. (*Lar Daly* case), 26 FCC 715, 18 R.R. 701 [1959], and letter to Lar Daly, Sept. 9, 1959, 18 R.R. 750; see also rulings in III.C., *infra*, concerning the 1959 amendments.)

III.C. WHAT CONSTITUTES AN APPEARANCE EXEMPT FROM THE EQUAL OPPORTUNITIES PROVISIONS OF SECTION 315?

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

A. No. A contrary view would be inconsistent with the legislative intent and recognition of such an exemption would in effect subordinate substance to form. (Letter to Congressman Clark W. Thompson, Feb. 9, 1962, 23 R.R. 178.)

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

A. Yes. 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

*An asterisk denotes a new question and answer.

part of a program not subject to the equal opportunities provision, for the reasons set forth in question and answer III.C. 1, above. (Letter to Congressman Clem Miller, June 15, 1962.)

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

A. Yes. In light of the fact that the format and content of the program were determined by the sheriff and not by the station, the program was not of the type intended by Congress to be exempt from the "equal opportunities" requirement of section 315. (Letter to station WCLG, Apr. 27, 1960.)

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

A. No. The Court of Appeals, Fifth Circuit, ruled that the weathercaster's appearance did not involve anything but a bona fide effort to present the news; that he was not identified by name but only as the "TX Weatherman"; that his employment did not arise out of the election campaign but was a regular job; and that the facts did not reveal any favoritism on the part of the stations or any intent to discriminate among candidates. (Letter to KWTX Broadcasting Co., Mar. 16, 1960; *Brigham v. FCC*, 276 F. 2d 828 (C.A. 5), Apr. 19, 1960; but see Q.'s and A.'s III.B. 11, 12, and 13.)

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

A. No. The main purpose of the amendment was to allow greater freedom to the broadcaster in reporting news to the public, that is to say, in carrying news about and pictures of candidates as part of the contents of news programs. The amendment did not deal with the question of whether the appearance of station employees who have become candidates for office should be exempted on a news-type program where such employees are announcing the news (rather than being a part of the content of the news), any more than it dealt with the general question of such appearances (e.g., on a variety program or as a commercial continuity announcer), and the legislative history indicates that the appearance of the candidate on a news-type program in which he has participated in the "format and production" would not be exempt. (In re WMAY, letter of Mar. 31, 1965, 4 R.R. 2d 849.)

6. Q. A Philadelphia TV station had been presenting a weekly program called "Eye on Philadelphia." This program consisted of personalities being interviewed by a station representative. Three candidates for the office of mayor of Philadelphia, representing different

*An asterisk denotes a new question and answer.

political parties, appeared on the program. Would a write-in candidate for mayor be entitled to "equal opportunities"?

A. No, since it was ascertained that the appearances of the three mayoralty candidates were on a bona fide, regularly scheduled news interview program, and that such appearances were determined by the station's news director on the basis of newsworthiness. (Telegram in re WCAU-TV, Nov. 2, 1959; see also in re WTMJ-TV, telegram of Nov. 2, 1964.)

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

A. No. The format of the program was such as to constitute a bona fide news interview pursuant to section 315(a)(2), since the program was regularly scheduled, was under the control of the licensee, and the particular program had followed the usual program format. (Telegram in re WNBC, Nov. 1, 1961.)

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

A. No. It was determined that "City Side" was a regularly scheduled, weekly, live, news-interview program on the station for approximately 6 years; that the normal format of the program consisted of the interview of a newsworthy guest or guests by a panel of reporters; that the appearances on the program were determined by the station on the basis of newsworthiness; and that it was on this basis that the three candidates were invited to appear. Such a program constitutes a bona fide news-interview program pursuant to section 315(a)(2). (Telegram to Charles Luthardt, Sr., May 12, 1962.)

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

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

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

A. No. The programs were regularly scheduled, bona fide news interviews and were of the type which Congress intended to exempt from the "equal opportunities" requirement of section 315. (Letter to Andrew J. Easter, Apr. 28, 1960; in re Lar Daly, letters of May 12 and June 13, 1960; and letter to Congressman Frank Kowalski, July 10, 1962.)

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

A. No. On the basis of the information submitted, the Commission was of the view that the program "Direct Line" was a "bona fide news interview" within the meaning of section 315(a)(2) and, therefore, the Congressmen's appearances were exempt. (Telegram to Martin B. Dworkis, Oct. 10, 1962; see also telegram to Aaron M. Orange, Nov. 3, 1962; letter to Aaron M. Orange, July 25, 1963, FCC 63-721.)

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

gram. Would the opponent of the Republican spokesman who was running for reelection be entitled to "equal opportunities"?

A. No. The Commission ruled that the program "Issues and Answers" was a bona fide news interview program of the type which Congress intended to be exempt from the "equal opportunities" provisions of section 315. (Telegram to Mr. William S. Flanagan, Oct. 23, 1962.)

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

A. No, since the appearance of the candidate was on a program which was exempt from the "equal opportunities" requirement of section 315. (Telegram to Lar Daly, July 6, 1960.)

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

A. The programs "Meet the Press" and "Youth Wants to Know" were specifically referred to during the Senate debates on the 1959 amendments as being regularly scheduled news interview programs of the type intended to be exempt from the "equal opportunities" provision of section 315. Thus, if the format of these programs is not changed in any material respect, appearances by a candidate on such programs would not constitute a "use" under section 315. (Letter to Senator Russell B. Long, June 13, 1962; see also Q. and A. III.C. 10; as to the "Tonight" program, see Q. and A. III.B. 9.)

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

to any particular interview, and either actively participated in the discussion, acted as an impartial moderator in the interview, or on occasion, "talked the show" out if the guest was of little interest value. In some instances, the program consisted of an exchange of views and in the other instances, constituted a panel discussion. Would the opponent of the candidate for Governor of New York be entitled to "equal opportunities"?

A. Yes. The Commission held that the definition of a bona fide news interview must be derived from the specific examples of such programs cited in the legislative history of the 1959 amendment to section 315. On the basis of the information submitted, the Commission could not determine that the Barry Gray Show was a bona fide news interview. (Telegram to WMCA, Inc., Oct. 20, 1962, FCC 62-1133.)

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

A. No. The Commission ruled that "* * * the program in question is the type of program Congress intended to be exempt from the equal time requirements of section 315." (Letter to George A. Katz, Esq., Nov. 2, 1960.)

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

A. No. Since the program involves the collective participation of the stations' newsmen, is prepared by the stations, is under their sole supervision and control, has been regularly scheduled for a period of time, and was not conceived or designed to further the candidacy of the Governor, it was held to be a bona fide news interview program and, therefore, exempt from the "equal opportunities" provision of section 315. (Letter to Governor Michael DiSalle, June 8, 1962.)

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

A. Yes. Such a program is not a news-interview program as contemplated by section 315(a)(2). This conclusion has been reached since the selection and compilation of the questions, as well as the production, supervision, control, and editing of the program are not functions exercised exclusively by the stations. (Letter to Governor Michael DiSalle, June 8, 1962.)

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

A. Yes. The Commission pointed out that the legislative history of the 1959 amendment to section 315 clearly indicated that a basic element of a "bona fide news interview" is that it be regularly scheduled. Accordingly, it held that the Congressman's appearance did not occur in connection with a "bona fide news interview" within the meaning of section 315(a)(2) and that his appearance, therefore, constituted a "use" entitling his opponent to "equal opportunities." (Telegram to station KFDX-TV, Oct. 26, 1962.)

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

A. No. Such a program is a bona fide news documentary pursuant to section 315(a)(3). The appearance of the candidate therein is incidental to the presentation of the subject covered by the documentary and the program is not designed to aid his candidacy. (Telegram to Judge John J. Murray, June 12, 1962.)

21. Q. A television station had been presenting, since 1958, a weekly 30-minute program concerning developments in the State legislature with principal Democratic and Republican Party leaders of both houses of the legislature participating. At the close of each legislative term, the station televised a 1-hour summary of the legislature's activities, using film and recordings made during its meetings. Is the appearance, in the latter program, of an officer of the State legislature, who is also a candidate, in which he and others express their views on the accomplishments of the legislative session a "use" under the "equal opportunities" provision of section 315?

A. No. For the reasons stated in Q. and A. III.C. 19, supra.

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

A. No, since the appearance of the first candidate incidental to a political convention was on a program which constituted "on-the-spot coverage of bona fide news events," pursuant to section 315(a)(4). (Telegram in re CBS and NBC, July 7, 1960: see sec. 315(a)(4), and Q. and A. III.C. 23, infra; but see Q. and A. III.B. 7, supra.)

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

A. No. Prior to 1959 any use of a station's facilities by a candidate for public office required the station to afford "equal opportunities" to other candidates for the same office. However, one of the specific types of news programs exempted by Congress was "on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto)" in the language of 315(a)(4). The broadcast of an acceptance speech made at a political convention is an aspect of the coverage of the political convention. (Letter to Deberry-Shaw Campaign Committee, Sept. 11, 1964. See also Q. and A. III.C. 22, supra; but for a ruling prior to the 1959 amendments see letter to Progressive Party, July 2, 1952, 7 R.R. 1300, Q. and A. III.B.7.)

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

A. No. Broadcast coverage of a parade is the type of bona fide news event contemplated by Congress in enacting the 1959 amendments to section 315. Therefore, such a broadcast would appear to constitute "on-the-spot coverage of bona fide news events" pursuant to section 315(a)(4) and any appearance by a candidate during the course of such a broadcast would not constitute a "use" of broadcast facilities entitling opposing candidates to "equal opportunities." (Letter to Lar Daly, Mar. 28, 1963.)

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

*An asterisk denotes a new question and answer.

Air" had remained unchanged since the inception of the program. The station used city court case decisions on its regularly scheduled newscasts and such decisions also appeared in Gary newspapers. Would the judge's opponent for the nomination for mayor be entitled to "equal time"?

A. No. The Commission concluded that the program fell within the "news event" exemption of section 315(a)(4) because the program covered the operation of an official governmental body and because the court proceedings were newsworthy. The Commission held that the program was "bona fide" in view of the fact that it had been presented by the station for 14 years, with this particular judge for 7½ years, and inasmuch as the appearance of the candidate was incidental to the on-the-spot coverage of a news event rather than for the purpose of advancing his candidacy. Therefore, the Commission ruled that "Gary County Court on the Air" fell within the reasonable latitude allowed to licensees for the exercise of good faith news judgment and was exempt from the "equal time" requirement of section 315. (Letter to Thomas R. Fadell, Apr. 10, 1963 (FCC 63-331); affirmed by order entered Apr. 29, 1963, *Thomas R. Fadell v. U.S.*, FCC, and *WWCA Radio Station*, case No. 14142 (USCA, 7th).)

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

A. Yes. The Commission held that neither the language of the amendment, the legislative history, nor subsequent congressional action indicated a congressional intent to exempt from the "equal opportunities" provision of section 315 a debate qua debate between legally qualified candidates. The Commission pointed out that the bona fide news event" pursuant to section 315(a)(4) of the Com- 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, Oct. 19, 1962; letter to NBC and CBS, Oct. 26, 1962, FCC 62-1132; see also letter to the Goodwill Stations, Inc. (WJR), Oct. 19, 1962.)

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

A. No. The broadcast of press conferences, such as the one described in the inquiry, would not be exempt from the provisions of section 315 either as "bona fide news interviews" or "on the spot coverage of bona fide news events." The press conference could not qualify as a "bona fide news interview" exemption inasmuch as it was not a regularly scheduled program, within the recognized and accepted meaning of that term, but rather was one that could be called by the candidates solely in their discretion and at times they themselves specify. Such a press conference could not, in any event, qualify for exemption, since the scheduling and in significant part the content and format of the press conference was not under the control of the network. In addition the broadcast of the press conference could not be deemed to be an "on-the-spot coverage of a bona fide news event," since prior Commission rulings issued on October 19 and 26, 1962 (see Q. and A. III.C. 26) pointed out, inter alia, "* * * that if the sole test of the on-the-spot coverage exemption is simply whether or not the station's decision to cover the event and put it on a broadcast program constitutes a bona fide news judgment, there would be no meaning to the other three exemptions in section 315(a) since these, too, all involve a bona fide news judgment by the broadcaster." Such a test would, in effect, amount to a repeal of the "equal opportunities" provision of section 315(a)—something Congress clearly did not intend, as shown, for example, by the necessity for the suspension of that provision for the 1960 debates between the two major presidential candidates. (Letter to CBS, Sept. 30, 1964, 3 R.R. 2d 623.)

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

A. No. On the basis of the legislative history of section 315 the Commission concluded that Congress did not intend to grant equal

*An asterisk denotes a new question and answer.

time to all presidential candidates when the President uses the airwaves in reporting to the Nation on an international crisis. (Telegram to NBC, CBS, and ABC, Nov. 5, 1956, public notice 38387, 14 R.R. 720.)

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

A. No. The networks carrying the report, in determining that such a report by the President on specific, current international events affecting the country's security falls within the "on-the-spot coverage of a bona fide news event" exemption of section 315(a)(4), acted within their "reasonable latitude for the exercise of good faith news judgment." The Commission also discussed its previous ruling of 1956 (Q. and A. III.C. 28, *supra*), and noted that this ruling had been fully reported to the Congress and that Congress had reexamined the concept of "use" in connection with extensive amendments in 1959 to section 315, but did not alter or comment adversely upon the 1956 ruling. The decision was appealed to the U.S. Court of Appeals (D.C. Cir.) and was affirmed by a vote of 3 to 3 without opinion. A petition for certiorari to the Supreme Court was denied. (Letter to Dean Burch, Oct. 21, 1964; cert. denied, 379 U.S. 893 (1964), 3 R.R. 2d 647, 3 R.R. 2d 2025.)

IV. WHO IS A LEGALLY QUALIFIED CANDIDATE?

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

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

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

A. Not always. The term "legally qualified candidate" is not restricted to persons whose names appear on the printed ballot; the term may embrace persons not listed on the ballot if such persons are making a bona fide race for the office involved and the names of such persons, or their electors can, under applicable law, be written in by voters so as to result in their valid election. The Commission recognizes, however, that the mere fact that any name may be written in does not entitle all persons who may publicly announce themselves as candidates to demand time under section 315; broadcast stations may make suitable and reasonable requirements with respect to proof of the bona fide nature of any candidacy on the part of applicants for the use of facilities under section 315. (§§ 3.120, 3.290, 3.657, especially par. (f); letters to Socialist Labor Party, Nov. 14, 1951, 7 R.R. 766; CBS Inc., May 28, 1952, 7 R.R. 1189; press release of Nov. 26, 1941 (mimeo 55732); see also Q.'s and A.'s IV. 11, 12, and 13.)

*An asterisk denotes a new question and answer.

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

A. The answer depends on applicable State law. In some States persons may be voted for by 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 determinative. (Letter to Senator Earle C. Clements, Feb. 2, 1954; and see also par. (f) of §§ 3.120, 3.290, 3.657.)

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

A. No. Section 315 does not permit any such subjective determination by the station with respect to a candidate's chances of nomination or election. (Letter to CBS Inc., May 28, 1952, 7 R.R. 1189.)

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

A. In view of the fact that a person may be nominated for these offices by the conventions of his party without having appeared on the ballot of any State having presidential primary elections, or having any pledged votes prior to the convention, or even announcing his willingness to be a candidate, no fixed rule can be promulgated in answer to this question. Whether a person so claiming is in fact a bona fide candidate will depend on the particular facts of each situation, including consideration of what efforts, if any, he has taken to secure delegates or preferential votes in State primaries. It cannot, however, turn on the licensee's evaluation of the claimant's chances for success. (Letter to CBS Inc., May 28, 1952, 7 R.R. 1189; and see also par. (f) of secs. 73.120, 73.290, 73.657.)

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

A. No. Where a question is raised concerning a claimant's legal qualification, it is incumbent on him to prove that he is in fact legally qualified. The facts here did not constitute an unequivocal showing of legal qualification. (Letter to Lar Daly, Apr. 11, 1956; letter to American Vegetarian Party, Nov. 6, 1956.)

7. Q. If a candidate establishes his legal qualifications only after the date of nomination or election for the office for which he was contend-

ing, is he entitled to equal opportunities which would have been available had he timely qualified?

A. No, for once the date of nomination or election for an office has passed, it cannot be said that one who failed timely to qualify therefor is still a "candidate." The holding of the primary or general election terminates the possibility of affording "equal opportunities," thus mooting the question of what rights the claimant might have been entitled to under section 315 before the election. (Letter to Socialist Workers Party, Dec. 13, 1956; letter to Lar Daly, Oct. 31, 1956, 14 R.R. 713, appeal sub nom. *Daly v. U.S.*, case No. 11946 (C.A. 7th Cir.) dismissed as moot Mar. 7, 1957; cert. den. 355 U.S. 826.)

8. Q. Under the circumstances stated in the preceding question, is any postelection 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." (See citations in Q. and A. IV.7.)

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

A. No. A licensee may not be required to furnish the use of its facilities to a candidate for nomination for President after the convention has chosen its nominee. (Telegram to Lar Daly, Nov. 3, 1960.)

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

A. In such instances, the ruling of the State attorney general or other official will prevail, absent a judicial determination. (Telegram to Ralph Muncy, Nov. 5, 1954; letter to Socialist Workers Party, Nov. 23, 1956.)

*11. Q. A television station afforded time to the Democratic candidate from the State of California for the U.S. Senate. The station subsequently turned down a request from the Socialist Labor Party for time for their candidate for the same office, on the basis of a telegram which it had received from the secretary of state of the State of California which declared that he did not consider the Socialist Labor Party candidate a legally qualified candidate under provisions of the California election code. The candidate in question was duly nominated and had accepted the nomination at the party State convention; the secretary of state's office was officially notified of his nomination; notification of his candidacy was sent to all news media

*An asterisk denotes a new question and answer.

and was published in the metropolitan newspapers: he had addressed public meetings in four large California cities on behalf of his candidacy. Upon request of the secretary of state the deputy attorney general advised the Commission that under California election law write-in votes may be cast and counted for an individual seeking the office of U.S. Senator and if the individual received a plurality of the votes cast for the office the secretary of state would certify the individual as having been elected. Would the candidate be considered legally qualified so as to be entitled to "equal opportunities" for the use of the station's facilities?

A. Yes. The Commission's rules define a legally qualified candidate, in part, as any person who has publicly announced that he is a candidate; meets the qualifications prescribed by the applicable laws to hold the office for which he is a candidate so that he may be voted for by the electorate; is eligible under the law to be voted for by writing in his name on the ballot; and makes a substantial showing that he is a bona fide candidate for nomination or office. On the basis of the facts recited it was determined that the candidate was a legally qualified candidate and as such was entitled to "equal opportunities." (Letter to Metromedia, Inc., Oct. 28, 1964.)

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

A. No. The State attorney general indicated that a person does not become a legally qualified or "bona fide" candidate in the primary until his notification and declaration papers have been received and accepted by the applicable State officer. Since the incumbent county clerk had not filed these required papers, he was not a legally qualified candidate under section 73.120(a) of the Commission rules at the time of his broadcasts. His opponent, therefore, was not entitled to "equal opportunities" to respond to these broadcasts. (In re WDOC; letter of June 4, 1965.)

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

A. No. When it appears that a State secretary of state has ruled that an individual is not a legally qualified candidate under the State election law and that individual has presented no further information regarding his claimed candidacy, he has failed to meet the burden imposed by section 73.120(f) of the Commission's rules of proving that he is a legally qualified candidate for public office under section 73.120(a) of those rules. (Letter to Socialist Workers Party, in re KNX, Oct. 28, 1964.)

*14. Q. An individual seeking a U.S. Senate seat requested time from a station equal to that afforded his opponents. The individual's

*An asterisk denotes a new question and answer.

request had been refused by the station on the grounds that he was not a bona fide candidate. The candidate informed the Commission that he had been advised by the local election board that he possessed the necessary requisites to be a write-in candidate and claimed that he was thus entitled to equal time. Would the individual be entitled to equal opportunities under these circumstances?

A. No. The Commission found that the individual had not complied with the Commission's rules for establishing one's self as a legally qualified candidate. He had failed to submit any proof other than his own statements relating to whether he was "eligible under the applicable law to be voted for * * * by writing in his name on the ballot." Therefore, he had not met his burden of proof under section 73.657(f) of the rules. (In re WNHC-TV, letter of Nov. 4, 1964.)

V. WHEN ARE CANDIDATES OPPOSING CANDIDATES?

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

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

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

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

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

A. No, the Commission has held that while both primary elections or nominating conventions and general elections are comprehended within the terms of section 315, the primary elections or conventions held by one party are to be considered separately from the primary elections or conventions of other parties, and, therefore, insofar as section 315 is concerned, "equal opportunities" need only be afforded legally qualified candidates for nomination for the same office at the same party's primary or nominating convention. The station's actions in this regard, however, would be governed by the public interest standards encompassed within the "fairness doctrine." (Letters to KWFT, Inc., Oct. 22, 1948, 4 R.R. 885; Socialist Labor Party of America, May 13, 1952, 11 R.R. 234; WCDL, Apr. 3, 1953; Senator Joseph S. Clark, Jan. 25 and Apr. 13, 1962; telegram to Dr. Edward J. Leuddeke, Oct. 25, 1961; letter to E. C. French, Oct. 28, 1964, 3 R.R. 2d 811, Q. and A. V. 5; and in re WCBS-TV, telegram of Oct. 29, 1965.)

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

A. No. For the reason given above. (Letter to KWFT, Inc., Oct. 22, 1948, 4 R.R. 885.)

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

A. Yes. The issue must be determined under the New York State election laws and should be resolved by appropriate State or local authorities. Since neither the complainant nor the Commission was able to obtain an interpretation of that law from the New York authorities, the Commission of necessity interpreted the law. An "uncontested position" as defined by the New York statute is one as to which (1) the number of candidates designated for the particular office does not exceed the number to be nominated or elected thereto by the party in the primary, and (2) no valid petition requesting an opportunity to write in the name of an undesignated candidate has been filed. If both conditions are fulfilled when the period for filing such petitions is over (May 5), no primary is required. Since condition (2) of this definition could not be fulfilled until May 5, 1964, 2 days after the Republican incumbent's broadcast, neither designated candidate here involved could be considered the nominee of his respective party until May 5, and, therefore, they were not opposing candidates for Congress at the time of incumbent's broadcast. (Letter to E. C. French, Oct. 28, 1964, 3 R.R. 2d 881.)

VI. WHAT CONSTITUTES EQUAL OPPORTUNITIES?—A. IN GENERAL

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

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

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

A. The licensee is not permitted to discriminate between the candidates in any way. With respect to any particular election it may 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.

*An asterisk denotes a new question and answer.

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

A. No. The law does not require that this be done. If a candidate inquires, however, the facts must be given him. It should be noted here that a station is required to keep a public record of all requests for time by or on behalf of political candidates, together with a record of the disposition and the charges made, if any, for each broadcast. (§§ 73.120(d), 73.290(d), 73.657(d); and telegram to Norman William Seemann, Esq., May 18, 1962.)

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

A. This depends on all of the circumstances surrounding the station's offer of time and, particularly, whether the station has given adequate advance notice. The Commission has held that a 4-day notice by a Texas station to a Congressman while Congress is in session does not constitute adequate advance notice and the Congressman is not foreclosed from his right to request "equal opportunities." (Letter to Jack Neil, station KTRM, Apr. 18, 1962.)

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

A. No. Neither the act nor the Commission's rules contain any provisions which require a licensee to sell a specific time segment to a candidate for public office. (Letter to Mr. Bill Neil, station KTRM, Mar. 9, 1962.)

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

A. Neither the act nor the Commission's rules contain provisions requiring stations to sell unlimited periods of time for political broadcasts. Section 315 of the act imposes no obligation on any licensee to allow the use of its station by any candidate. Commission's programing statement contemplates the use of stations for political broadcasting. Where the station showed that sale of limited time segments to candidates was based on its experience and the interests of viewers in programing diversification, no Commission action was required. (Telegram to J. B. Lahan, May 18, 1962; and telegrams to Grover C. Doggette, Esq., May 22 and 23, 1962. Cf. letter to station WLBT-TV, Apr. 17, 1962, and letter to station WROX, May 3, 1962, where the Commission indicated that a public interest question would be raised if the station failed to provide any broadcast time to candidates in a major election being held within the station's coverage area.)

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

A. No. The refusal of one candidate does not foreclose other candidates wishing to use the time offered. However, whether the candidate initially declining the offer could later avail himself of "equal oppor-

tunities" would depend on all the facts and circumstances. (Letter on offers of free time, June 13, 1956, 14 R.R. 65.)

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

A. No. Section 315 requires only that all candidates be afforded "equal opportunities" to use the facilities of the station. (Letter to Mrs. M. R. Oliver, Oct. 23, 1952, 11 R.R. 239.)

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

A. Neither section 315 nor the Commission's rules prohibit a licensee from contracting with a party for reservation of time in advance of an election. However, substantial questions as to a possible violation of section 315 would arise if the effect of such prior commitment were to disable a licensee from meeting its "equal opportunities" obligations under section 315. (Letter to Congressman Frank M. Karsten, Nov. 25, 1955.)

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

A. No. But the time offered to candidate A must be generally comparable. The principal factors considered in this situation were: (a) the total amount of time presently scheduled for each candidate; (b) the time segments presently offered to candidate A; (c) the time segments presently scheduled for candidate A's opponent and previously rejected by candidate A; (d) the time segments now scheduled for candidates for other offices, if any, and previously rejected by candidate A; and (e) the station's possible obligations to other candidates for office. (Telegram to Maj. Gen. Harry Johnson, Nov. 1, 1961.)

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

A. No. The station cannot rely upon its policy if the latter conflicts with the "equal opportunities" requirement of section 315. (Stephens Broadcasting Co., Sept. 4, 1945, 11 F.C.C. 61, 3 R.R. 1.)

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

A. Section 315 has reference only to the use of facilities by persons who are candidates for public office and not to the political parties which may have nominated such candidates. Accordingly, if broadcast time is made available for the use of a candidate for public office, the provisions of section 315 require that "equal opportunities" be

afforded each person who is a candidate for the same office, without regard to the number of nominations that any particular candidate may have. (Letter to Thomas W. Wilson, Oct. 31, 1946.)

VI.B. COMPARABILITY

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

A. No. The station in providing "equal opportunities" must consider the desirability of the time segment allotted as well as its length. And while there is no requirement that a station afford candidate B exactly the same time of day on exactly the same day of the week as candidate A, the time segments offered must be comparable as to desirability.

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

A. No. However, the requirements of comparable time do not require a station to make available exactly the same time periods, nor the periods requested by candidate B. (Letter to D. L. Grace, July 3, 1958.)

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

A. If candidates are permitted to appear without cost to themselves, on programs sponsored by commercial advertisers, opposing candidates are entitled to receive comparable time also at no cost. (Letter to Senator A. S. Mike Monroney, Oct. 9, 1952, 10 R.R. 451; and telegram to WWIN, May 3, 1962; but see Q. and A. VI.B. 4, *infra*.)

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

A. No. Where a political committee of an organization such as a labor union purchases time specifically on behalf of a candidate, opposing candidates are not entitled to free time. There is a distinction between this situation and a case where a candidate is permitted to appear on a program which is regularly sponsored. (Telegram to Metromedia in re ILGWU Campaign Committee, Oct. 29, 1964, 3 R.R. 2d 774; but see Q. and A. VI.B. 3, *supra*.)

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

A. Yes. Under such circumstances an opposing candidate would be entitled to time on such stations. (Letter to Senator A. S. Mike Monroney, Oct. 9, 1952.)

*An asterisk denotes a new question and answer.

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

A. Not necessarily. The mechanics of the problem of “equal opportunities” must be left to resolution of the parties. And while factors such as the size of the potential audience because of the appearance of the first candidate on an 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. (Letter to Harold Oliver, Oct. 31, 1952; letter to CBS Inc., Oct. 31, 1952; in re WPRO-TV, letter of Oct. 20, 1964.)

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

A. Since the station’s format was reasonable in structure and the station put no restrictions on what matters and issues might be discussed by candidate B and others who appeared on the program in question, it offered candidate B “equal opportunities” in the use of its facilities within the meaning of section 315 of the act. The station’s further offer to candidate B, prior to the primary, of its facilities on a “comparable format” was reasonable under the facts of the case, consistent with any continuing obligation to afford candidate B “equal opportunities” in the use of the station which he may have had. (Letter to Congressman Bob Wilson, Aug. 1, 1958.)

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

A. Yes, provided the request is made by the candidate within the period specified by the rules. The Commission stated that licensees should negotiate with the affected candidates and that where the offer was mutually agreeable to such candidates, “equal opportunities” were being afforded to the candidates. Where the candidate rejected the proposal, however, and other candidates accepted and appeared the Commission stated: “Where the licensee permits one candidate to use his facilities, section 315 then—simply by virtue of that use—requires the licensee to ‘afford equal opportunities to all other such candidates

for that office in the use of such broadcasting station.' This obligation may not be avoided by the licensee's unilateral actions in picking a program format, specifying participants other than and in addition to the candidates, setting the length of the program, the time of taping, the time of broadcast, etc., and then offering the package to the candidates on a 'take it or leave it—this is my final offer' basis. For * * * section 315 provides that the station 'shall have no power of censorship over the material broadcast.' (Cf. *Port Huron Broadcasting Co.*, 4 R.R. 1.) Clearly, the 'take it or leave it' basis described above would constitute such prohibited censorship, since it would, in effect, be dictating the very format of the program to the candidate—and thus, an important facet of 'the material broadcast.' We wish to make clear that the Commission is in no way saying that one format is more in the public interest than another. On the contrary, the thrust of our ruling is that the act bestows upon the candidate the right to choose the format and other similar aspects of 'the material broadcast,' with no right of 'censorship' in the licensee." Cf. *Farmers Educational and Cooperative Union of America, North Dakota Division v. WDAY, Inc.*, 360 U.S. 525. (Letter to Nicholas Zapple, Oct. 5, 1962.)

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

A. A station must treat opposing candidates the same with respect to the use of its facilities and if it permits one candidate to use facilities over and beyond the microphone, it must permit a similar usage by other qualified candidates. (Letter to D. L. Grace, July 3, 1958.)

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

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

A. No. Any such action would entail censorship which is expressly prohibited by section 315 of the Communications Act. (*Port Huron Broadcasting Co.*, 12 FCC 1069, 4 R.R. 1; *WDSU Broadcasting Co.*, 7 R.R. 769.)

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

A. In *Port Huron Broadcasting Co.*, 12 FCC 1069, 4 R.R. 1, the Commission expressed an opinion that licensees not directly participating in the libel might be absolved from any liability they might otherwise incur under State law, because of the operation of section 315, which precludes them from preventing a candidate's utterances. In a subsequent case, the Commission's ruling in the *Port Huron* case was, in effect, affirmed, the Supreme Court holding that since a licensee could not censor a broadcast under section 315, Congress could not have intended to compel a station to broadcast libelous statements of a legally qualified candidate and at the same time subject itself to the risk of damage suits. (Read: *Farmers Educational and Cooperative Union of America v. WDAY, Inc.*, 79 S. Ct. 1302 (Oct. 1958), 89 N.W. 2d 102, 164 F. Supp. 928.)

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

A. No, licensees are not entitled to assert the defense that they are not liable since the speeches could have been censored without violating section 315. Accordingly, they were at fault in permitting such speeches to be broadcast. (*Felix v. Westinghouse Radio Stations*, 186 F. 2d 1, cert. den. 341 U.S. 909.)

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

A. No. The provision of section 315 prohibiting censorship by a licensee over material broadcast pursuant to section 315 applies only to broadcasts by candidates themselves. Section 315, therefore, is not a defense to an action for libel or slander arising out of broadcasts by noncandidates speaking in behalf of another's candidacy. Since section 315 does not prohibit the licensee from censoring such a broadcast, the licensee is not entitled to the protection of section 315. (Letter to Mr. William P. Webb, Apr. 24, 1962.)

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

A. No. The candidate may use the time as he deems best. To deny a person time on the ground that he was not using it in furtherance of his candidacy would be an exercise of censorship prohibited by section 315. (Letter to WMCA, Inc., May 15, 1952, 7 R.R. 1132.)

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

A. No. Other qualified candidates may use the facilities as they deem best in their own interest. (Letter to Congressman Allen Oakley Hunter, May 28, 1952, 11 R.R. 234.)

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

A. Section 315 expressly provides that licensees "shall have no power of censorship over the material broadcast under the provisions of this section." The licensee may request submission of an advance script, to aid in its presentation of the program (e.g., suggestions as to the amount of time needed to deliver the script). But any requirement of an advance script from a candidate violates section 315. A licensee could not condition permission to broadcast upon receipt of an advance script, because "the Act bestows upon the candidate the right to choose the format and other similar aspects of 'the material broadcast,' with no right of 'censorship in the licensee.'" (Letter to Nicholas Zapple, Oct. 5, 1962, FCC 62-1031.) (See also *Farmers*

*An asterisk denotes a new question and answer.

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.)

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

A. Yes. Provided that the procedures adopted are applied without discrimination between candidates for the same office and no censorship is attempted.

VIII. WHAT RATES CAN BE CHARGED CANDIDATES FOR PROGRAMS UNDER SECTION 315?

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

A. No. Section 315, as amended, provides that the charges made for the use of a station by a candidate "shall not exceed the charges made for comparable use of such stations for other purposes."

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

A. No. This requirement applies only to candidates for public office. Hence, a station may adopt whatever policy it desires for political broadcasts by organizations or persons who are not candidates for office, consistent with its obligation to operate in the public interest. (Letter to Congressman Charles C. Diggs, Jr., Mar. 16, 1955.)

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

A. No. Under §§ 73.120, 73.290, and 73.657 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.

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

A. This question cannot be answered categorically. To determine the maximum rates which could be charged under section 315, the Commission would have to know the criteria a station uses in classifying "local" versus "national" advertisers before it could determine what are "comparable charges." In making this determination, the Commission does not prescribe rates but merely requires equality of treatment as between section 315 broadcasts and commercial advertising. (Letter to Congressman Richard M. Simpson, Feb. 27, 1957.)

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

A. Yes. Under §§ 73.120, 73.290, and 73.657 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.

*An asterisk denotes a new question and answer.

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

A. Yes, section 315 imposes no obligation on a station to allow the use of its facilities by candidates, and neither that section nor the Commission's rules require a station to sell time to a group of candidates on a pooled basis, even though such may be the practice with respect to commercial advertisers. (Letter to WKBT-WKBH, Oct. 14, 1954.)

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

A. No. A station is under such circumstances only required to make available the discount privileges to each legally qualified candidate on the same basis.

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

A. Yes. Other legally qualified candidates are entitled to take advantage of the same reduced rate. (Letter to Senator A. S. Mike Monroney, Oct. 16, 1952.)

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

A. He is entitled to be charged the same rate as his opponent since the provisions of section 315 run to the candidates themselves and they are entitled to be treated equally with their individual opponents. (Report and order, docket 11092, 11 R.R. 1501.) (Cf. Q. and A. VI.B. 3; and telegram of WWIN, May 3, 1962.)

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

A. There is no prohibition in section 315 or the Commission's rules against the above practices. It would be reasonable to assume that the group time used by a candidate is, for the purposes of section 315, time paid for by the candidate through the normal device of a recognized political campaign committee, even though part of the campaign funds was derived from sources other than the candidates' contributions. (Letter on distribution of time among candidates, Oct. 14, 1954.)

11. Q. When a candidate and his immediate family own all the stock in a corporate licensee and the candidate is the president and general manager, can he pay for time to the corporate licensee from

which he derives his income and have the licensee make a similar charge to an opposing candidate?

A. Yes. The fact that a candidate has a financial interest in a corporate licensee does not affect the licensee's obligation under section 315. Thus, the rates which the licensee may charge to other legally qualified candidates will be governed by the rate which the stockholder candidate actually pays to the licensee. If no charge is made to the stockholder candidate, it follows that other legally qualified candidates are entitled to equal time without charge. (Letter to WKOA, Mar. 18, 1957.)

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

A. No. The Commission held that such a policy violated both section 315(b) of the act and § 73.120(c) of the rules; that the benefits accruing to a candidate from the use of an advertising agency were neither remote, intangible, nor insubstantial; and that while under the station's policy, a commercial advertiser would, in addition to broadcast time, receive the services of an advertising agency merely by paying the station's established card rate, the political advertiser, in return for payment of the same card rate, would receive only broadcast time. The Commission held that such a resultant inequality in treatment vis-a-vis commercial advertisers is clearly prohibited by the act and the rules. (In re KNOE-TV, letter of May 13, 1964, FCC 64-430).

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

*An asterisk denotes a new question and answer.

A. Yes. If the station were to allow the complainant to purchase political spot announcements at the rates charged to him for his commercial spot announcements, then the station would either be giving him treatment preferential to that given to his opponents or it would have to charge all candidates this lesser rate. This was not the intent of either section 315(b) of the Communications Act or the Commission's rules. In charging the complainant the rate for a political advertisement that was normally charged other commercial advertisers for a comparable use, the station was acting in compliance with both the act and the rules. (In re WCBG, letter of Nov. 3, 1964.)

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

A. Yes. The stations' action was not inconsistent with either the act or its rules, since the rates charged to candidates (both for the local office and Congress) were the same as the rates charged to commercial advertisers whose advertising was directed to promoting their businesses within the same area as that encompassed by the political office for which such person is a candidate. (In re WSAV, letter of Sept. 11, 1964.)

IX. PERIOD WITHIN WHICH REQUEST MUST BE MADE

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

A. Within 1 week of the day on which the prior use occurred. (Par. (e) of §§ 73.120, 73.290, and 73.657 of the Commission rules; and telegram to WWIN, May 3, 1962.)

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

A. No. A legally qualified candidate announcing his candidacy for the above nomination would be required to request "equal opportunities" concerning a particular broadcast of "Your Senator Reports" not later than 1 week after the date of such broadcast. Thus, any of the incumbent's opponents for the nomination who first announced his candidacy on a particular day would not be in a position to request

*An asterisk denotes a new question and answer.

"equal opportunities" with respect to any showing of "Your Senator Reports" which was broadcast more than 1 week prior to the date of such announcement. (Letter to Senator Joseph S. Clark, Apr. 16, 1962.)

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

A. No. The Commission stressed that where, as here, the licensee, or a principal of the licensee, was also the candidate, there is a special obligation upon the licensee to insure fair dealings in such circumstances and held that the licensee was estopped in the circumstances from relying upon the 7-day rule. The Commission held that the incumbent's letter reasonably constituted a notification as required under the rules; that the licensee knew that equal opportunities were requested; and that he could have made, if he wished, reasonable scheduling plans. (Letter in re KLLF, Apr. 22, 1964, FCC 64-363.)

X. ISSUANCE OF INTERPRETATIONS OF SECTION 315 BY THE COMMISSION

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

A. 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*, 12 FCC 678, 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. It prefers to issue such rulings or opinions where the specific facts of a particular case in controversy are before it for decision. (Letter in re WDSU, June 18, 1958.)

APPENDIX A.—Correlation Table

1966 public notice	1962 public notice	1964 supplement	New rulings
III.A.:			
1.....	1		
2.....	2		
3.....	3		
III.B.:			
1.....	4		
2.....	5		
3.....	6		
4.....	7		
5.....			In re United Community Campaigns.
6.....	¹ [8]		
7.....	9		
8.....	10		
9.....	11		
10.....	12		
11.....	13		In re WNEP.
12.....			Do.
13.....			In re WMAY.
14.....	14		
III.C.:			
1.....	15		
2.....	16		
3.....	17		
4.....	18		
5.....			In re WMAY.
6.....	19		
7.....	20		
8.....	21		
9.....	22		
10.....	23		
11.....		1	
12.....		2	
13.....	24		
14.....	25		
15.....		5	
16.....	26		
17.....	27		
18.....	28		
19.....		4	
20.....	29		
21.....	30		
22.....	31		
23.....			Debarry-Shaw Campaign Committee.
24.....		6	
25.....		7	
26.....		8	
27.....			Letter to CBS on Presidential press conferences.
28.....			Telegram on "Suez crisis" speech.
29.....			Letter to D. Burch.
IV.:			
1.....	32		
2.....	33		
3.....	34		
4.....	35		
5.....	36		
6.....	37		
7.....	38		
8.....	39		
9.....	40		
10.....	41		
11.....			Letter to Metromedia.
12.....			In re WDOC.
13.....			In re KNX.
14.....			In re WNHC.
V.:			
1.....	42		
2.....	43		
3.....	44		
4.....	45		
5.....			Letter to E. C. French.
VIA.:			
1.....	46		
2.....	47		
3.....	48		

¹ Deleted (reversed by 1959 amendments, and superseded by Q. and A. III.C. 25).

APPENDIX A.—Correlation Table—Continued

1966 public notice	1962 public notice	1964 supplement	New rulings
4	49		
5	50		
6	51		
7	52		
8	53		
9	54		
10	55		
11	56		
12	57		
VI.B.:			
1	58		
2	59		
3	60		
4			In re ILGWE.
5	61		
6	62		
7	63		
8	64		
9	65		
VII.:			
1	66		
2	67		
3	68		
4	69		
5	70		
6	71		
	² [72]		
	³ [73]		
7			Hypothetical.
8			I. c.
VIII.:			
1	74		
2	75		
3	76		
4	77		
5	78		
6	79		
7	80		
8	81		
9	82		
10	83		
11	84		
12		VIII. 1	
13			In re WCBG.
14			In re WSAV.
IX.:			
1	85		
2	86		
3		IX. 1	
X. 1	87		

² Deleted (updated by Q. and A. VII. 7).
³ Deleted (replaced by Q. and A. VII. 8).