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Section 315 of Communications Act of 1934.

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Section 315 of the Communications Act of 1934: An Overview of the Development of Political Broadcast Regulation

by

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INTRODUCTION

The effect of the mass media on the politics of our society has rarely been minimized by politicians. The influence of the press on campaigns and elections was accepted when radio came into its own in the 1920's. Congress was quick to recognize this new method of electronic journalism as perhaps potentially the most powerful of all political weapons. This recognition became evident when Congress included a section in laws passed in both 1927 and 1934 which testified to their misgivings regarding the potential political power of broadcasting in the hands of broadcasters who might be unscrupulous. This portion of the law (now Section 315) was originally formulated as a political broadcast regulation to prevent discrimination among political candidates by requiring broadcasters to give equal opportunity to all candidates for the same office to use their facilities if they gave opportunity to one candidate. The section also specifically prevented broadcasters from censoring speeches made by candidates.

Broadcasters have protested Section 315 since its inception thirty-three years ago, but Congress has been loath to repeal it, or even lessen its impact. Through thirty-three years of controversy, Congress has steadfastly held the reins of political broadcasting in its own hands.
The regulation of political broadcasting provided by Section 315 has raised a series of continuing issues centering around two areas: (1) the "equal opportunity" provision of the section; and (2) the "no censorship" provision of the section. These issues have been emphasized and developed in the administration of the section, its effects on political broadcasting, and Congressional consideration of the section.

**Purpose**

The vast majority of the writings on Section 315 are concerned with some one particular aspect of its development. Richard Salant, vice president of CBS, has, for instance, summarized the broadcaster's point of view in an article showing the development of Section 315 during recent years, and problems created by these developments.¹ Students of the legal implications of Section 315 have written specialized surveys. Typical of these excellent, but limited, studies is "Censorship of Political Broadcasts," by Walter Goldhill.² Goldhill analyzes the legal intricacies of the proviso in Section 315 which prevents censorship of political broadcasts. The legal division of the FCC, in Use of Broadcast Facilities


by Candidates for Public Office\(^1\), attempted to draw together some of its pertinent interpretations of Section 315. However, the document is limited only to the problems presented to the Commission and does not attempt to relate them to the over-all development of political broadcast regulation. Such authors as Elmer Smead\(^2\) and Sidney Head\(^3\) have briefly considered Section 315 but their views have been quite general.

In addition to the studies mentioned above there is a wide variety of specific material contained in a large number of sources, including periodical articles, congressional hearings, court decisions, and FCC decisions and reports.

It was the feeling of this writer that pertinent materials and studies could be drawn together to present a continuous background for the issues which have arisen in the development of Section 315, a general history of this particular regulation which might serve both as a means for correlating the studies heretofore made, and at the same time to provide a background for further, more specific research into this important area of study.

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Scope

It has been this writer's intention to develop an historical overview of the problems of regulating broadcasts of political candidates; and for this reason the present study includes all aspects of Section 315. It covers the general effects of the regulation on political broadcasting, the efforts of Congress and the FCC to clarify and implement the legislation, the changing view of the courts toward the regulation, and the continuing efforts of broadcasters to obtain repeal or modification of the section.

Organization

The study of Section 315 is divided into five general areas: (1) the legislative history of the passage of the act; (2) the development of political broadcast censorship; (3) the development of Section 315 during the "radio era"; (4) new problems presented under section by the advent of television; and (5) the unique situation created by the "Lar Daly decision" and its consequences.

The first chapter comprises a legislative history of the passage of Section 18 of the Radio Act of 1927, which later became Section 315. It summarizes the legislative activities of Congress which led to passage of the section. This material is basic to an understanding of Section 315 and provides a background against which to consider its further development.
The second chapter is a summary of the development of the specific provision in Section 315 that broadcasters might not censor political broadcasts. This aspect of the regulation was highly controversial because it prohibited broadcasters from preventing defamatory remarks by candidates which could lead to expensive damage suits. Although the issues arising from the "no censorship" provision are closely related to other aspects of Section 315, they lend themselves to consideration as a separate unit. The chapter outlines court interpretation of the provision, congressional consideration of problems arising, attempts of the FCC to clarify the provision, and problems presented to broadcasters.

The third chapter surveys general aspects of Section 315 during the "radio era" from 1927 to 1949. It traces the development of the section during radio's growth which was paralleled by an expansion of political broadcasting. Particular emphasis is laid on congressional attempts to extend the provision, development of FCC interpretation of Section 315, and the problems presented to broadcasters by the Commission's interpretations.

The fourth chapter surveys the development and implementation of Section 315 after the advent of television. Included are the new problems in political broadcast regulation which were brought on by the advent of television, the increasing consideration given by Congress to Section 315, the FCC's attempts to deal with new problems, and the increasing
efforts of broadcasters to obtain remedial legislation to correct the problems they faced under Section 315.

The fifth chapter is a summary of the "Lar Daly decision" and the resulting controversy which led to passage of a corrective amendment to Section 315. The role of broadcasters, Congress, and the FCC are considered.

The writer has not attempted to draw a large number of specific conclusions. Issues have been enumerated primarily in order of their chronological development. Certain general observations have been made from these issues about the effectiveness of Section 315 as a political broadcast regulation and whether it is necessary. It is hoped that these general observations might provide the basis for further investigation into causes of political broadcast problems and their solutions.

Sources

The sources used in the study have been drawn from several areas. Extensive study was made of pertinent congressional hearings, committee reports, and congressional debate in the Congressional Record. Applicable court decisions were drawn from the various court reporters and legislative journals. The viewpoint of the FCC was gained from study and analysis of FCC reports, and formal and informal decisions--some available from the Commission, some in the annual reports of the Commission, and some in public reference
works. *Broadcasting* magazine was extensively surveyed for pertinent material. Its editorial comment was particularly enlightening. In addition, other periodicals were also examined. Also utilized were the opinions of several legal authorities from standard broadcast law reference works. Pike and Fischer's *Radio Regulation* yielded much helpful information.
CHAPTER I

THE FORMATION OF POLITICAL BROADCAST REGULATION

General Background

Prior to the passage of the Radio Act of 1927, the legislation regulating radio was contained in the Wireless Ship Act of 1912. This law proved sadly inadequate to govern the rapidly growing medium, and particularly to empower the Commerce Department to properly deal with the problem of frequency allocations. The growing tide of new stations were creating impossible interference problems.

Congress came under increasing pressure to pass legislation regulating broadcasting. Broadcasters, themselves, urged speedy formulation of law which would bring some order out of the chaos of unauthorized stations.

Although the most pressing considerations were technical problems, Congress viewed other aspects of broadcasting in consideration of legislative proposals to regulate the medium. One of these aspects was political broadcasting. The major concern of Congress was that broadcasters might use the new medium to unfairly discriminate among political candidates.
Early Congressional Consideration of Political Broadcast Regulation

As early as March, 1924, in the 69th Congress, the subject of political broadcast regulation was discussed in hearings on H.R. 7357, a bill to organize governmental regulation of broadcasting, before the House Committee on Merchant Marine and Fisheries.\(^1\) The problem of possible discrimination by broadcasters in political broadcasts was considered, and while broadcasters appearing before the committee defended their ability to deal with candidates fairly, they voiced no strong objection to possible regulation.

Mr. Charles Caldwell, representing the Radio Broadcasters' Society of America, while speaking against any monopoly controlling broadcasting, brought up the possibility of discrimination by broadcasters in allowing use of their facilities for political speeches. He cited the case of "a great public man who . . . was invited, requested, and solicited by A.T. and T. to make a speech . . . but when his subject was announced, that he would speak on the campaign of 1924, they withdrew his invitation and refused at any price to let him broadcast his speech over the radio."\(^2\) Although


\(^2\) Ibid., p. 36.
Mr. Caldwell’s statement was intended to be primarily an indictment of control of broadcasting by such interests as A.T. & T., it emphasized the issue of possible discrimination by broadcasters.

Representative Davis indicated Congressional concern, as he brought the discrimination issue to rest squarely on broadcasts by political candidates, in questioning William Harkness, Assistant Vice President of A.T. & T.:

Rep. Davis: For instance, the indications are that the radio is about to be utilized more and more by candidates for public office and by proponents of public measures. You can readily see, can you not, that one candidate might monopolize the radio field by obtaining contracts that his speeches . . . might be carried and the other fellow not permitted to employ the same method of reply.

Mr. Harkness: Yes; we feel that is true as a controversial subject. But our experience has been that on a controversial subject both sides should be presented preferably at the same time, more in the nature of a debate by the presentation of first the one side and then the other, and we have done this thing very much to the satisfaction of the public.1

Representative Davis apparently did not feel that the answer was representative of broadcasting. He asked if there was not a possibility that some broadcasting stations might present both sides of issues less fairly than A.T. & T.'s station. Harkness replied, "There is that danger."2 Thus, he did not defend the ability of other broadcasters to be fair in the granting of their facilities to political candidates.

1Ibid., p. 83. 2Ibid.
When Representative Davis asked if he would object to his broadcasting station being regulated as the telephone, telegraph, and other public utilities, he replied, "I do not think so."¹

Other broadcasters seemed to agree with Harkness that a strong principle of fairness should prevail in political broadcasts. At the first annual meeting of the NAB, on October 11, 1923, a paper was presented by Harold Power of WGI on "Governmental Regulation." A debate followed on whether politicians should be allowed to use stations. John Sheppard made a suggestion (adopted by those present) that a party applying for station time should be required to bring a speaker from the opposing party and that his speaker be given equal time.² This strong support by broadcasters of fairness in political broadcasting seemed to give little basis to the fears of congressmen that broadcasters could not be trusted.

Later in the hearings mentioned above (on H.R. 7357), David Sarnoff, then vice-president and general manager of RCA, defended the fairness displayed by broadcasters in presenting candidates and issues. He described the test used by his station in making facilities available for political candidates:

¹Ibid.

²Letter from Dr. David R. Mackey, Professor of Communications, School of Public Relations and Communications, Boston University, May 20, 1960.
When the sole test is public interest, there is little difficulty in making decisions. Any candidate for the Presidency of the United States, or other high office, whether he be the candidate of the Republican, Democratic, Progressive, Farmer-Labor, Socialist, Prohibition, or any other lawfully organized party, should, by the very fact of his nomination by a considerable group, establish himself as of sufficient interest to a sufficient group to warrant a hearing. Roughly I should say that any man worthy of a prominent place in the news of the day ... would probably be welcomed by the radio audience, and the only concern of the busy broadcasting director is to arrange his schedule so that there will not be too much fish, fowl, or red herring.¹

Mr. Sarnoff did not amplify or clarify what constituted a "lawfully organized party" or a "considerable group." Nor did he mention what kind of facilities, if any, a minority group might expect to receive. Later, under the provisions of Section 315, these issues were to become of real concern to the broadcaster. Minority groups strongly stated that if there was no regulation of broadcasting, their requests for time would be ignored by broadcasters. Sarnoff and other broadcasters undoubtedly felt later that, whether the "sole test" is public interest or not, there is some difficulty in determining how to handle broadcasts by political candidates fairly.

Sarnoff brought forward another argument against government regulation of political broadcasts. He pointed out that, "You have the same measure of protection in the broadcast field that you have in the newspaper. What control have you as to what a newspaper may or may not say?"² The answer

¹Ibid., p. 167. ²Ibid., p. 177.
of Representative Davis was to be repeated by other Congressmen. "Well, the difference is this, that newspapers are not public service corporations, and these broadcast stations are, if they charge for this service."¹

These hearings represented the first major skirmish between Congress and broadcasting industry over the ability of broadcasters to fairly distribute their facilities to political candidates and for the discussion of controversial issues.² Representatives had indicated a deep concern that broadcasters could not be trusted to handle political broadcasts fairly without regulation. Broadcasters, while defending their principles of fairness, had voiced no strong objection to the possibility of political broadcast regulation.

Political Broadcast Regulation Again Considered in Hearings on H.R. 5589

In the 69th Congress, in early 1926, the House Committee on the Merchant Marine and Fisheries considered H.R. 5589, introduced by Representative Wallace White in December, 1925. Although no provision regulating political broadcasting was included, the issue again arose in hearings.³

¹Ibid.


In discussing the availability of broadcast facilities for political speeches, Mr. Wilson, counsel for A.T. & T., stated that, "If the matter is one of national importance and the time is not taken, the station would be glad, in all probability to put any person on who had a speech of that kind to deliver."\(^1\)

William Harkness, again appearing before the committee, made a stronger statement of A.T. & T.'s sense of fairness toward political broadcasts than did Wilson:

> During the last national political campaign we presented all parties and gave them equal opportunity and they paid for the service received.\(^2\) [emphasis supplied]

Mr. Harkness' choice of the words "equal opportunity" to describe A.T. & T.'s policy toward granting facilities for political broadcasting was prophetic. This phrase was destined to become a source of confusion and controversy between broadcasters and the FRC, and later the FCC. The political broadcast regulation later passed by Congress specified that equal opportunities must be given to political candidates. Broadcasters found the phrase somewhat difficult to define. An equal amount of time was not always an "equal opportunity" since some hours of the day drew larger listening audiences than others.

\(^1\)Ibid., p. 55. \(^2\)Ibid., p. 56.
Harkness also touched on another area of future controversy when he stated that A.T. & T. "did not attempt to edit" political speeches. The issue of whether or not broadcasters might censor speeches by political candidates, at least as to their defamatory content, was to become another point of contention in government regulation of political broadcasting. The regulation passed by Congress specifically prohibited censorship of political speeches.

In his final reinforcement of A.T. & T.'s position Harkness said, "If we give it to one, we give it to all. That is what we did throughout the political campaign, so that they were all treated exactly alike, the socialist candidate the same as the others."2

Regulation of Political Broadcasting is Formalized by Law

Regulation of political broadcasting was formulated in H.R. 9971 introduced by Representative White on March 3, 1926, in the 69th Congress.

House Version of the Bill does not Include Political Regulation

In its original form, the House bill did not include a reference to political broadcasting. In the House Committee report, Representative Davis commented on this omission in a minority view:

1Ibid. 2Ibid.
Yet there is nothing in the pending bill requiring such public utilities to make either reasonable or uniform charges for service or to afford equal treatment to citizens.

The broadcasting field holds untold potentialities in a political and propaganda way; its future use in this way will undoubtedly be extensive and effective. There is nothing in this bill to prevent a broadcasting station from permitting one party or candidate or the advocate of a measure or a program or the opponent thereof, to employ its service and refusing to accord the same right to the opposing side; the broadcasting station might even contract to permit one candidate or one side of a controversy to broadcast exclusively upon the agreement that the opposing side should not be accorded a like privilege.¹

Although there seemed to be little basis for the fear expressed by Representative Davis it apparently was a prevalent attitude in Congress. When H.R. 9971 was considered in the House, several representatives, led by the outspoken pronouncements of Representative Davis, stated their desire for a political broadcast regulation. No one rose to defend the broadcasters' ability to handle political broadcasts without discrimination. House members either spoke in favor of regulation or were silent.

In the discussion of H.R. 9971 on the House floor, Representative Davis charged that in broadcasting, "There is absolutely no restriction upon the arbitrary methods that can be employed, and witnesses have appeared before our committee and already have given instances of arbitrary and tyrannical

action in this respect, although the radio industry is only in its infancy.\textsuperscript{1} Davis did not document or illustrate the "instances of arbitrary and tyrannical action" to which he referred. It seems doubtful that they were as pronounced as he intimated. Later he declared that, "You are dealing with what is going to be the most powerful political instrument in the future."\textsuperscript{2}

The possibility of stations using rate discrimination as a weapon against political candidates was also briefly considered in the House debate.

Representative Blanton asked, "What time can there be better than now to write a proper radio bill? One candidate might be able to pay $1,000 for one night's service over the radio, and another candidate might not be able to put up anything, and the radio could shut that man out and let the other in."\textsuperscript{3}

Representative Cellar complained that, "... I was asked to pay by the American Telephone and Telegraph Company $10 for every minute and I refused to pay it. I have no knowledge that candidates of the opposing party were asked to pay the same amount for the same use."\textsuperscript{4}

\begin{flushright}
\textsuperscript{1}U.S., \textit{Congressional Record}, 69th Cong., 1st Sess., IXVIII, Part 5, p. 5483. \\
\textsuperscript{2}Ibid., p. 5557. \textsuperscript{3}Ibid., p. 5483. \textsuperscript{4}Ibid.
\end{flushright}
At the conclusion of the debate, Representative Johnson proposed an amendment from the floor which would have met the complaints by extending regulation to political broadcasts:

Provided further, that equal facilities and rates, without discrimination, shall be accorded to all political parties and all candidates for office, and to both the proponents and opponents of all political questions or issues.1

As he envisioned it, "... the Government would grant the license to the broadcasting station on the express agreement and understanding that it should not discriminate against political parties, or candidates for office, or political issues."2 The amendment was not included in the House bill because it was ruled to be not germane to the section for which it was proposed.

H.R. 9971 was passed by the House on March 15, 1926. Although it contained no regulation of political broadcasting it was obvious that there was a vocal group of representatives who felt this was a serious omission. The House seemed particularly concerned about rate discrimination.

Senate Amendment to H.R. 9971 Forms
Basis for Section 315

The Senate Committee on Interstate Commerce considered H.R. 9971 and then completely revised it by striking out

1Ibid., p. 5559. 2Ibid.
everything after the enacting clause and adding a new bill.

One of the new provisions partially took into account the fear of discrimination voiced by Representative Davis:

All matter broadcast for hire shall be announced as paid material, and if any broadcasting station is used for hire or by political candidates for discussing public questions, there shall be no discrimination and the licensee of such station shall be deemed a common carrier in interstate commerce and such licensee shall not have the power to censor broadcast material.¹

This provision was included in Section 4 of the Senate version of H.R. 9971.

The consideration of the section by the Senate opened with a debate on the right of broadcasters to censor political speeches. It revealed the thinking which had prompted Senators to include the no-censorship proviso in the section.

Senator Dill referred to a New York station whose owners asked for a copy of the speech a certain man was to make. After examining his speech, they refused him time on the grounds that his speech constituted an attack on the present administration. Senator Heflin called this, "... a piece of tyranny that ought not to be countenanced in this country. What business is it of one to censor a speech and say whether or not it can be made, unless it is of such a

character that it ought not be made anywhere because of
obscene language or something of that kind."¹ [emphasis
supplied]

Senator Fess raised a problem which was to become of
real concern to broadcasters in future years. In emphasizing
the problems connected with such an unconditional no-censor-
ship plan as Heflin advocated, Fess commented that there must
be some responsibility on the part of broadcasters in handling
political speeches because they might face damage suits for
libelous statements made by candidates. He felt the only
defense broadcasters might be able to resort to would be to
let no one talk at all. He pointed out that Heflin had,
"... opened up one of the most difficult problems that we
have to deal with, and, if we can work it out, it will be
highly desirable."²

Senator Dill Proposes an Amendment

After this debate on censorship, Senator Dill pro-
posed the amendment which, with modifications, was to become
the basis of governmental regulation of political broad-
casting. The amendment in its original form stated:

If any licensee shall permit a broadcasting station
to be used by a candidate or candidates for any public
office he shall afford equal opportunities to all

¹U.S., Congressional Record, LXVIII, Part 11, p. 12356.
²Ibid.
candidates for such public office in the use of such broadcasting station: *Provided*, that such licensee shall have no power to censor the material broadcast under the provisions of this paragraph and shall not be liable to criminal or civil action by reason of any uncensored utterances thus broadcast.¹

In support of his amendment Dill said, "... I have consulted with a number of the leading broadcasters and the officers of the broadcasting organizations, and while they do not like any sort of limitation, they do agree that this will not be objectionable."² [emphasis supplied]

Senator Dill introduced his amendment to replace the provision in Section 4 of H.R. 9971 which would have insured equal opportunity in broadcasts by political candidates and also made broadcasters common carriers for the purpose of the section. He indicated that there had been general agreement among the members of the Committee on Interstate Commerce that common carrier "was an unwise phrase to use because of what would result to broadcasters in the present state of development."³

Senator Cummins disagreed with Senator Dill's interpretation and stated that he felt that the amendment, rather than replacing the common carrier provision, still made stations common carriers because they could not exercise discrimination. In answering Cummins, Dill stated, "There is the difference that under the common-carrier provision a radio

¹Ibid., p. 12358. ²Ibid. ³Ibid.
station is compelled to take any kind of broadcasting that anybody wants to offer. This provision simply says that if a radio station permits one candidate for public office to do so, and to that extent there must be no discrimination." Dill was pointing to a very important aspect of Section 315, that was more definitively stated later. Broadcasters were not required to grant broadcast time to any candidate. The provisions of the regulation were to apply only if the station made an initial grant to one candidate. Thus, stations were given an "escape clause" in which they could refuse to broadcast a speech of any candidate.

Senator Cummins noted this possibility, and in the colloquy which followed, Senator Dill unequivocally stated his position, and the intent of the provision, that discrimination in political broadcasts must be avoided at all costs:

Sen. Cummins: Of course, the Senator understands that the effect of the amendment now offered is to deny all candidates the use of the broadcasting station.

Sen. Dill: Unless it permits one candidate to use it.

Sen. Cummins: But the Senator knows that if it permits one there will be enough others to insist upon the use of the service to take up all the time of the broadcasting stations.

Sen. Dill: I will say to the Senator that at present they are not required to allow anybody to speak over the radio. Under the House bill they can allow one man to speak and forbid everybody else to speak. I felt that was not the proper thing. If a station permitted a candidate for Congress to broadcast, then other candidates for Congress should have an equal right.
Sen. Cummins: ... The Senator is simply providing a situation in which broadcasting will be denied to political candidates.

Sen. Dill: It is now if the broadcasters see fit to deny it. I think it would be better to deny it altogether than to allow the candidate of one party to broadcast and the candidate of the other party not to be able to secure the same right.1 [emphasis supplied]

Senator Cummins had accurately predicted an effect of the proposed political broadcast regulation. In later years, when broadcasters were faced with large numbers of demands for equal time from minority parties they did adopt a policy in which broadcasting was in effect "denied to political candidates." To avoid the minority demands they granted no free time to any candidate during campaigns and in some cases refused use of facilities to candidates. This practice became of increasing concern to Congress.

Another possibly undesirable effect of the section was pointed out by Senator Mayfield, "If the Senator's amendment is adopted and becomes the law and a lecturer desired to deliver a lecture on bolshevism or communism, he would be entitled to do so." Senator Dill agreed, adding a qualification that, "The amendment only provided for candidates for political offices. If a candidate wanted to speak on that subject as to his candidacy, then he could deliver such a speech."2 [emphasis supplied] In later years, as communism became an increasing

1Ibid. 2Ibid.
concern of Congress, this possible interpretation of the section was to receive much attention and criticism.

Senator Fess suggested a possible interpretation of the amendment, which he considered undesirable, that was later to occur in a situation almost identical to his hypothetical illustration:

Sen. Fess: ... I am sure the Senator does not intend to write this meaning into the amendment; that an individual being a candidate for an office, Senator of the United States, for example, might be invited to speak somewhere on the occasion of some great celebration where what he was going to say would be broadcasted. He would not talk on the subject of politics at all; he might be talking on something entirely free from his interests, but in the interests of the community at large. I read in this amendment that he could not accept the invitation to speak over the radio unless the candidate who might be running against him in the same election should be invited likewise to speak. I know the Senator from Washington does not mean so to provide.

Senator Dill countered the objection of Fess by proposing the method which he felt would make the regulation flexible enough to meet specific situations:

... if the Senator will examine the amendment he will find that following this provision is the statement that the commission shall make rules and regulations to carry out the provision. It seemed to me to be better to allow such questions as the Senator has raised to be settled by them.

Dill had tried to make his amendment as general as possible to cover every eventuality. He expected the Commission, the administrative body provided for in the bill, to do

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1 *Infra*, chap. 4, p. 183.
3 Ibid.
the work of applying it in specific situations. However, whether the Commission was equipped to handle the myriad of decisions and interpretations, required by the increasing complexity of political broadcasting in future years, was to become a point of increasing contention. In fact, in later congressional hearings in 1943, FCC Commissioner T. A. M. Craven accused Congress of shirking its responsibility by placing so much emphasis on the Commission:

I think you ought to write the law more clearly. I think the reason you did not write the law more clearly was that there was so much dispute in the original enactment of the law. You could not settle it yourselves, and you put it upon us to try and settle, and we are getting into trouble.1

Senator Fess raised another point which later became highly controversial. He questioned the provision which exempted stations from liability for defamatory statements broadcast by political candidates under the provision:

Sen. Fess: Is it possible for us to write into law entire exemption from liability in a case that might go to court?

Sen. Dill: I think so. I do not see why we have not that power. Perhaps I am wrong in that. However, I may say to the Senator that the broadcasting station owners take the position that if they are not to censor such material they must not be held liable.

Sen. Fess: I think it is a very tenable position.

Sen. Dill: I know of no other way in which to write the language to be fair to them; at least, I am willing to let it be tried out.¹

The provision exempting stations from liability was later deleted in conference committee without explanation.² This move presented a dilemma to broadcasters. They could not censor, and yet seemingly they were given no protection from defamatory remarks which might be uttered by candidates. Broadcasters battled for 32 years to have the provision clarified by either allowing them to censor defamatory remarks or freeing them from liability.

Senator Howell voiced a suggestion which was to be repeated in future sessions of Congress. He suggested that the section be extended to "public questions" noting that, "It must be recognized that so far as principles and policies are concerned they are major in political life; candidates are merely subsidiary."³

Senator Dill cautioned Howell about, "... the danger of having the words 'public questions' in the bill. That is such a general term that there is probably no question of

¹U.S., Congressional Record, LXVII, Part 11, p. 12503.


³U.S., Congressional Record, LXVII, Part 11, p. 12503.
any interest whatsoever that could be discussed but that the other side of it could demand time . . . "1

Senator Howell's final defense of his position in the debate represented an extremist congressional point of view toward broadcasting and equal opportunity:

Mr. President, abuses have already become evident. We do not need to wait to find out about these abuses. If you think today the radio stations are ready to comply with your request for publicity, you are very much mistaken. Mr. President, we ought to meet these abuses now, and not enact a bill which in the future it will be very difficult to change, when these great interests more and more control the stations of this country; and that, apparently, is the future of broadcasting.2 [emphasis supplied]

In the Senate debate several noteworthy aspects of the proposed political broadcast regulation were considered which were to be important in its future development:

1) its author felt that even though it might have a restrictive effect on political broadcasting by encouraging stations to avoid equal time demands by excluding broadcasts by candidates, that this would be more desirable than risking discrimination by broadcasters;

2) the section might be interpreted as giving equal time to Communist candidates;

3) a non-political broadcast by a candidate might be considered a "use" under the section entitling his

1Tbid., p. 12504. 2Tbid.
opponents to equal time;

4) specific problems in the regulation were to be worked out by the Commission;

5) although it might be unconstitutional, relieving broadcasters of liability for defamatory remarks made by candidates seemed to be the fairest way of solving problems of political censorship.

Joint Conference Committee Adopts Section 18

H.R. 9971 was then sent to the joint Congressional conference committee where representatives from the House and Senate attempted to reconcile the two versions of the bill.

As previously mentioned, Dill's amendment to Section 4 of the Senate bill was accepted by the conference committee but the clause relieving stations from liability for defamatory statements was deleted without explanation. The committee made certain changes in the language of the amendment and incorporated it as Section 18 of the Radio Act of 1927. It provided that:

Sec. 18 If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station, and the licensing authority shall make rules and regulations to carry this provision into effect: Provided, That such licensee shall have no power of censorship over the material broadcast under the provisions of this paragraph. No obligation
is hereby imposed upon any licensee to allow the use of its station by any such candidate.¹

House Considers Conference Report

In considering the conference report, the main issue considered by the House was the possibility of rate discrimination by broadcasters in political broadcasts. Representative Scott maintained, in a colloquy with Representative Blanton, that Section 16 prevented rate discrimination:

Rep. Blanton: Suppose there are two candidates, one a rich man and one a poor man, and the corporation charges for service one candidate $5,000, a sum the poor man cannot pay. Is that giving them an equal chance?

Rep. Scott: No; I think the bill preserves to the commission the authority to prevent any discrimination.

Rep. Blanton: That would be discrimination?

Rep. Scott: Absolutely.²

The House passed the conference report and accepted H.R. 9971.

Senate Considers Conference Report

In Senate consideration of the conference report the major issue considered was also possible rate discrimination. In discussing how it could be handled, Senator Dill felt that the Commission could make regulations to handle the problem. He apparently did not agree with Representative Scott that


²U.S., Congressional Record, LXVII, Part 11, p. 2567.
protection was inherent in the provision itself. Senator Pittman raised the issue in a colloquy with Dill:

Sen. Pittman: In the original form it provided that there should be no discrimination against a candidate. There is nothing now to prevent one candidate from being charged twice as much as another.

Sen. Dill: I do not agree with the Senator as to that. The Commission is to make regulations to carry out the provision referred to, and certainly the term 'equal opportunity' includes the price to be charged.

Sen. Fletcher: Does the term 'equal opportunity' include equal rates? For instance, they might say to one candidate, 'We will give you the opportunity at a hundred dollars a minute,' and to another candidate, 'Yes, we will give you the opportunity at a thousand dollars a minute.'

Sen. Dill: We believed that the words 'equal opportunity' included those things. We believed that the Commission, given power to make regulations, would cover those details.\(^1\)

Apparently Senators were satisfied with Dill's belief that the Commission would work out satisfactory regulations on rate discrimination. At any rate, in spite of the concern expressed over the possibility of unequal rates, a regulation prohibiting rate discrimination in political broadcasting was not included in Section 18. It might be noted, however, that the Commission did not work out satisfactory regulations to prevent rate discrimination, and this was to become a contentious point in the relationship between the broadcasters and Congress in the years to come.\(^2\)

The Senate passed the conference report and Section 18.

\(^1\)Ibid. \(^2\)Infra, chap. 4, p. 136.
Amendment to Political Broadcast Regulation Formulated in the 72nd Congress

Senate Committee Introduces Amendment

The first amendment to Section 18 was formulated in the 72nd Congress in 1932. The Senate Interstate Commerce Committee reviewed H.R. 7716, a bill to amend the Radio Act of 1927, in December, 1932. It proposed replacing Section 18 with the following new section:

Section 14 (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 station; and if any licensee shall permit any person to use a broadcast station in the interest or support of or in opposition to any candidate for public office, or in the presentation of views on any side of a public question to be voted upon at an election, he shall afford equal opportunity to any other person to use such station in the interest or support of any opposing candidate for such public office, or for the presentation of opposite views on such public questions, or to reply to any person who has use of such broadcasting station in opposition to any candidate.

(b) The Commission shall make rules and regulations to carry this provision into effect. No such licensee shall have power of censorship over the material broadcast in accordance with the provisions of this subsection. No obligation is imposed upon any licensee to allow the use of his station by any candidate for or in the interest or support of or in opposition to any candidate, or for the presentation of views on any side of a public question.

(c) The rates charged for the use of any station for any of the purposes set forth in this section shall not exceed the regular rates charged for the use of said station to advertisers furnishing regular programs, and
shall not be discriminating as between persons using the station for such purposes.1

During hearings on the bill, Henry Bellows, chairman of the Legislative Committee of the National Association of Broadcasters, brought up the first dilemma faced by broadcasters under Section 18, the Sorenson v. Wood decision.2 The Nebraska Supreme Court held that broadcasters were liable for defamatory statements made by candidates under the provisions of Section 18 since it, in the court's opinion, did not prevent them from censoring libelous references.3 The problems this presented to broadcasters will be discussed in more detail in Chapter II.

Senator Dill pointed to the escape clause in Section 18 as a possible solution to the problem, indicating that broadcasters could avoid broadcasts by political candidates altogether. Bellows' answer to this suggestion undoubtedly reflected the viewpoint of a number of broadcasters:

Sen. Dill: Of course there is no requirement in the law that a broadcasting station shall admit partisanship discussion on the station.

Mr. Bellows: That, it seems to me, amounts to less than nothing. The greatest value that radio can serve is to give the public, give the people, a chance to speak and to speak freely. If we are in the position where we have

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3 Ibid., p. 349.
to say to you: we do not dare let you go on because we do not know what the other fellow is going to say, then, if we have to use that provision that you have cited, I think one of the greatest values of radio will be lost. 1

H.R. 7716 Considered by Conference Committee

The Senate and House versions of H.R. 7716 differed in several places, and the House bill contained no change in Section 18 of the Radio Act.

A conference committee considered the two bills to attempt to reach a compromise. It modified Section 14 of the Senate bill by striking out the provision calling for equal opportunity to present views on any side of a public question to be voted upon at an election. It inserted instead, "Furthermore, it shall be considered in the public interest for a licensee, so far as possible, to permit equal opportunity for the presentation of both sides of public questions." 2

Section 14, as modified, was incorporated as amendment 26 of the conference version of H.R. 7716. The bill was passed by Congress but did not become law because of a pocket veto.

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Congress, in passing Section 14 of H.R. 7716, had indicated increasing concern with the possibility of discrimination in political broadcasting. The section would have specifically extended Section 18 to prevent discrimination in broadcasts of information on public questions and also in the area of rates for political broadcasts. These, of course, were issues which had been of concern to Congressmen during the consideration of Section 18 of the Radio Act in 1927.

73rd Congress Carries over Section 18 as Section 315 of the Communications Act of 1934

In the 73rd Congress, in 1934, S. 3285 was drafted as "ripper" legislation to replace the Radio Act of 1927. The bill later became the Communications Act of 1934. It included a political broadcast provision which was identical with Section 14 in H.R. 7716, discussed above. The provision was described in the report on S. 3285 from the Senate Committee on Interstate Commerce:

Section 315 on facilities for candidates for public office is a considerable enlargement of section 18 of the Radio Act. It is identical with a provision in H.R. 7716, 72nd Congress, which was passed by both houses. It extends the equality of treatment provisions to supporters and opponents of candidates, and public questions before the people for a vote. It also prohibits any increased charges for political speeches . . . that no higher rates than ordinary advertising rates shall be charged.

Conference Strikes Out Proposed Extensions in Senate Version Section 315

The versions of S. 3285 passed by the House and Senate differed in several respects. As in the 72nd Congress, the House version of S. 3285 contained no change in political broadcast regulation.

Again, the enlarged section to regulate political broadcasts failed to become law. The conference committee, after reviewing S. 3285, voted not to include Section 315 as stated in the Senate bill. Instead, as stated in their report, "Section 315 on facilities for candidates for public office is the same as Section 18 of the Radio Act. The Senate provision which would have modified and extended the present law, is not included."\(^1\)

Thus, Section 315 of the Communications Act of 1934 became merely a carry-over of Section 18 in the Radio Act of 1927. This regulation of political broadcasting was to remain unchanged until the 82nd Congress.

Section 315 seemed deceptively simple. It merely required that if a station gave time to one candidate for a political office it must give equal time to all other candidates for the same office if they requested it. Broadcasters

were prevented from censoring any speeches made under the provisions of the section and were given the perogative of refusing to broadcast a speech by any candidate.

Congress had already indicated that, in spite of the regulation, they still feared discrimination by broadcasters in the broadcast of public questions and in the rates charged for political broadcasts. These issues were to receive further congressional consideration in future years.

In spite of its apparent simplicity, Section 315 was destined to create many complicated problems for political broadcasting. Both the "equal opportunity" provision and the "no censorship" provision became the sources of later controversy.

Although the record of broadcasters did not seem to warrant it, Congress had unremittingly pushed forward political broadcast regulation, moved by a fear of the possibility that wide-scale discrimination could exist. As Senator Dill remarked, "... members of Congress were determined to compel equal treatment of aspirants to all public offices, including aspirants to Congress."\(^1\)

CHAPTER II

SECTION 315 AND THE CENSORSHIP OF
POLITICAL BROADCASTS

General Background

A major provision of Section 18 of the Radio Act of 1927, and later Section 315 of the Communications Act of 1934, which has generated considerable confusion and controversy over the years is the express prohibition that stations may not censor speeches made by political candidates, regardless of whether or not they contain defamatory statements. Section 18 and Section 315 specifically stated, "Provided, that such licensee shall have no power of censorship over the material broadcast under the provisions of this section."1

For many years, this has placed the broadcaster in a somewhat paradoxical position. Once time had been given to a political candidate for a broadcast, the speech of this candidate, and others running for the same office (who must be given time under the "equal-time" requirements of the section),

could not be censored according to the federal law, even if
defamatory material were included, but on the other hand, the
state laws were often violated if the defamation was not pre-
vented. The decision of the U. S. Supreme Court in Farmers
Educational and Cooperative Union of America v. WDAY, which
will be discussed below, apparently solved the dilemma which
broadcasters have faced. However, the road to relief has been
rocky and fraught with many difficulties for the broadcaster.

Sorenson v. Wood: Broadcasters
Can Censor Speeches

Section 18 of the Radio Act of 1927, which contained
the initial regulation of political broadcasts by Congress,
contained the "no-censorship" provision which was restated in
Section 315.\(^1\) In June, 1932, the decision of the Nebraska
Supreme Court in Sorenson v. Wood\(^2\) gave broadcasters their
first full realization of the liability they faced under the
provision. At the same time, it clouded the apparently clear
and unequivocal statement of "no-censorship."

In the 1930 Nebraska primary, KFAB in Lincoln,
Nebraska, in compliance with the "equal-time" requirement of
Section 18, had offered Mr. Stebbins, a candidate for

\(^1\)Federal Communications Commission, The Communications
Act of 1934: With Amendments and Index Thereto, Rev. to

U. S. Senator, the opportunity to answer a broadcast by a rival candidate. Mr. Stebbins accepted the offer and authorized a Mr. Wood to deliver a campaign statement on his behalf. During the broadcast, Wood made obviously defamatory remarks about C. A. Sorenson. Sorenson filed for damages against KFAB, as well as Wood.¹

KFAB claimed in its defense that it had no advance knowledge that Wood's remarks would be defamatory. It also pointed out that under Section 18 it was required to carry the broadcast and would have been prevented from censoring the remarks anyway.

In reviewing the legislative history of Section 18, the court observed, "We do not think Congress intended by this language in the radio act to authorize or sanction the publication of libel . . . ."²

After determining that Congress had not intended to authorize the broadcast of defamatory statements the court found in favor of Sorenson and proceeded to give its own interpretation of the meaning of Section 18:

We are of the opinion that the prohibition of censorship of material broadcast over the radio station of a licensee merely prevents the licensee from censoring the words as to their political and partisan trend but does not give a licensee any privilege to join and assist in the publication of a libel nor grant any immunity from the consequences of such action.³ [emphasis supplied]

¹Ibid., p. 352. ²Ibid., p. 351. ³Ibid., p. 354.
The court went further, and drew a strong comparison between radio and newspapers, determining that:

... the fundamental principles involved in publication by a newspaper and by a radio station seem to be alike. There is not legal reason why one should be favored over another nor why a broadcasting station should be granted special favors as against one who may be a victim of a libelous publication.1

In the court's decision, broadcasters found themselves in the same category with the press in responsibility for published libel. However, the court ignored the fact that newspapers were not under the jurisdiction of Federal regulation similar to Section 18.

Thus, broadcasters were faced with a completely new interpretation of Section 18 which contradicted the apparently clear language of the provision. They could censor defamatory statements but not words as to their "political and partisan" trend. Of course, the obvious questions for broadcasters were, "was the court correct in its legislative interpretation?" and "where was the distinction between defamation and political and partisan trend?" The answers to the questions were not readily forthcoming.

1Ibid.
Congress and the Courts

The 72nd Congress had the opportunity to clarify Section 18 in light of the Sorenson v. Wood decision and answer the questions of broadcasters. In 1932, it had under consideration H.R. 7716, which included a section to modify Section 18 of the Radio Act of 1927. However, it did not include a change in the "no censorship" provision.

During hearings on the bill in December before the Senate Interstate Commerce Committee, Henry Bellows, Chairman of the Legislative Committee of the National Association of Broadcasters, outlined the dilemma faced by broadcasters:

... Section 18 of the Radio Act, in spite of its perfectly clear language, has recently been interpreted by the Supreme Court of the State of Nebraska and that court says it does not mean what it says there at all... we broadcasting stations are placed in a very difficult position at the present moment... We are fully in sympathy with this section of the law, but the courts have already interpreted it to mean that the power of censorship referred to in the law does not mean that we are not responsible for libel and slander. We are perfectly ready to accept that responsibility, but in that case we must have the right to go over speeches in advance and see what is in them, for we cannot wait until they are on the air.

Senator Dill asked Mr. Bellows if he felt that if Congress passed a statute exempting stations from liability for defamation, rather than giving them the power to censor,

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2Ibid., p. 9.
it "would save you from rulings of the state courts?" Bellows replied, "I have had opinions from two or three attorneys who suggest that such a provision would probably be found unconstitutional."¹

Here that matter stood. Congress did not include a change in the "no censorship" provision of Section 18 in H.R. 7716. They chose neither to relieve broadcasters from liability for defamatory statements broadcast under Section 18 nor to give them the power to censor. Broadcasters had no assurance that Congress acquiesced in the Nebraska Supreme Court interpretation.

Court Reinforces Sorenson v. Wood

In 1933, a Washington state court reinforced the Sorenson v. Wood decision. KHQ in Spokane, Washington, was held liable for defamation broadcast on a weekly prohibition program. The court agreed with the Nebraska decision in noting the similarity of liability for defamation between newspapers and radio stations. It held that, "The owner of that station furnished the means by which the defamatory words could be spoken to thousands of people. It operated the station for profit and received compensation for the time it was being used."²

¹Ibid., p. 10.
²Miles v. Wasmer, 172 Wash. 466, 467, (1933).
Although the circumstances of the defamation did not include a political broadcast, the court supported the Sorenson v. Wood decision, stating, "It seems to us that the views expressed are sustained by reason."¹

Congress Again Ignores the Censorship Question

In 1934, Congress again had the opportunity to clarify the "no censorship" provision of Section 18, in light of the confusion created as to its meaning by the court decisions. S. 3285 was drafted as a "ripper" bill to replace the Radio Act of 1927 with a new communications act. S. 3285 included an enlargement of Section 18 which was designated as Section 315 in the new act. However, the "no-censorship" provision again was not changed.² Later, after the bill was submitted to conference committee, all the changes in the political broadcast regulation were deleted and Section 315 of the Communications Act of 1934 became merely a duplication of Section 18 of the Radio Act of 1927. Congress still had not clarified the political broadcasting clause.

¹Ibid., p. 473.

Court Gives New Weight to
Sorenson v. Wood

In December of 1934, a court in Missouri emphasized the liability of broadcasters for broadcasting defamatory statements and made the problem even more acute for network affiliates.¹

KMBC in Kansas City carried a CBS network broadcast in which libelous references were made concerning one Robert J. Coffey. KMBC had no knowledge that the defamatory words would be included in the program. Coffey sued not only the network and the speaker but also KMBC.

In reviewing the circumstances the court acknowledged "a complete absence of the slightest negligence on the part of the owner of the station."² Nevertheless it held that:

... the conclusion seems inescapable that the owner of the station is liable. It is he who broadcasted the defamation. ... But for what he has done the victim of the defamation never would have been hurt.

As in Sorenson v. Wood and Miles v. Wasmer, the court pointed to a close relationship between "such a situation and the publication in a newspaper of a libel under circumstances exonerating the publisher of all negligence ... in the case of the newspaper publisher absence of negligence is no defense."³ [emphasis supplied]

²Ibid., p. 890.
³Ibid. ⁴Ibid.
The court concluded that:

The owner of a broadcasting station knows that some time some one may misuse his station to libel another. He takes that risk. He . . . can insure himself against resulting loss.¹

Thus, once again broadcasters were reminded that they would be liable for libel or defamation broadcast over their facilities, and network affiliates were presented with the comfortless prospect of being liable for defamation resulting from a broadcast on a network program over which they had no control.

The Sorenson v. Wood decision, reinforced by Miles v. Wasmer and Coffey v. Midland Broadcasting Co., made it clear to broadcasters that:

1) they were liable for defamation broadcast in all circumstances;
2) that the censorship prohibition in Section 315 gave them no exemption from liability for defamation in political broadcasts;
3) that the courts considered the press and broadcasting as being analogous in liability for defamation, i.e., absence of negligence would be no defense.

Since Sorenson v. Wood had suggested that broadcasters could censor political broadcasts at least as to their

¹Ibid.
defamatory content, and neither Congress nor the Federal Communications Commission had repudiated this finding, many stations began to adopt the policy of examining scripts before broadcasts by political candidates under the provisions of Section 315. Sometimes they deleted defamatory statements.¹

A sort of uneasy status quo developed which lasted with no major controversy until the Port Huron decision of the FCC in 1948. Generally, candidates submitted scripts in advance of their broadcasts and agreed to the deletion of possible defamatory material. Of course, in most cases, the candidates by their acquiescence, also saved themselves from the possibility of expensive defamation suits.

**Congress Considers Relieving Broadcasters of Liability**

In 1943, the broadcasters' plight finally received some attention from Congress. Senators Wheeler and White co-authored S. 814, commonly referred to as the "Wheeler-White bill." It proposed sweeping reorganization of the Communications Act of 1934. Section 11 of the bill would have added a new section (number 332) to the act, providing that:

No licensee of any radio-broadcast station nor the Commission shall have the power to censor, alter, or in any way affect or control the political or partisan trend of any material broadcast under the provisions of

section 315, 330, and 331 hereof: Provided, however . . . that no licensee shall be required to broadcast any material which is slanderous or libelous or which might subject the licensee or its station to any action for damages or to a penalty or forfeiture under any local, State, or Federal law or regulation. In all such cases the licensee shall have the right to demand and receive a complete and accurate copy of the material to be broadcast a sufficient time in advance of its intended use to permit examination thereof and the deletion therefrom of any material necessary to conform the same to the requirements of this section, and the commission shall make rules and regulations to carry this provision into effect.\(^1\)

Section 332 thus would have relieved broadcasters from the dilemma created nine years earlier by the Sorenson v. Wood decision. It would have legally sanctioned the censorship policy which many broadcasters had temporarily adopted to protect themselves from defamation suits arising out of political broadcasts.

**FCC View**

In hearings on S. 814 before the Senate Interstate Commerce Committee, FCC Chairman Fly gave the first major statement of the Commission's feeling on the political censorship problems of the broadcasters. He pointed out that giving licensees some censorship power might tend to weaken the licensees' responsibility to carry borderline programs. However, he felt that if a licensee was forced to take a program

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\(^1\)U.S., Congress, Senate, Committee on Interstate Commerce, Hearings on S. 814, To Amend the Communications Act of 1934, 72nd Cong., 1st Sess., November 3, 4, 5, 9, 11, 12, 15-19, 22-24, 29-30; December 1-4, 6-10, 14-16, 1943, p. 5.
without being able to censor, it would be unfair to hold him liable for damages.¹

Fly then made a proposal which was later to become the basis of the FCC's Port Huron decision. It was answered by Senator White who, in questioning its constitutionality, apparently reflected the misgivings of many members of Congress, concerning such a proposal:

Mr. Fly: I am wondering if it would not be well to relieve the station of all possible liability for libel or slander.

Sen. White: ... I just never have been able to see how Congress by any legislation of its own, could suspend the libel laws of all states in which the spoken word might be heard.²

In spite of his misgivings, Senator White later admitted that, "I would free the station from liability unless you can give the station an effective control over the words that are spoken. I do not think the station should be liable for things which are beyond its control."³

After his testimony, Commissioner Fly submitted detailed comments on S. 814 to the committee, which included an expansion of his original proposal for Section 332. His re-draft would have prevented censorship of material broadcast under the provisions of the section, adding the protective clause:

¹Ibid., p. 63. ²Ibid., p. 64. ³Ibid.
That licensees shall not be liable for any libel, slander, invasion of right of privacy, or any similar liability imposed by any State, Federal, or Territorial law for any statement made in any broadcast under the provisions of this section, except as to statements made by the licensee or persons under his control.

In support of this proposal, Fly pointed out that,

"Under this method the public is assured of the fullest and freest use of the radio and the licensee is protected against liability because of his compliance with the directives of the statute."

The committee did not include Fly's proposal in the bill.

Whether or not Congress would have accepted Section 332, and its sanctioning of censorship of political broadcasts, as a measure of relief for broadcasters, unfortunately must remain in the realm of speculation. S. 814 was not reported out of the Interstate Commerce Committee and did not receive consideration by the full Congress. Broadcasters now knew, however, that the FCC apparently looked with disapproval upon any kind of censorship by broadcasters and preferred the plan of relieving licensees from liability for defamatory statements on political broadcasts, in spite of this remedy's dubious constitutionality. In the absence of definitive congressional

1Ibid., p. 944.

action, broadcasters still relied on their policy of censorship derived from the Sorenson v. Wood decision.

The FCC issued no official interpretation of Section 315 corresponding to Chairman Fly's proposal before the Senate Interstate Commerce Committee. Its rules and regulations on political broadcasting simply restated the "no censorship" provision with no amplification. Some broadcasters had begun demanding scripts from candidates on the grounds that the FCC required it, but this, of course, was not true.2

Congress Again Considers Relieving Broadcasters of Liability

In 1947, a modified version of the Wheeler-White bill was again introduced by Senator White in the first session of the 80th Congress. It would have amended the "no censorship" provision of Section 315 by adding a section providing:

(F) Neither licensees nor the Commission shall have power of censorship over the material broadcast under the provisions of this section; PROVIDED, That licensees shall not be liable for any libel, slander, invasion of right of privacy, or any similar liability imposed by any State, Federal, or Territorial or local law for


any statement made in any broadcast under the provisions of this section, except as to statements made by the licensee or persons under his control.\textsuperscript{1}

This, of course, was identical with the proposal made by FCC Commissioner Fly in the 1943 hearings on S. 814, and subject to question as possibly being unconstitutional in that it would usurp state law.

Constitutionality of Proposal Challenged

In hearings on S. 1333 before the Senate Interstate and Foreign Commerce Committee, Frank Roberson, Chairman of the Legislative Committee of the Federal Communications Bar Association, informed Congress as to the current policy of broadcasters in handling defamation in political broadcasts:

Mr. Roberson: ... I think the lawyers have usually and consistently advised the station they do have the right to examine the political speech to see whether there is anything libelous or slanderous in it, but not with any idea of deleting or changing ideas or any political or social question or anything of that sort.

Sen. Magnuson: Supposing there is. What do you do?

Mr. Roberson: We would advise the licensee not to carry it unless the speaker deleted those statements under the present law.\textsuperscript{2}

Roberson, along with Senators Magnuson and White, expressed doubt as to the constitutionality of subsection (F):

Mr. Roberson: ... There is some doubt in our minds as to just how effective that immunity may be.

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\textsuperscript{1}Ibid., p. 6. \textsuperscript{2}Ibid., p. 103.
Sen. Magnuson: You run into a very serious situation if you can pass a Federal law giving immunity to the station where in most states the station would be just as liable for the statement as the man who made it.

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Sen. White: I do not like the notion of a Federal law for libel or slander. I do not know if Congress would vote for such a law to oust the jurisdiction of the States over such subject matters or not.1 [emphasis supplied]

Views of Broadcasters

The strongest statement from broadcasters supporting subsection (F) was delivered by Edgar Kobak, president of the Mutual Broadcasting System:

The proposed amendment relieving the licensee from liability for the broadcasting of defamatory matter contained in speeches which the licensee is forbidden to censor seems to me only common justice. . . . The amendment should protect the licensee against any liability whatsoever, whether it is or is not similar to libel, if the licensee is prohibited from exercising any censorship.2

Although Kobak undoubtedly expressed the view of the majority of broadcasters, another position held by some licensees was stated by Don Elias, Executive Director of WWNC in Asheville, North Carolina. In speaking of the proposed exemption from liability for broadcasters, he said:

I do not want that privilege. I think it is wrong. I think we should have that responsibility upon us. I doubt the ability of the Congress to relieve me in North Carolina of the North Carolina laws on libel and slander, even though you might pass such a law.

But even if you can relieve me, I still don't want to be relieved. I think it would be dishonest, indecent,

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1Ibid., p. 104. 2Ibid., p. 355.
dishonorable, and unmoral for a broadcaster operating a broadcast station to let some irresponsible man come in and make a speech in a political campaign.\footnote*{1}{emphasis supplied} Elias raised the only strong objection at the hearings to section (F) and the possibility of its encouraging irresponsible broadcasts. The prevailing sentiment seemed to oppose his suggestion that stations have censorship control over political broadcasts. In fact, when Senator White suggested that perhaps stations should have the censorship authority which was included in S. 814 in 1943, Senator Taylor expressed a fear of many congressmen:

\begin{quote}
Sen. Taylor: Certainly, if they are going to be responsible for what he says. But when they get that authority, there is no stopping them. You do not know where they are going to stop.\footnote*{2}{emphasis supplied}
\end{quote}

The great majority of testimony at the hearings on S. 1333 favored subsection (F) as the solution to the political censorship problems of broadcasters. In spite of the agreement that the section might be found unconstitutional as an infringement of state's rights, committee members and broadcasters alike seemed to feel that it was worth testing. Apparently many members of Congress shared Senator Taylor's fears that if the alternative proposal of giving broadcasters power of censorship was accepted, the privilege would be abused.

\footnote*{1}{Ibid., p. 430.} \footnote*{2}{Ibid., p. 526.}
Unfortunately, due to the sudden illness of its chief proponent, Senator White, S. 1333 never received consideration by the full Congress. Once again Congress had failed to take definitive action to aid broadcasters in their liability dilemma under Section 315.

Broadcasters Begin Drive to Modify State Libel Laws

Also in 1947, broadcasters, under the auspices of the National Association of Broadcasters, began their first concerted effort to strengthen state libel laws. The NAB introduced a model libel statute which proposed a standard law offering protection to stations where due care was exercised in cases where defamatory remarks were broadcast and providing thorough safeguards from defamatory statements by candidates for public office. The model statute was passed in 1947 by Colorado and Wyoming.

In the early months of 1948, broadcasters still faced uncertainty as to the policy they should pursue in handling defamation in political broadcasts. Only nine states gave broadcasters what they considered adequate protection in case of innocent broadcast of libelous remarks. They were Wyoming, Florida, Illinois, Iowa, Montana, Oregon, Washington, and

2Ibid. 3Ibid.
Virginia. Four other states, California, Indiana, North Carolina, and Utah gave partial protection. In other states broadcasters were generally at the mercy of the courts.

The Port Huron Decision

Thirty-nine years after Congress had first passed legislation regulating political broadcasting, the FCC finally gave its definition of the responsibility of licensees in handling defamation on political broadcasts.

In February of 1948, by a vote of 4 to 2, the Commission accepted a proposed decision involving WLHS in Port Huron, Michigan.\(^1\) It was formally adopted on June 28, 1948.\(^2\) This "Port Huron decision" brought a flood of protests from broadcasters, and served to spotlight the censorship issues of Section 315.

Station WLHS in Port Huron, Michigan, upon examination of scripts to be broadcast by C. E. Muir, candidate for city commissioner, found libelous material and withdrew the right of Muir and all other candidates for city commissioner to use WLHS facilities. Muir had already purchased the time but he had previously been given free time. After the free broadcasts


\(^2\)F.C.C. Reports, Vol. XII (June 1, 1947 to June 30, 1948), p. 1069.
WLHS had offered free time to other candidates but none had accepted. Muir submitted a complaint to the FCC.¹

Broadcasters Forbidden to Censor Political Broadcasts

Considering the broader question of whether a station could require a candidate to delete slanderous material from a broadcast made under Section 315, the commission held it could not. Having determined that stations could not censor, the commission explained its position as follows:

The prohibition . . . against censorship in connection with political broadcasts appears clearly to constitute an occupation of the field by Federal authority, which under law would relieve the licensee of any responsibility for any libelous matter broadcast in the course of a speech coming within Section 315 irrespective of state law.² [emphasis supplied]

It must be pointed out that the FCC by using the word "appears" made its statement somewhat less than definite. Many observers felt its opinion was based on extremely shaky ground, particularly since there were no court precedents in the field of political broadcast regulation which would lend support to the interpretation. Broadcasters had serious reservations about the validity of the decision under court scrutiny.

The FCC had based a large part of its stand for immunity on the decisions in Sola Electric Co. v. Jefferson

¹Ibid. ²Ibid., p. 1071. ³Ibid., p. 1080
Electric Co.\textsuperscript{1} and O'Brien v. Western Union Telegraph.\textsuperscript{2} These cases sanctioned an occupation of state law by Federal authority. However, both were concerned with censorship as it related to common carriers and not broadcasting.

FCC Commissioner Jones Dissents

In a bitter statement, Commissioner Jones dissented from the majority opinion. He saw the majority view as dicta which the FCC had no right to issue and which Congress had refused to enact. He felt that the decision inferred unreasonable demands on stations under Section 315. Commenting on the Commission's lack of activity in the area, he pointed out:

The majority freely admit that the Commission has made no rules covering the specific situation; that there has been much confusion over this section; and that the licensee has no specific Commission rules to guide him. This is an admission that the rules and regulations are not adequate. \textsuperscript{3}

It might be added that the majority of protests over the decision by broadcasters sided with Commissioner Jones' views that the Commission had no right, or weight of precedent, to issue its interpretation.

\textsuperscript{2}O'Brien v. Western Union Telegraph, 113 F(2d)539, (1940).
\textsuperscript{3}Ibid., p. 1080.
Broadcasters Protest the Decision

After its announcement of the proposed Port Huron decision in February, the FCC was deluged by protest from broadcasters. The NAB, and WDOV, Valdosta, Georgia, petitioned for an oral argument on the decision. They contended that any interpretation of Section 315 such as the Commission intended to hand down should be taken out of the WLHS case and be handled by a general proceeding.¹ In the meantime, the NAB made plans for a concerted effort in district meetings to organize local broadcasters to pressure for improvement of libel laws in their respective states.²

In the oral argument before the FCC on the Port Huron decision a brief was presented on behalf of Texas Attorney General Price Daniel. It contended that in Texas the only way stations could be sure of obtaining exemption from liability would be to refuse to carry political broadcasts. He pointed out that Texas libel laws would be in effect regardless of the FCC interpretation and that radio stations carrying defamatory statements would be subject to state laws.³

³"F.C.C. Libel Ruling Attacked at Hearings," Broadcasting-Telecasting (May 10, 1948), p. 4
Legal arguments challenging the Port Huron decision were presented by Don Petty, NAB general counsel, and W. Theodore Pierson, Washington attorney.

Pierson suggested that the FCC should, "forthwith communicate to Congress an exposition of the present status of this problem together with a recommendation that Congress pass a uniform defamation-by-radio act that would clearly prescribe the duties and liabilities of radio broadcasters . . . and that would expressly and clearly invalidate state laws that conflict herewith.\(^1\) Petty completely rejected the decision stating that stations, "are entitled to refuse to permit the broadcast of defamatory and other unlawful matter and are not freed from liability under state and federal law for such broadcasts."\(^2\) Thus, Petty strongly supported the censorship policy in which broadcasters had been engaging to prevent defamation suits.

Just how serious the liability problem could be for broadcasters was emphasized by an attorney for KIDO, Boise, Idaho, one of the stations which carried a possibly defamatory re-broadcast by Senator Taylor in 1947. He pointed out that the station and four others were being sued for $100,000 each as a result of the speech. He also said that Senator Taylor

\(^1\)Ibid. \(^2\)Ibid. \(^3\)"F.C.C. Libel Ruling Attacked at Hearings," Broadcasting-Telecasting (May 10, 1948), p. 4.
had threatened to report the stations to the FCC if they did not carry the broadcast.

CIO Supports FCC Interpretation

The only outright support of the Commission's decision came in a brief filed by the CIO on May 10th, 1948. The organization offered to assume full liability for any libel suits resulting from political broadcasts by its members. It contended that, "The threat of libel action is an excuse that can be, and has been employed in the past for censoring or banning altogether the messages of labor representatives . . ."¹

In spite of great pressure from broadcasters and serious question as to the validity of its interpretation, on June 28, 1948, the FCC formally adopted its Port Huron decision. It firmly stated that broadcasters could not censor any material broadcast under Section 315 and they apparently would be free from liability for defamation as a result of the prevention of censorship. In other words, the Commission could not guarantee that licensees would be free from liability but it felt that they certainly should be.

Texas Court Undermines Decision

The Port Huron decision in August of 1948 received a legal blow in a Texas District court. Station KPRC of Houston

¹"CIO," Broadcasting-Telecasting (May 10, 1948) p. 221.
sued to have the court set aside the FCC interpretation. In Houston Post Co. v. United States the court commented that:

Indeed, in the uncertain and doubtful state of law as to the intent of Congress in enacting the section to exclude the operation of libel laws, we think it judicially inconceivable that the Commission . . . could with considerations of fair play and just administration in mind, have so ordered.1 [emphasis supplied]

While not specifically setting aside the interpretation, the court concluded that:

In the present state of the law, that is in the absence of congressional action clarifying its intent and purpose, or of authoritative judicial decision, we think it doubtful that the commission would have power to lay down a binding rule or regulation of the nature of that expressed in its opinion.2

Congressional Scrutiny of the Port Huron Decision

The Port Huron decision soon came under serious scrutiny by Congress. Members of Congress had become increasingly concerned with certain activities of the FCC, and the controversy over the Port Huron decision, together with certain other events brought about the passage of House Resolution 691 which authorized formation of a "Select Committee to Investigate the FCC."

The House committee met on August 5, 1948, under the chairmanship of Representative Forest Harness, and its first

2Ibid.
item of business was consideration of the Port Huron decision.¹

In commenting on the decision, Representative Harness stated, "The purpose of this hearing will be to consider possible legislation to correct what appears to be an intolerable situation and one that seems to be in conflict with the public interest."² [emphasis supplied]

The FCC Position

FCC Chairman Wayne Coy stated the position of the Commission:

The import of the decision is this: There has been some question as to what Section 315 means for many years. The problem of whether or not a broadcaster has the right to censor for libel under Section 315 of the act has been with us since 1927, when the Radio Act was passed. It seems to me it was a contribution to clarification if the commission would state its views about Section 315, and by stating its views there might be a determination as to what Section 315 meant.³

When asked by committee counsel Bow if he felt the Port Huron decision had relieved the confusion, Coy admitted, "I do not claim it has relieved the confusion. It may contribute to the final determination of the question."⁴ [emphasis supplied]

He also called for congressional action, "I think there would be great assistance given to the settlement of this question if the Congress were to enact legislation which said in explicit

¹U.S., Congress, House, Hearings before the Select Committee to Investigate the F.C.C., Investigation of F.C.C., 80th Cong., 2nd Sess., August 5, 6, 31, and September 1, 1948, p. 1.

²Ibid. ³Ibid., p. 12. ⁴Ibid.
language that broadcasters were freed from liability for libel in political speeches.\footnote{Ibid., p. 25.}

Richard Solomon, Chief of the Litigation Branch of the FCC, who originally drafted the Port Huron decision, testified as to his determination of the intent of Congress in constructing the "no censorship" provision:

\ldots it seems to me that Congress was at that time confused as to their power in this libel field, and did not legislate because they had not made up their minds as to their power.\footnote{Ibid., p. 26.}

However, Solomon did not indicate why he felt the FCC should have taken the step which Congress had not. Apparently, as stated by Mr. Coy, one of the main purposes of the decision was to \textit{serve as an impetus} to Congressional legislation and \textit{contribute to the final determination of the question.} Of course, the objection of broadcasters to this reasoning was that Congress might be as reluctant as it had been in the past to pass legislation clarifying the question, thus leaving the decision to erase the protective policy of censorship which broadcasters had adopted and placing them in an extremely vulnerable position.

Broadcasters State Opposition

All broadcasters appearing at the hearings opposed the FCC decision, not in its principle of exempting broadcasters from liability, but because of its dubious legality.
Theodore Pierson, a Washington, D. C., lawyer representing several stations pointed out one possible consequence of the constant threat stations were facing in liability for defamation in political broadcasts:

All the stations, so far as I have knowledge, dread the issue being presented. To the extent they can minimize their liability by avoiding political broadcasts, they do it. I think that is a detriment to the public interest, because never before have we had such important issues.\(^1\) [emphasis supplied]

Pierson delivered a rebuttal to the argument that broadcasting stations should be considered in the same category as newspapers in regard to responsibility for published libel:

The situation of a newspaper is vastly different. They can decide what will be in their papers before they publish them. It is only in the case of a recorded program that broadcasters can really control the thing. I think there is no point in imposing a duty to prevent something on a person wholly unable to prevent it.\(^2\)

Don Petty, general counsel for the NAB, felt that, "The intent of Congress was that a political candidate would speak for himself in his own political campaign and should have complete freedom."\(^3\) He supported the view that stations should not be empowered to censor and suggested congressional legislation to relieve the broadcasters of liability.

Joseph Ream, Executive Vice-President of CBS, urged repeal of the decision on the basis that broadcasters were

\(^1\)Ibid., p. 35.  \(^2\)Ibid., p. 38.  \(^3\)Ibid., p. 71.
satisfactorily dealing with the problem under their policy of censorship:

My own feeling is that in the 21 years since the enactment of the original section, and particularly since 1932 . . . that I know of no cases which have come to my attention where there has been real discrimination among candidates on the basis of the deletion of defamatory material. Accordingly, if we could return to the status quo which existed prior to the promulgation of the Port Huron case, I think that would be a solution which would take care of us for the immediate future.¹

Gustav B. Margraf, Vice-President and General Counsel of NBC, agreeing with NAB Counsel Petty, defined the intent of Congress as emphasizing, "... that political candidates have complete freedom in what they say." He also pointed out that a law preventing broadcast of defamation would be extremely difficult to put into practice:

I do not know of any way to suggest writing a law which would prevent the broadcasting of defamatory material. I think a certain amount of that is bound to come out in political campaigns, and I do not know how you can prevent it from being done.²

Joseph McDonald, Vice-President and General Attorney of ABC, also felt that Congress had not intended to empower broadcasters to censor political broadcasts. He pointed out:

The political candidate himself who was making the speech probably knows better than anyone else what is and what is not of political import in his particular campaign. In order to be sure that he has the freedom of political debate which is recognized in this country, he should be free to make his own arguments and such statements and allegations as he believes he can support. He should by the same token be responsible for them.³

¹Ibid., p. 89. ²Ibid., p. 94. ³Ibid., p. 103.
McDonald also strongly emphasized that the broadcaster should not be responsible for defamatory broadcast. He drew an analogy pointing out that, "... the broadcast licensee should not be responsible for what the political candidate says any more than the proprietor of a hall which may be rented by a political speaker is responsible for the words spoken in the hall by the speaker."¹

Thus, the representatives of the broadcasting industry supported the basic principles of the Port Huron decision but not the authority of the FCC to make such an interpretation. They seemed to agree that it had been the intent of Congress that broadcasters should not censor political broadcasts. With the exception of Joseph Ream of CBS, they acknowledged the difficulty of separating censorship of libel from political content. The consensus seemed to be that broadcasters should be prevented from censorship and exempted from liability for defamatory statements broadcast under Section 315. However, the broadcasters did not accept the dubious legality of the FCC decision nor its failure to definitively state that licensees would be exempted from liability.

Although Joseph Ream had called for return to the status quo, Theodore Pierson suggested the possible negative effect of such a move when he indicated that broadcasters might

¹Ibid.
begin to restrict political broadcasts out of fear of libel suits. In spite of this warning, a return to the status quo was the result of the committee hearings.

FCC Temporarily Suspends the Decision

After hearing the testimony of broadcasters, Chairman Harness recalled FCC Chairman Coy in an attempt to obtain a definitive statement of how stringently the Commission planned to interpret the Port Huron decision.

Under the pressure of questioning, Coy, in effect, temporarily suspended the ruling:

Mr. Bow: And the Port Huron decision is not to be regarded as an order of the Commission?

Mr. Coy: That is right.

Mr. Bow: And future cases will be judged upon the facts in those particular cases?

Mr. Coy: Yes. There are no regulations of the Commission as of this time with respect to Section 315 as it applies to libelous material being deleted.¹

** ** ** *

Rep. Harness: In other words, until this thing is resolved, the matter could rest almost in status quo? [emphasis supplied]

Mr. Coy: That is right.²

Coy then added a brief statement to expand his viewpoint:

I might add this, that I believe it is my own view, I will stay with that, that a broadcaster has the obligation

¹Ibid., p. 107. ²Ibid., p. 108.
of operating in the public interest. One of the things that is in the public interest is political discussion by the candidates of the various political parties in a political campaign.

No broadcaster is going to get into serious trouble who operates in the public interest by carrying speeches by the political candidates of all political candidates fairly...

I think a broadcaster has an obligation in a situation of this kind to take some speculative risk...

Thus, Coy made it clear that he personally, and probably the Commission, felt that it was a responsibility of the broadcaster to serve the public interest by carrying political speeches. If stations followed the course Theodore Pierson had suggested they might, in restricting political broadcasts, then possibly they would be considered to have violated their public interest responsibility.

In the interim report of the Select Committee to Investigate the FCC on September 24, 1948, the committee gave its view of the Port Huron decision:

Coming on the eve of a national political campaign, this decision might have designed to guide broadcasters in their handling of a perennially troublesome problem. To the contrary, however, as was stated by Commissioner Jones in his dissenting opinion, it - 'serves to create confusion and to hold forth both promise and threat without effect.'

The committee concluded that:

As a result of our examination of the Port Huron decision, your committee has received assurances from the commission that 'for the time being, at least until the

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1Ibid.

matter is settled, the honest and conscientious broadcaster who uses ordinary common sense in trying to prevent obscene and slanderous statements from going out over the air, need not fear any capricious action.\footnote{Ibid.}

Thus, the Port Huron decision was at least temporarily nullified by consent of the Commission as well as by serious legal challenge. Broadcasters continued their policy of examining scripts of political candidates before broadcasts and urging deletion of possibly defamatory statements. They still had not obtained the absolute relief from liability they had so diligently sought, but the situation was eased.

A New Libel Controversy:  
\textit{Felix v. Westinghouse}

In 1950, the libel issue again arose and broadcasters briefly received new support for their campaign for relief from defamatory liability, in \textit{Felix v. Westinghouse Radio},\footnote{\textit{Felix v. Westinghouse Radio}, 89 F. Supp. 740, 742, (1950).} which supported the principle of the Port Huron decision.

In certain speeches in Philadelphia, over the stations of Westinghouse, the chairman of the Pennsylvania Republican Central Committee had attacked the Democratic party in certain libelous statements. He was speaking on behalf of four Republican candidates under the provisions of Section 315. A few minutes before the broadcast he submitted a script of his
remarks to the station. The libel suit which followed the broadcast included the Westinghouse stations, as well as the Chairman.

The provisions of Section 315 are limited specifically to candidates for public office and not their spokesmen. Of course, the Republican chairman was speaking as a spokesman and not a candidate, thus raising some question as to whether the stations would legally have been prevented from censoring his remarks.

The court interpreted the legislative history of Section 315 to determine that it did include spokesmen of candidates.¹ Thus, they reasoned that Westinghouse would have been prevented from deleting libelous remarks in the speech under the censorship prohibition of the section. The court concluded that the stations should not be held liable:

If in view of the section, this defendant could not have censored Mr. Meade's speech in any way . . . without violation of the law, then it follows that it was without fault in the matter of the broadcast. It goes without saying that no court can for a moment entertain the idea that refraining from doing something which the law forbids can constitute fault and create civil liabilities.²

[emphasis supplied]

Decision is Remanded on Appeal

Unfortunately, this court precedent supporting the no-liability principle enunciated by the FCC was reversed on appeal in December of 1950. The Circuit Court of Appeals did

¹Ibid., p. 740. ²Ibid., p. 742.
not specifically consider the no-censorship aspects of the decision but held that the lower court erroneously interpreted Section 315 as including spokesmen for candidates as well as candidates themselves. Commenting on the reversal, Broadcasting-Telecasting noted, "Attorneys familiar with libel law indicated the latest decision still leaves the broadcasters in a precarious position in connection with political broadcasts."

The case was appealed to the Supreme Court which declined to review it, and another hope of broadcasters to obtain legal sanction for relief of liability from defamation suits was dead. As Broadcasting-Telecasting noted, "Broadcasters were again left out on a limb... regarding libel liability..." Although the decision still left the same uncertainty as to the broadcasters' responsibility in respect to the statements of candidates, it was a definite reminder that they would be held liable for remarks made by non-candidates.

1 Felix v. Westinghouse Radio (appeal), 186 F(2d) 1, (1950).
4 Ibid.
Congress Again Considers Political Censorship Dilemma

Broadcasters, looking ahead to increased political broadcast activity in the 1952 elections, were given new hope of relief from their libel dilemma, when Congress again considered the question in 1951. Congress was reminded of the problem early in the year when hearings were held on S. 658, a bill introduced by Senator McFarland and previously passed by the Senate.1 No clarification of the "no censorship" provision was included in S. 658, but FCC Chairman Wayne Coy reminded the Committee:

... it is time the Congress was clear as to what Section 315 means. If it says 'no censorship' does it mean there is no censorship, or does it mean that you can censor if you are liable under state laws for libel and defamation? I am making no recommendations about it because it is not included in this legislation.2

Coy then hinted at the coming WDSU decision of the FCC as he delivered a warning:

However, some of these days there is going to be a very grave case arise and the Commission's position, as we have made it quite clear ... is that we think there is no ground for any station to censor a political speech of anybody.3 [emphasis supplied]

2Ibid., p. 134.
3Ibid.
Remedial Legislation is Introduced

Coy made it clear that the Commission was impatient with the failure of Congress to clarify the "no censorship" provision since the Port Huron decision. It seemed that if Congress did not soon take steps to rectify the situation, the FCC might reaffirm its stand in the Port Huron decision.

In April of 1951, Senator Johnson, Chairman of the Senate Interstate and Foreign Commerce Committee, introduced S. 1379 which, among other things, would have relieved broadcasters of liability for defamatory remarks made by candidates or their spokesmen under the provisions of Section 315. No hearings were held on the bill.¹

In September of 1951, Representative Walt Horan introduced H.R. 5470 which, in clarifying Section 315, specified that broadcasters might not censor material broadcast under the section but would be relieved of liability for any civil or criminal action in any local, state, or federal court for the broadcast of the material.² The bill was referred to the House Committee on Interstate and Foreign Commerce which was still considering S. 658 and did not hold hearings on it. The NARTB strongly endorsed the Horan bill

¹"Political Shows," Broadcasting-Telecasting (October 1, 1951), p. 54.
and urged broadcasters to write letters to their Congressmen in support of it.

WDSU: FCC Restates its Port Huron Decision

While legislation to relieve broadcasters of liability was being considered by Congress, in October, 1951, the FCC dropped its temporary agreement suspending the Port Huron decision and restated the interpretation in strong terms.¹

In the 1949-50 mayoralty election in New Orleans, station WDSU had denied time to one candidate because he refused to delete libelous remarks from his script. Time had already been granted to the other mayoralty candidates. The candidate complained to the FCC and when WDSU's license renewal application was considered, the complaint was reviewed.

Although the Commission renewed the license of WDSU, it stated in its decision:

We do not see how Congress could have made it any clearer than it did in the proviso of Section 315 that a licensee may not censor the broadcast of a legally qualified candidate for public office.²

The Commission admitted that in the 1948 hearings before the Select Committee to Investigate the FCC, Chairman Coy had agreed to a "grace" period for settlement of the

¹In the Matter of Application of WDSU Broadcasting Corp., New Orleans, La., for Renewal of License, 7 RR 769.

²Ibid., p. 770.
question. However, it pointed out that the Select Committee had taken no action and that since the Port Huron decision no pertinent legislation had passed nor had any judicial decision resolved any of the questions. The Commission indicated, "We believe it is important, especially with a national election in the offing, that there be as little confusion and doubt as possible on the important question whether licensees are free to censor political broadcasts . . ."\(^1\)

The Commission concluded:

We will . . . in the future, consider that there is no open question with respect to censorship on the part of the licensee of material broadcast under Section 315, and licensees will be expected to abide strictly by the provisions of that section.\(^2\)

The WDSU decision gave broadcasters the dismal prospect of facing the election broadcasts of 1952 being forbidden to censor political speeches to prevent broadcasts of defamation, without being assured that they would be at all free of liability in the defamation suits which might follow.

California Court Follows
Felix v. Westinghouse

A glimmer of hope was given to broadcasters that the courts might begin to follow the lead set by Felix v. Westinghouse before it was appealed. Shortly after the WDSU decision a California district court held that in political broadcasts under Section 315, "The station cannot be sued for

\(^1\)Ibid., p. 773. \(^2\)Ibid.
libel and it has the right to make a disclaimer, which it does and can in no way be held responsible for what is said . . ."¹ However, the decision was somewhat reduced in value by the fact that it came from a lower court and that the judge stated, "I don't desire to create any precedent."² Nevertheless, the decision was a beginning.

As 1951 neared an end, with a presidential campaign year fast approaching, Congress had taken no action on either H.R. 5470 or S. 1379. Broadcasting-Telecasting suggested that since censorship was permissible in speeches by non-candidate, "the chief advantage to be gained by restricting the air to non-candidates is chiefly that of avoiding or at least minimizing the danger of libel." It concluded that, "for broadcasters, it will be a year of be-damned-if-you-do and be-damned-if-you-don't, the uncomfortable objective being to figure a way to be damned the least."³

About one-third of the states now had laws which did not hold the broadcaster liable if he exercised due care. However, they offered the protection in varying degrees. The NARTB still was working with broadcasters to influence state legislatures to adopt a model defamation statute.

¹Yates v. Associated Broadcasters, 7 RR 2088, (1951).
²Ibid., p. 2089.
⁴"Politics on Air," Broadcasting-Telecasting (December 17, 1951), p. 29.
More Remedial Legislation is Introduced

Early in 1952, Senator Johnson introduced S. 2539, to replace his earlier bill S. 1379, which incorporated another proposal to relieve broadcasters from the political libel dilemma. The bill required that a candidate post bond with the broadcaster for protection of the broadcaster from "loss as a result of any civil or criminal action arising in any local, state, or federal court because of any material broadcast by such person." The bond equaled the amount of one year's salary of the office sought by the candidate and the bill specified that the licensee would be held "liable in any local, state, or federal court because of any material in such a broadcast only to the extent of the bond required."

Observers were quick to point out that there might be some question as to the constitutionality of the bill. However, Broadcasting-Telecasting supported the bill as at least a stop-gap measure saying that, "in essence we believe Senator Johnson is on the right track. Every effort must be made to bring his legislation to hearing . . . as soon as possible, with the hope of correcting the law before the full vigor of the 1952 campaign is developed." But no definite committee action was taken on S. 2539.

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In May, 1952, Representative O'Hara introduced H.R. 7782 to add to the growing group of bills designed to relieve broadcasters in political defamation situations. The bill prevented the licensee from exercising power of political or partisan censorship. However, it placed no obligation upon him, "to broadcast any defamatory, obscene, or other material which may subject it [licensee] to any civil or criminal action in any local, state, or federal court."\(^1\)

The bill would have solved the problem of liability for the broadcaster in the same way as did the Sorenson v. Wood decision, empowering the broadcaster to censor defamatory remarks. O'Hara was quoted as saying he had designed the bill "to place the broadcasting station on the same basis as the newspaper in taking a political advertisement."\(^2\) O'Hara's solution was not subject to the stigma of possibly being declared unconstitutional, as were the other legislative proposals. On the other hand, many members of Congress seemed to be dubious about how trustworthy broadcasters would be in exercising the power of censorship wisely.

*Broadcasting-Telecasting* strongly supported the O'Hara bill, saying, "For the first time truly sensible legislation has been introduced to relieve the broadcaster of the be-damned-if-he-does and be-damned-if-he-doesn't dilemma now.

\(^{1}\)"O'Hara Bill," *Broadcasting-Telecasting* (May 12, 1952), p. 25.

\(^{2}\)Ibid.
confronting him in programming of political speeches." Broadcasting-Telecasting felt that, "though delay may be entailed, we believe the wiser course is to throw the industry's support behind Representative O'Hara's measure."¹

The NARTB, on the other hand, continued its support of the Horan bill, H.R. 5589. It noted that, "Mr. O'Hara said that he was of the opinion that members of the Congress would be reluctant to give up some protection in the law against censorship of their program content by the broadcasters. The FCC by previous utterances and declarations would seem to support the reservations as well . . . ."² The association also pointed out that because of broadcaster response to the Horan bill, "Congress is now fully conscious of the present impossible situation in which the industry finds itself with respect to political broadcasting."³

At this point, three legislative proposals were pending before the 82nd Congress, designed to solve the censorship and liability problems of broadcasters under Section 315: S. 2539, which would have prohibited censorship and would have required candidates to post a bond to be used by the station if it were sued for any libelous remarks the candidate might broadcast;

¹"We Vote O'Hara," Broadcasting-Telecasting editorial (May 19, 1952), p. 50.
³Ibid.
H.R. 5589, which would have prohibited censorship and would have absolved the broadcaster of any civil or criminal liability for defamatory remarks broadcast; and H.R. 7782, which would have made broadcasters liable for defamation but would have given them opportunity to censor defamatory statements but not the political content of speeches by candidates.

Remedial Legislation Passes House

Then, on June 17th, 1952, S. 658 was brought up for consideration in the House of Representatives. The issue of censorship of political broadcasts became an important area of the debate. As previously mentioned, the bill contained no change in Section 315. However, both Representative O'Hara and Representative Horan planned to offer amendments affecting the censorship provision of the section, similar to the respective bills they had introduced in Congress. Thus, the House had the two alternative methods for solving the broadcasters' problem clearly set before them.

In the debate, Representative O'Hara stated his view:

But if they are going to permit broadcasts, then they are going to have to assume also some of the liability and some of the responsibility of controlling the vicious types of statements that are made that are defamatory or obscene.¹

Representative Horan criticized the major weakness in O'Hara's proposal of allowing stations to censor defamatory content, that of differentiating between partisan political content and defamatory content. This brought a quick rebuttal from O'Hara challenging the constitutionality of Horan's proposal to relieve stations of liability:

Rep. Horan: ... the trouble would come in deciding what was partisan or political, because most defamatory statements would come in political broadcasts. The result would be that the radio station would find itself between the courts and the FCC.

Rep. O'Hara: Does the gentleman think the Congress could pass an act which would amend and change the police powers of the states as affecting libel or slander?

Rep. Horan: I am not sure about that, but I do know that you have interstate, even national broadcasts which come within the purview of the National Government in the matter of the morals concerned in any such broadcast ... 1

The recurring fear of many congressmen about the placing of the power of censorship in the hands of the broadcaster was voiced by Representative McCormack:

It seems to me that our speeches should not be censored by station. ... We all know there is a twilight zone. What one station might think is libelous another station might not. Furthermore, partisan considerations might enter into the interpretation or the evaluation of a speech as to whether or not it is libelous.2 [emphasis supplied]

O'Hara then introduced his amendment to S. 658 which specifically stated:

... the licensee shall have no power to censor the material broadcast; but the licensee may require deletion

1Ibid., p. 7403. 2Ibid.
of any defamatory, obscene, or other matter which would subject the licensee to any civil, or criminal liability in any Federal, State, or local court.¹

In final support of the amendment, O'Hara made the inevitable comparison of the broadcast media to the press:

Why should it not apply to radio stations? If a newspaper took a political advertisement that was libelous, it would be responsible if it carried it in the newspaper . . . ²

This view was promptly rebutted by Representative Meader:

. . . there is certainly a physical and mechanical difference between broadcasting and newspapers, and it is in that difference that I am concerned. A newspaper must always make a record . . . It cannot be read until it is printed, and there is an opportunity to edit it. But, where you have these extemporaneous programs, some of them being the most interesting . . . it seems to me you are placing a terrific liability on the publisher of the news broadcast or the television broadcast.

The O'Hara amendment failed by a vote of 37 to 59.

Then Representative Horan introduced his amendment to Section 315. The portion affecting the censorship provision provided that:

The licensee shall have no power to censor the material broadcast . . . and the licensee shall not be liable in any civil or criminal action in any local, State, or Federal court because of any material in such a broadcast except in case said licensee shall wilfully, knowingly, and with intent to defame participate in such broadcast . . . ³

Horan's amendment passed 92 to 27.

¹Ibid., p. 7412. ²Ibid. ³Ibid., p. 7415.
Immediately after passage, Representatives Hoffmann and Dondero bitterly attacked the amendment:

Rep. Hoffmann: This amendment ... is an invitation to a foul, dirty, villifying campaign over the radio.

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Rep. Dondero: I think the amendment which the committee adopted is the invitation for the lowest kind of a political campaign.¹

It now appeared that broadcasters were close to receiving the legal immunity from liability for defamatory remarks in political broadcasts which they had so long sought. However, the House version of S. 658 contained several amendments to the Senate version making it necessary to submit the bill to a joint conference committee.

Conference Committee Deletes No-Liability Provision

In conference committee the "no-liability" provision of the House bill was thwarted. The committee deleted this part of the Horan amendment explaining: That it had "not been adequately studied" by the Committees on Interstate and Foreign Commerce of the Senate and House of Representatives:

The proposal involves many difficult problems and it is the judgement of the committee of conference that it should be acted on only after full hearings have been held.²

¹Ibid., p. 7417.

Once again broadcasters were denied legal immunity. Broadcasting-Telecasting commented, "It is a pity that a major revision of the Communications Act would be made without the complete overhauling of the section . . . the section providing immunity from libel having been stricken, there is no chance now for immediate relief."¹

No further definitive action was taken in Congress or the courts on the political censorship problem until 1955. However, local broadcasters, since they had received no aid from Congress, continued their attempts to obtain protection from defamation suits under state laws. The WDSU decision of the FCC left no doubt that broadcasters would not be permitted to censor material broadcast under Section 315.

Supreme Court Ends Controversy

In July, 1955, the Connecticut court decision in Charles Parker v. Silver City Crystal Co.² began a series of court precedents which, with the first Felix v. Westinghouse decision, were eventually to lead to the Supreme Court decision interpreting the "no-censorship" provision of Section 315 as relieving broadcasters of liability for defamation broadcast under the provisions of this section.

In the case, a candidate for mayor broadcasting under the provisions of Section 315, allegedly made defamatory remarks for which the station was sued. The court pointed out:

Any political campaign is a process of debate and appeal publicly conducted in a way to bring knowledge to the voters to assist them in making a choice on election day. It is a time-honored institution indispensable to our way of life. Courts must be careful not to permit the law of libel and slander to encroach unwarrantably upon the field of free public debate. ¹ [emphasis supplied]

In concluding that the station was free from liability the court stated:

As to the defendant company, it was under a legal requirement to permit the broadcast. Power to censor the script was denied it. . . . Unless it could be shown that the defendant company maliciously permitted its facilities to be used, or that it knew that the facts stated were false and yet allowed the broadcast, or otherwise acted in bad faith, it too is shielded by privilege. ²

The court felt that since stations were prohibited from censoring under Section 315 they had a qualified privilege which exempted them from liability as long as they exercised "good faith" and did not participate in the broadcast of the defamation.

NAB Advocates Repeal of Censorship Prohibition

Also in 1955, in testimony before the Senate Subcommittee on Privileges and Elections, NARTB President Harold Fellows indicated in his statements on the "no-censorship" provision of Section 315, an apparent change in the viewpoint

¹Ibid. ²Ibid.
of the NARTB. Instead of calling for Federal legislation relieving broadcasters of defamatory liability, Fellows advocated abolition of the prohibition against censorship of political broadcasts:

But the problem . . . is that you are not at all safe under a Federal regulation. It is dependent entirely on the attitude of each state.¹

* * * * *

The great majority of broadcasters do not believe there should be any regulations or acts in connection with the encroachment upon the responsibility and the obligation of the licensee to determine what goes on his station, how it is handled, whether or not it is paid, or free in the public interest.

This is the only instance and basically the broadcasters believe it is wrong.²

Apparently, the NARTB saw new validity in the argument that the constitutionality of a Federal regulation exempting broadcasters from defamatory liability would be extremely questionable. Evidently, more permanent relief was seen in abolishing the censorship prohibition altogether.

Efforts to Modify State Libel Laws

By early 1956, mainly through the efforts of the NARTB and local broadcasters, 36 states and the Territory of Alaska had amended their libel laws to provide some degree of protection to broadcasters. 27 states had specifically enacted


²Ibid., p. 100.
laws providing that the licensee, his agent, or his employee
would not be held liable for a defamatory statement uttered by
a candidate under the provisions of Section 315.1 However,
broadcasters, and more particularly the networks, did not con-
sider immunity adequate. The degree of protection in the
states varied substantially in some cases.

Congress Again Considers
Remedial Legislation

Then Congress, for the first time since 1952, again
seriously turned its attention to legislation to relieve broad-
casters of defamatory liability. Representative Miller intro-
duced H.R. 4814 in early 1956, which would have added to
Section 315 a provision that:

No licensee, or agent or employee of a licensee, shall
be liable in any civil action in any court because of any
defamatory statement made by a legally qualified candi-
date for public office in a broadcast made under the pro-
visions of this section . . . unless . . . they participate
in such broadcast wilfully, knowingly, and with intent to
defame.2

The FCC strongly supported H.R. 4814. Chairman
McConnaughey stated:

Some progress has been made through State legislation
to give immunity to broadcasters. However, the existing
State legislation is not, in the Commission's opinion,
adequate.3

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1U.S., Congress, House Subcommittee of the Committee on
Interstate and Foreign Commerce, Hearings on Misc. Bills,
Communications Act Amendments, 84th Cong., 2nd Sess.,
January 31, February 1, 2, 3, 7, 8, and April 19, 1956.
2Ibid., p. 8. 3Ibid.
McConnaughey also delivered the strongest endorsement the Commission had yet given to the constitutionality of such a proposal:

We have no doubt as to the authority of Congress, having forbidden censorship, to grant immunity from civil liability to broadcasters in State and local, as well as Federal courts.¹

The NARTB also supported H.R. 4814. In a long session of testimony before a Subcommittee of the Committee on Interstate and Foreign Commerce, Robert Heald, Chief Attorney of the NARTB stated:

This is an amendment which the broadcasters of this nation have long advocated and which is necessary if the congressional objective of Section 315 is to be completely accomplished.²

He also reviewed the state statutes on libel and defamation and concluded that:

Unfortunately some of these statutes do not completely solve the broadcaster's problem. Moreover, State remedial action is slow and will never be effective until identical statutes are adopted by all 48 states. Federal legislation is the only practical remedy.³

Heald agreed with the FCC in supporting the constitutionality of the proposal. When asked by Representative Rogers what effect he felt the remedy would have on state laws in conflict with it, he replied:

I feel . . . and I think there is substantial authority from the courts, that this is a matter of Federal jurisdiction and Federal legislation would preempt the field

¹Ibid. ²Ibid., p. 268. ³Ibid., p. 269.
and that the state courts would be bound to adhere to it, to follow this rule, and it would be constitutional.¹

In commenting on why broadcasters had never taken the most obvious protective step of refusing to carry political broadcasts altogether, Heald pointed out:

They have a responsibility to operate in the public interest. Any station that would refuse to give political candidates time would probably and would very definitely be charged with failure to live up to its responsibility as a licensee. When its license came up for renewal, a very serious question would arise as to whether or not it should be renewed.²

This responsibility of broadcasters, in the eyes of the FCC, to carry political speeches will be dealt with in more detail later. However, it had effectively prevented broadcasters from withdrawing from the field of political broadcasting in any great degree, as a defense against liability.

Representative Harris, the Chairman of the Interstate and Foreign Commerce Committee, indicated that Congress might still be dubious about its constitutional power. He determined that several states had passed more satisfactory libel laws since S. 658 was considered in 1952. He commented:

The reason I bring that up is that we had the same question up then and we ran right into the old question which has been raised here today as to the Federal Government preempting the State's long-established right or prerogative in this field. Congress was reluctant to do it at that time.³

¹Ibid., p. 271. ²Ibid., p. 297. ³Ibid., p. 307
Court Decisions Support Charles Parker v. Silver City

In 1958, two court decisions supported the finding in Charles Parker Co. v. Silver City Crystal Co. that broadcasters should not be held liable for statements made by candidates under the provisions of Section 315.

In Farmers Educational and Cooperative Union of America v. WDAY, the station had broadcasted a speech by a candidate under the provisions of Section 315. The station had previously reviewed the script and found libelous remarks which it had urged be deleted. The candidate refused and insisted the script be broadcast. The station was sued for libel.

In reviewing the case, in April, 1958, the Nebraska Supreme Court noted:

It appears clear . . . that the Congress has taken full control of interstate radio and television communication.

* * * * *

If WDAY is immune from liability such immunity is a privilege granted by Section 315, and is either an absolute privilege or a qualified privilege.1

* * * * *

We cannot believe that it was the intent of Congress to compel a station to broadcast libelous statements and at the same time subject it to the right of defending actions for damages.2


2 Ibid., p. 109.
In holding that WDAY was not liable the court concluded that:

WDAY . . . had no choice other than to broadcast the speech. If the speech was libelous the plaintiff had its recourse and remedy against the author of the speech who delivered it through the facilities of . . . WDAY.\[emphasis supplied\]

In July, 1958, a Tennessee court also held in Lamb v. Sutton that the defendant stations were immune from liability since the defamatory statements for which they were sued were broadcasted by candidates under the provisions of Section 315. It stated:

. . . the court is of the opinion that Congress in the Federal Communications Act of 1934, as amended, completely occupied and preempted the field of interstate communications in radio and television, and that from the censorship provision in Section 315, and other regulatory provisions of the act, there results by necessary implication an immunity from liability for defamatory material broadcast by a legally qualified candidate.\[emphasis supplied\]

Supreme Court Clarifies the Problem

Finally, in 1959, after 25 years of doubt, the responsibilities of broadcasters under the "no-censorship" provision of Section 315 were resolved by the United States Supreme Court. In a close 5-4 decision it held that:

. . . the section of the Federal Communications Act providing that a licensee shall have no power of censorship over material broadcast by a legally qualified candidate to public office bars a broadcasting station from removing defamatory statements contained in speeches broadcast by

\[1\text{Ibid.}, p. 110.\]

legally qualified candidates for public office and grants the station a federal immunity from liability for libelous statements so broadcast.1 [emphasis supplied]

In determining that Congress intended to completely prevent broadcasters from censoring, the court noted that:

... it is obvious that permitting a broadcasting station to censor allegedly libelous remarks would undermine the basic purpose for which Section 315 was passed — full and unrestricted discussion of political issues by legally qualified candidates.2

The court also emphasized what it felt would be some of the dangers of allowing stations to censor political speeches even as to their defamatory content:

Quite possibly, if a station were held responsible for the broadcast of libelous material, all remarks even faintly objectionable would be excluded out of an excess of caution. Moreover, if any censorship were permissible, a station so inclined could intentionally inhibit a candidate's presentation ... 3

The court coupled this rather dim view of the responsibility stations could be expected to exercise if they were given the power of censorship, with a recognition of the effect censorship could have on candidates:

... allowing censorship, even of the attenuated type advocated here, would almost inevitably force a candidate to avoid controversial issues during political debates over radio and television, and hence restrict the coverage of consideration relevant to intelligent political decision. We cannot believe ... that Congress intended any such result.4

2Ibid., p. 1304. 3Ibid., p. 1305. 4Ibid.
After determining that stations were definitely prevented from censoring under Section 315, the court interpreted the lack of action by Congress in the face of the FCC interpretation that stations should not be held liable for defamation suits arising out of Section 315 as Congressional acquiescence to this view:

Not only has this interpretation been adhered to despite many subsequent legislative proposals to modify Section 315, but Congress with knowledge of the Commission's interpretation has since made significant additions to that section without amending it to depart from the Commission's view. In light of this contradictory legislative background we do not feel compelled to reach a result which seems in conflict with traditional concepts of fairness.\(^1\)

The dissenting opinion, written by Mr. Justice Frankfurter, seriously questioned whether the FCC had strongly maintained the principle that Section 315 conferred immunity from liability:

Dictum in the Port Huron decision was affirmatively embraced by only two of the five commissioners who presided. Since Port Huron the Commission has referred to its language in increasingly tentative fashion.\(^2\)

Frankfurter also seriously questioned the right of the court to usurp the law:

States should not be held to have been ousted from power traditionally held in the absence of a clear declaration by Congress that it intends to forbid the continued functioning of the state law or an obvious and unavoidable conflict between the federal and state directives.\(^3\)

\(^1\)Ibid., p. 1307. \(^2\)Ibid., p. 1310. \(^3\)Ibid., p. 1311.
The Supreme Court thus reaffirmed the Port Huron decision of the FCC. It apparently solved the problems of broadcasters for libel liability under Section 315 and clearly defined the fact that they did not have the right to censor material broadcast under the section. Congress now did not need to have any legal compunctions about violating the Constitution by clarifying Section 315 to exempt broadcasters from liability. However, at this writing they have taken no legislative steps to do so.

NAB President Harold Fellows hailed the Supreme Court decision as, "gratifying to all Americans because it reflects the sense of fair play which is traditional in this country. It is particularly gratifying to broadcasters who otherwise would have been caught in the legal vise of a federal statute on one hand and state libel laws on the other."¹

A more ominous note was struck by Broadcasting's evaluation of the decision:

On the surface the ruling is vastly appealing. But the ruling legitimizes the evil theory that broadcasters are incompetent to exercise the kinds of editorial judgement which are accorded to the press by the First Amendment.

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If the United States government, through an act of Congress, endorsed by the Supreme Court, is to deny broadcasters the right of editorial judgement in the

¹"Sec. 315 Libel Dangers Ended," Broadcasting (July 6, 1959), p. 34.
presentation of political oratory, the inevitable flow of regulation from that denial will be curtailment of other rights. ¹

Whether this prediction will be realized remains to be seen.

CHAPTER III

THE DEVELOPMENT OF SECTION 315 DURING
THE RADIO ERA--1927 TO 1949

General Background

In addition to the difficulties imposed on broadcasters by the "no-censorship" provision of Section 315, the "equal opportunities" requirement also posed many problems which complicated the handling of political broadcasts. Section 18 of the Radio Act of 1927, and later Section 315 of the Communications Act of 1934, stated:

If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station, and the licensing authority shall make rules and regulations to carry this provision into effect . . . 1

Over the years, there has been considerable confusion and controversy among broadcasters as to the meaning of this section: as to what constitutes a "legally-qualified" candidate; as to how far the provisions of Section 315 extend (do they apply to "legally-authorized" spokesmen, for instance;)

and as to what constitutes an "equal-opportunity." These and other problems have been reflected in the activities of Congress in attempting to draft legislation to satisfactorily amend Section 315 and in the interpretations of the FCC which have attempted to clarify the section.

Throughout its history, broadcasters have almost always opposed Section 315. As political campaigns have become more complex and relied more on broadcasting, particularly since the advent of TV, licensees have pointed to the restrictive effect which the section could have. Demands from minority parties for "equal-time" became so intensive in the early 1950's that broadcasters were forced to limit the free time they gave to major party candidates to prevent the granting of an overbalance of time to fringe political parties.

Two major changes have been made by Congress in Section 315. The first, in 1952, was an additional restriction on broadcasters preventing them from charging discriminatory rates to political candidates. The second, in 1959, was a provision exempting certain programs from the provisions of Section 315, thus permitting broadcasters to exercise their own discretion in granting time to political parties. This they hailed as a major victory.

The development of Section 315 as a regulation on political broadcasting is complicated by the legal intricacies
of state statutes, FCC interpretations, and speculation from broadcasters and lawyers as to the intent of Congress. A chronological survey of its development will perhaps best serve to illustrate the problems which the regulation has imposed.

**FCC Rulemaking to Clarify Sec. 315**

In its initial regulation of political broadcasts in Section 18 of the Radio Act of 1927, Congress obviously intended the Federal Radio Commission to clarify the section with specific regulations. When Senator Dill was questioned on specific applications of his amendment, which became the heart of Section 18, he stated, "We believed that the Commission, given power to make regulations, would cover those details." Section 18 specifically stated:

> the licensing authority shall make rules and regulations to carry this provision into effect.

The regulation of the Federal Radio Commission governing Section 18, was Rule 178 of the Commission's Rules and Regulations. The rule did nothing to clarify the section. It merely restated it with the admonishment:

> Any violation of this section of the act shall be sufficient grounds for the revocation or denial of a broadcast license.

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1 U.S., Congressional Record, LXVII, Part 11, p. 2567.
In Rule 172 an additional requirement was imposed regarding political broadcasts that, "If a speech is made by a political candidate, the name and political affiliations of such speaker shall be entered."\(^1\) When the FCC took over the functions of the FRC, it also employed substantially the same language in its rules concerning political broadcasts by candidates.

**FCC Adopts New Rules Governing Sec. 315 in 1938**

However, it was not until 1938 that the FCC made any significant change in its "political broadcast" rule, in spite of numerous requests for expansion to clarify the meaning and scope of Section 315.

On July 1, 1938, the FCC adopted new rules covering political broadcasting to take the place of Rule 178.\(^2\) The major additions to the existing rule provided that rates charged for facilities offered to political candidates should not be rebated by any direct or indirect means. No preference, prejudice, or disadvantage was to be shown to candidates in connection with their use of a station's facilities. The Commission also required stations to keep a record of all requests for time made by political candidates and the manner in which they handled the requests.

\(^1\)Ibid., p. 50.

The Commission included in the rule a provision which defined the phrase "legally-qualified" candidate. It specified:

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 qualification prescribed by the applicable laws to hold the office for which he is a candidate, so that he may be voted by electorate directly or by means of delegates or electors, and who

a) has qualified for a place on the ballot or
b) 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.1

The major criticisms of the Commission's definition were its broadness, and its dependence on the state election laws for final determination of the status of a candidate.

One observer noted:

The words 'legally qualified' manifestly limit the word 'candidate.' In the Federal Constitution there are certain familiar qualifications prescribed for those who would seek Federal elective office. But it is within the competency of the States to control the manner of the election, so even with regard to Federal elective offices the States may require legal qualifications in addition to those found in the Constitution.

* * * * *

... to avoid confusion, and set a definite standard, it would seem desirable to promulgate a rule which would

apply uniformly and not depend for interpretation on the myriad election laws.\textsuperscript{1}

In spite of the difficulty broadcasters faced in deciphering state election laws, particularly in regard to national candidates, the Commission did not change or implement its definition. It stood unclarified.

\textbf{Congress Considers Expansion of Political Broadcast Law—S. 814}

In 1943, in the first session of the 78th Congress, consideration was given to expanding the regulation of political broadcasts. Senators Wheeler and White introduced S. 814 which included several sections relating to political broadcasting but did not specifically alter Section 315.\textsuperscript{2}

Section 10 of the bill merely restated Section 315.

\textbf{Problems of Equal Opportunity for Political Parties between Elections}

However, Section 11 would have added a section (332) to the Communications Act specifying:

Sec. 332 In all cases where public officers other than the President of the United States use a radio-broadcast station for the discussion of public or political questions, the licensee of any station so used shall afford a right of reply to any person designated


\textsuperscript{2}U.S., Congress, Senate, Committee on Interstate Commerce Hearings on S. 814, To Amend the Communications Act of 1934, 78th Cong., 1st Sess., November 3, 4, 5, 9, 11, 12, 15-19, 22-24, 29-30; December 1-4, 6-10, 14-16, 1943.
by the accredited representatives of the opposition political party or parties. In all cases the right of reply herein provided shall be afforded upon the same terms and conditions as the initial discussion.1

Apparently in drafting Section 331 the authors of the bill agreed with the criticism of Section 315 by such observers as C. B. Rose, Jr. in his National Policy for Radio:

But it does nothing to equalize the fight between political parties between elections. The party in power, by virtue of holding office receives more time than the opposition. That is, the public eager to hear what a cabinet officer or other government official has to say but cares less about his defeated opponent's opinion.

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The fear persists in the broadcaster's heart that anti-administration activity over his station may adversely affect his chances of having his license renewed.2

Section 332 would have acted to alleviate any existing inequality in which broadcasters favored a particular party or candidates--although the problem was certainly more limited than the charges of certain partisan critics indicated. However, it would also have vastly extended the powers of Congress in the field of political broadcast regulation, a move which broadcasters bitterly opposed.

In hearings on S. 814 before the Senate Interstate Commerce Committee, early in 1943, Senator Wheeler, an outspoken critic of broadcasting in the area of fair presentation of political discussions, charged that:

1Ibid., p. 4.

... when the administration goes on the air at the present time, or anybody under the administration, every station carries the program. But when the opposition goes on if the station does not like what he stands for, or his views, they do not carry him.¹

FCC Chairman Fly supported Section 332 and reminded broadcasters of the obligation which they had to the public:

... I think you can very properly say that in terms of this mechanism of free speech a broadcaster has more of a duty than a right. That is, the mechanism of free speech is entrusted to him by the public, and there comes the public obligation to use that in the public interest.² [emphasis supplied]

Fly's view was directly opposed by William Paley, President of CBS. In objecting to Section 332, he indicated:

It is impossible to prove scientifically and mathematically, in any particular case, that there has been absolute fairness in the presentation of the opposing views on any subject. Since such proof is impossible, the result will be, I fear, that many broadcasters will solve the problem of avoiding unfairness by simply not broadcasting political programs.³ [emphasis supplied]

Whether broadcasters could completely abdicate the field of political broadcasting, as Paley suggested, was to become an increasing point of contention. It seemed unlikely that broadcasters could do so without violating the "duty" of which Chairman Fly spoke. The subject later drew more definitive comment from the commission on the public service responsibility of broadcasters to carry some political programs.

¹Hearings on S. 814, op. cit., p. 100. ²Ibid., p. 118. ³Ibid., p. 100.
FCC Commissioner T. A. M. Craven, in testimony at the hearings, supported broadcasters in the face of criticism such as that from Senator Wheeler. He suggested that "natural laws", providing increased access to the microphone by allocation of more channels, could be relied on to correct any inequalities in political broadcasting. He strongly endorsed the current policy of broadcasters, suggesting that, "So far as I know, licensees generally have conformed to this principle voluntarily and have been fair, with exceptions too rare to be important."\(^1\)

It would seem that Craven's evaluation of broadcasters' responsibility was probably more accurate than Senator Wheeler's. Certainly broadcasters, by virtue of their duty to inform the public of operations of government, might have been expected to provide more time to officers of the administration than to the opposition party.

Craven expressed the feeling of many broadcasters when he stated:

\[\text{. . . if you decide to legislate 'fairness' into radio and desire to specify rights of access to the microphone, would it not be preferable to enact a law which prohibits known abuses rather than to draft legislation which prescribes how the objective must be accomplished?}^2\]

\(^{1}\text{Ibid., p. 507.}\) \(^{2}\text{Ibid., p. 517.}\)
FCC Suggests Additions to Section 315

Several suggestions relating to the clarification of Section 315 were made by Chairman Fly. He urged that the section should more explicitly indicate that it was applicable in primary elections. He pointed out, "... there has been some little doubt on that subject. And we think it is just as important that it be applicable there as in other cases." Although such a provision was not included in the bill, the Commission later specifically interpreted Section 315 to include primary elections.

Fly also suggested that the section be extended to apply to the supporters and opponents of candidates, pointing out that, "If a predominant force gets behind one candidate and gets a lot of time on the air, then nobody is entitled to request equal facilities under the law in order to offset that ... " While Fly could cite no cases in which broadcasters had given an unfair balance of time to supporters of one candidate over another, he apparently felt that the mere existence of the possibility that they might, justified such a regulation. This proposal was to receive more serious consideration in future years.

Later in detailed comments on S. 814 submitted to the committee after the hearings, Fly included another proposal

\[1\text{Ibid.}, \text{p.} \, 59. \quad 2\text{Ibid.}, \text{p.} \, 60.\]
that would have specifically prohibited rate discrimination in the charges for political broadcasts. It stated that the rates should not "exceed the regular rates charged for the use of said station to sponsors furnishing regular programs."¹ The issue of rates for political broadcasts was destined to receive further consideration, culminating in the passage by Congress, in 1952, of an addition to Section 315 regulating the rates for political broadcasts.

Opposing Points of View on the Equal Time Issue

Perhaps the opposing points of view at the hearings toward further regulation of political broadcasts are best represented in statements of William Paley of CBS and Senator Wheeler:

Mr. Paley: I have participated in many discussions with radio broadcasters, with members of Congress, and with other public leaders, and as a result . . . I have not changed my opinion that legislative guaranties are not the answer in the field . . . ²

Senator Wheeler: . . . you cannot leave it up to an industry which has such tremendous power over public opinion; you cannot let them say that they will give expression to the views of only one side of a question. If that happened in this country we might very easily have what they have in Germany . . . ³

After the hearings on S. 814 Senator Wheeler continued his support of Section 332. However, its co-author, Senator White stated in 1944, "I do feel . . . that the question of

¹Ibid., p. 944. ²Ibid., p. 100. ³Ibid., p. 694.
equal opportunity is charged with complexities and I can see where it would lead to disastrous results if we attempted to write a flat provision into the law."1

S. 814 did not receive the consideration of the full Congress. It was not reported out of committee.2 Thus, broadcasters had no definite indication as to whether Congress felt that they were so lax in the area of responsibility in political broadcasts that further regulation was needed.

**FCC's WDSU Decision: Equal Opportunities Defined**

In 1944, the FCC delivered its WDSU decision which gave a more specific definition of "equal opportunities" than was contained in Section 315. This was a phrase which broadcasters had found some difficulty in interpreting.

In the 1944 Louisiana primary Senator John Overton complained that WDSU in New Orleans had refused to grant him time for a political broadcast between the hours of 6 and 10 p.m. while his opponent E. A. Stephens, part-owner of the station, had received ample time in this period. WDSU's explanation was that it had a policy of not carrying any

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political broadcast if it was necessary to cancel a commercial program. Since the time period in question was all commercial it was not available.¹

In considering the scope of the phrase "equal opportunities" the commissions concluded that:

The obligation imposed . . . is not discharged merely by offering the same amount of time to each candidate. Quantity alone is not the sole determining factor, for it is a matter of common knowledge that the size of a station's potential audience, an important consideration in political broadcasts, is much larger during the early evening hours than in other portions of the broadcast day.² [emphasis supplied]

Licensee Responsibility to Carry Political Programs

The Commission also correlated the public responsibility of licensees with their duty to carry political broadcasts. It stated that the, "... station licensee has both the right and the duty to cancel such previously scheduled programs as may be necessary in order to clear time for broadcast of programs in the public interest."³ [emphasis supplied]

This statement, and Chairman Fly's testimony at the hearings on S. 814, seemed to indicate that, although broadcasters were specifically given the privilege of refusing to carry broadcasts by political candidates under Section 315, they might have a broader responsibility to carry them as part of their

¹In Matter of Hearing to Determine Whether Stephens Broadcasting Co. (WDSU) Has Violated Section 315 of the Communications Act, 3 RR 2.

²Ibid., p. 4. ³Ibid., p. 5.
obligation to serve the public. This policy was emphasized by the FCC in a later decision.

The Commission strongly condemned the WDSU policy of not cancelling commercial broadcasts saying that, "it reflects such a complete failure on the part of the respondents to appreciate their obligations as station licensees as to require severe censure of such policy." However, it took no action against the station and renewed its license on the promise that the policy would not be continued.

FCC's WNEW Decision: Section 315
Applies to Candidates and Not Parties

The Commission further clarified Section 315 in 1946. In New York State the Democratic Party, the Liberal Party, and the American Labor Party all nominated the same candidate for governor and also endorsed a joint candidate for U. S. Senator. The three parties claimed that each was entitled to an equal amount of time for sponsorship of its candidate. Thus, in effect, their candidates would have received three equal time periods to every one for candidates nominated by only one party.

WNEW, in New York City, when faced with this situation adopted a policy of affording equal time for the sponsorship of

1Tbid.

2Letter from F.C.C. to Thomas W. Wilson, counsel for WNEW, New York, N.Y., October 31, 1946, 11 RR 231.
each person who was a candidate for office, regardless of the
number of political parties which might have nominated the
particular candidate.

In reviewing the policy of WNEW, the FCC interpreted
Section 315 as applying to candidates and not political
parties, noting, "... this section has reference to the use
of facilities by 'persons' who are candidates for public
office and does not refer to political parties nominating such
candidates."¹ It held that:

... if broadcast time is made available for the use of
a candidate for public office the provisions of Section 315
would require that equal opportunity be afforded each
person who is a candidate for the same office, without
regard to the number of nominations that any particular
candidate may hold.²

Duty of Broadcasters to carry Political
Programs Re-emphasized

Although broadcasters were grateful to the FCC for
its restriction of Section 315 to candidates and not parties
they were somewhat disturbed by the Commission's further
clarification of its interpretation. After noting that
Section 315 did not include political parties the FCC pointed
out, "In such cases the general principle underlying the duty
of station licensees is that there must be fairness and
objectivity in making time available for the discussion of all
sides of controversial issues of public importance."³ Again

¹Ibid., p. 232. ²Ibid. ³Ibid.
the FCC seemed to be pointing to the duty of broadcasters to carry all types of political discussions. The immediate question for licensees was "what constituted 'fairness and objectivity' in areas of political broadcasting peripheral to Section 315?" This query was to remain unanswered for some time. But it was certain that the Commission expected broadcasters to carry political broadcasts.

**Congress Considers Revision in Political Broadcast Law--S. 1333**

In 1947, Congress again gave consideration to revising political broadcast regulation. In the first session of the 80th Congress, Senator White introduced S. 1333, a modified version of S. 814 which he had co-authored in 1943. Section 15 of the bill proposed extensive changes in Section 315.

**Broadcasters Not Obligated to Carry Political Broadcasts**

It first would have strengthened the statement that broadcasters were not obligated to carry any political campaign speeches by providing:

> Nothing in this Act shall be understood as imposing or as authorizing or permitting the Commission to impose any obligation upon the licensee of any radio broadcast station to allow the use of such station in any political campaign.\(^1\)

\(^1\)U.S., Congress, Senate, Committee on Interstate and Foreign Commerce, Hearings on S. 1333, To Amend the Communications Act of 1934, 80th Cong., 1st Sess., June 17, 18, 19, 20, 23, 24, 25 and 27, 1947, p. 6.
In commenting on this exemption at the hearings on S. 1333 before the Senate Interstate and Foreign Commerce Committee, Edmund Craney, a radio station operator in Butte, Montana, stated the view of many broadcasters:

For this, licensees should raise their hands in thanksgiving. No longer would a licensee be hauled before the Commission to explain why he did not sell time to someone who they thought should have time. A licensee would have to look only to the law.¹

Subsection (A) of Section 15 provided that:

(A) When any licensee permits any person who is a legally qualified candidate for any public office in a primary, general, or other election to use a broadcast station, or permits any person to use a broadcast station in support of any such candidate, he shall afford equal opportunities to all other such candidates for that office, or to a person designated by any such candidate, to use such broadcast station; and if any licensee permits any person to use a broadcast station in opposition to any such candidate, he shall afford equal opportunities to the candidate or candidates so opposed, or to a person designated by any such candidate, in the use of such broadcasting station.² [emphasis supplied]

Thus, subsection (A) incorporated two of the proposals made by FCC Chairman Fly during hearings on S. 814 in 1943.³ It would have extended the provisions of Section 315 to include primary elections and authorized spokesmen of candidates.

In commenting on the provision to extend Section 315 to primary elections, Edgar Kobak, president of the Mutual Broadcasting System, called it of "indifferent practical

¹Ibid., p. 547. ²Ibid.
³Supra, p. 105, chap. III.
value" since it largely conformed with the present practices of the industry.

Proposed Extension of Section 315 to Political Parties

Subsection (B) of Section 15 provided that:

When a licensee permits an official of a regularly organized political party, or a person designated by him, to use a broadcast station in any political campaign, then the corresponding official in all other regularly organized political parties, or a person designated by him shall have equal opportunities for its use.

In extending Section 315 to include political parties, the provision would have placed them under the direct "equal-time" requirements of the section. Thus, it would have spelled out more specifically the "fairness and objectivity" which the FCC had suggested should be exercised in handling broadcasts by political parties. Of course, it would also have provided another large group to which broadcasters would have had to be mathematically fair. The headaches of providing "statistically equal" coverage of politics would have been compounded.

Proposed Restriction of Use of Sec. 315 by Minority Parties

Subsection (C) of Section 15 would have greatly restricted the potential use of broadcast facilities during a campaign by providing that:

\[\text{Hearings on S. 1333, 80th Cong., 1st Sess., op. cit., p. 355.}\]
No licensee shall, during a political campaign, permit the use of the facilities of a broadcast station for or against any candidate for any public office except (1) by a legally qualified candidate for the same office; or (2) by a person designated in writing by such candidate; or (3) by a regularly organized political party whose candidate's or candidates' names appear on the ballot and whose duly chosen responsible officers designate a person to use such facilities.1

This was the most controversial of the additions to Section 315 proposed in S. 1333.

In pointing out the deficiencies of subsection (c), Charles R. Denny, FCC Chairman, called it "a great obstacle to the proper functioning of radio in a democracy."2 He indicated that minority parties who did not have a candidate on the ballot would be completely restricted from broadcasting:

The health of our democratic system depends in large measure upon the rights of minority groups to present their views to the American public. The amendment would also be extremely unfair to non-political groups such as the League of Women Voters. . . . Finally, the subsection would probably prevent news analysts or commentators from using the air during political campaigns, unless they refrained from discussing the campaign.

Edgar Kobak of MBS called subsection (C) "patently absurd." He observed, "Since when have American citizens, as well as religious and civic organizations, lost the right publicly to discuss candidates for public office?"4

Susan Anthony, representing the New York State chapter of the Progressive Citizens of America, noted:

1Ibid., p. 6. 2Ibid., p. 52. 3Ibid. 4Ibid.
Whatever the purpose of subsection (C) may be, its effect will be to harm our democratic system, which rests, in large measure, upon the rights of individuals or minority groups to present their ideas and their viewpoints to the rest of us.¹

The agreement of testimony at the hearings seemed to be that subsection (C), rather than relieving broadcasters of political broadcast problems by restricting the number of groups who could use their facilities, would simply serve to restrict the democratic availability of information channels.

Extension of Section 315 to Include Public Questions

Subsection (D) would have added yet another facet to the "equal-opportunity" requirements of Section 315 by including discussion of public questions within its provisions:

When any licensee permits any person to use a broadcast station in support of or in opposition to any public measure to be voted on as such in a referendum, initiative, recall, or other form of election, he shall afford equal opportunities (including time in the aggregate) for the presentation of each different view on such public measure.²

Broadcasters had complained that they were being deluged with requests for broadcast time to represent the varying viewpoints on public questions. They had indicated that, "unless some restrictions were placed on time made available, stations would be snowed under with scores of demands for time which could jeopardize their entire program

¹Ibid., p. 356. ²Ibid., p. 557.
schedules . . . "1 The committee obviously intended the subsection (D) to put a specific limit on the amount of time broadcasters would be required to give to opposing sides.

However, the committee qualified this well-intentioned protection, in much the same way the FCC had qualified its WDSU decision, with a reminder to licensees of their responsibilities. It urged, "The committee expresses the earnest hope that broadcasters will construe this provision liberally." The committee pointed out to broadcasters that they had, "as licensees, in a democratic republic an important duty to aid in the dissemination of varying viewpoints."2

Prevention of Political Broadcasts within 24 Hours of an Election

Subsection (E) also generated considerable opposition from broadcasters. It provided that:

No licensee shall permit the making of any political broadcast, or the discussion of any question by or upon behalf of any political candidate or party as herein provided, for a period beginning twenty-four hours prior to and extending throughout the day on which a National, State, or local election is to be held.

FCC Chairman Denny noted that the purpose of the subsection, "appears to be to prevent the making of sensational


2Ibid.

3Hearings on S. 1333, 80th Cong., 1st Sess., op. cit., p. 6.
and uncorroborated charges on the day of the election which the opponent finds himself unable to answer."¹ Denny agreed that such practices should be outlawed if possible. However, he pointed out, "the same thing can be done at the last minute on the day before election and thus the opponent would be prevented from answering."

Campbell Arnoux, President and General Manager of WTAR Radio, Norfolk, Virginia, emphasized that the day before the election, "is the time when the interest is highest. It is the time when the political broadcasts are most appropriate."²

Edgar Kobak of MBS charged that subsection (E) placed "broadcasting at an unwarranted disadvantage as against the press, . . . and it wholly ignores and nullifies radio's tremendous capacity and efficiency in stimulating civic responsibility and causing citizens to vote."³

Subsection (F) of the bill dealt with censorship of political broadcasts and has been previously discussed.

Equal Opportunities Defined

Subsection (G) attempted to define the phrase "equal opportunities" which broadcasters had found difficult to interpret. It stated:

. . . the term 'equal opportunities' as used in this section . . . means the consideration, if any, paid or promised for the use of such station, the approximate time of the day or night at which the broadcast is made.

¹Ibid., p. 52. ²Ibid., p. 268. ³Ibid., p. 356.
an equal amount of time, the use of the station in combination with other stations, if any, used by the original user, and in the case of network organizations, an equivalent grouping of stations connected for simultaneous broadcast or for any recorded rebroadcasts.¹

Although the subsection was intended to ease problems of broadcasters in interpreting Section 315, they were generally opposed to it. Many felt its very specificity limited necessary flexibility in the regulation. Also the networks objected because they were specifically included in the provision, a distinction which they did not desire.

Edgar Kobak of MBS noted:

Actually, it goes into too much detail as to what is meant by 'equal opportunities' and may be productive of injustices and uncertainty in the relations between networks and affiliates. Also for the first time it creates an obligation directly on the networks . . .²

General Opposition of Broadcasters to the Legislation

Frank Stanton, President of CBS, voiced a policy of complete repeal of Section 315, which he was to emphasize in future years:

Just as there are no congressional rules regulating the publication of newspapers and magazines during political campaigns, such regulations with respect to broadcasting are inappropriate. Moreover, I am not aware of such malpractice in the maintenance of fairness by broadcasters during political campaigns that such legislation is required.³ [emphasis supplied]

Mark Woods, president of ABC, also supported the present conduct of broadcasters:

¹Ibid., p. 6. ²Ibid., p. 365. ³Ibid., p. 322.
A highly commendable degree of impartiality in the treatment of political candidates has been maintained by broadcasters under the present act . . .

Both Woods and Stanton objected to the highly detailed provisions of Section 15; Woods by pointing out that the intention of the regulation might be thwarted, and Stanton by indicating a possible unfair effect on broadcasters and a consequent reduction in the number of political broadcasts:

Mr. Woods: It seems to me that a licensee intent on unfair treatment can more readily find a loophole in a detailed and specific provision that cannot possibly anticipate all the situations that may arise, than a provision which is general and all-inclusive in its terms. 2

Mr. Stanton: In an effort to plug all possible loopholes, the detailed provisions of the proposed Section 315 might well have the effect of inducing a large number of stations to refuse to carry political broadcasting at all. The minutiae of the proposed regulations are such as to cause any broadcaster to wonder whether it is possible in the course of a political campaign to avoid unintentional violation of some prohibition. 3 [emphasis supplied]

Congress Recognizes Political Broadcast Problems

That Congress recognized the problems inherent in extending political broadcast regulation was apparent in the very comment of Senator White, author of S. 1333:

These provisions about political broadcasting are rather difficult. There are almost as many views about it and how to meet it and how to carry knowledge to the people of the country and how to secure equality of opportunity to aspiring speakers, as there are people who are interested, and that is a lot. 4

1 Ibid., p. 268 2 Ibid. 3 Ibid., p. 322.

4 Ibid., p. 102.
In its report on S. 1333, the committee noted:

The testimony before the committee and the facts available to it clearly demonstrate that the overwhelming majority of licensees at the present time do attempt to maintain the proposed standards of fairness and equality now recommended to be written into the law, and it is not believed that the recommended section will work any hardships upon licensees.¹

Due to the sudden illness of its chief proponent, Senator White, S. 1333 never received the consideration of the full Congress. Thus, broadcasters were spared the detailed regulation of political broadcasts which S. 1333 would have provided and also the corresponding problems which probably would have arisen.

**Political Broadcast Problems in 1947 --the Truman Incident**

The problems of broadcasters in handling political broadcasts were emphasized in April, 1947. Republican National Chairman Carroll Reece threatened to demand free time from NBC, CBS, and MBS equal to that given President Truman for a Jefferson Day dinner Speech. He called it "an abuse of radio facilities."² He noted:

I fear the impression has grown up that free radio time is a royal perogative, something to be given without question whenever requested and without regard for the purpose to which it may be devoted. I feel confident that the broadcasting industry must regard this not only as

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nuisance, but as a very expensive nuisance . . . However, this use of free radio time has come to be accepted, and so long as the present administration remains in power, I see no possibility of any change in that situation.¹

Although the GOP had no rights under Section 315 to demand equal time, since Truman was not a candidate for any office, it nevertheless gave indication of how vitally concerned it was with the distribution of facilities for political broadcasts. Reece recognized the difficulties faced by broadcasters in the constant granting of free time. However, he was obviously not ready to encourage Republicans to ease the situation until the "abuses of radio facilities" were halted. Unfortunately for broadcasters, any use of broadcast facilities by the opposition party often was considered as "abuse."

FCC's Texas Quality Network Ruling

Also in 1947, the FCC expanded its earlier view of the broadcasters' duty to carry political broadcasts as part of their public service responsibility. This opinion was strongly emphasized in the Commission's memorandum opinion regarding a complaint by Homer P. Rainey.²

¹Ibid.

The Texas Quality Network (composed of WOAI, San Antonio, WFAA, Dallas, WBAP, Fort Worth, and KPRC, Houston) early in 1940, set up certain restrictions on political broadcasts by candidates for public office. These were implemented in later years to limit broadcasts by primary candidates to a total of thirty minutes between the date the candidates were certified and two weeks before the primary elections. After that the sale of time to the candidates was substantially limited.

Homer P. Rainey was denied a request by the TQN to purchase time for a political speech prior to the date he became a certified candidate in the 1946 primary. He was also informed that any broadcasts he might make after he was a candidate would be subject to the restrictions of the Texas Quality Network. Newspapers owned by three of the four stations in the network had already criticized Rainey's proposed candidacy and he charged that the network was conspiring to prevent him from answering the newspapers' attacks, thus encouraging his defeat.

The FCC held that since Rainey was not a certified candidate Section 315 was not violated by the denial of his request for time.

\[1^\text{Ibid.}, \text{p. 742.}\]
Public Service Responsibility of Broadcasters to Carry Political Speeches Reemphasized

It also pointed out how the restrictions of the network on political broadcasts might be considered a breach of the stations' public service responsibility:

... there remains for consideration the question as to whether the restrictions on political broadcasts imposed by the four licensees herein were calculated to best serve the public interest.

It appears that the amount of time available for political broadcasts had been set well in advance of the actual campaign and without particular attention having been given to the needs or public interest involved in the particular campaign. In view of the importance of the 1946 primary in Texas, and further, since the licensees well knew that in the 1946 primary relatively few candidates for state-wide office would desire to purchase time over the networks, these restrictions do not appear to bear a reasonable relationship to the needs or public interest in the particular campaign.¹ [emphasis supplied]

The FCC took no action against the Texas Quality Network pointing out, "It appears that in the future the amount of time set aside for such broadcasts will not be arbitrarily determined in advance but will vary from time to time as the public interest requires ..."² [emphasis supplied]

¹Ibid.
²Ibid., p. 743.
1948 Campaign

Broadcasters Actively Participate in Area of Political Broadcasts

That broadcasters were actively participating in the political broadcast field was strongly indicated in a survey conducted for Broadcasting-Telecasting by Audience Surveys, Inc., prior to the 1948 elections. The sample of commercial AM stations indicated that 99% of the broadcasters planned to sell time for political broadcasts during the 1948 campaign. 31% said they would actively solicit such broadcasts. The survey did not include the amounts of free time that many stations and the networks were planning to donate for the use of candidates in the campaign. However, some stations were already restricting the amount of free time given to candidates themselves. This was a protective measure because the broadcaster might be forced to grant additional free time to many other insignificant, but "legally-qualified" candidates.

1948 Campaign--TV and Rates

The 1948 campaign was marked by the limited use of television by candidates and also an increasing use of paid broadcast time by political parties.

2 Ibid.
Actually television was available only to about 40% of the nation's homes during the campaign, and its newness prevented it from becoming a major issue between broadcasters and politicians until the 1952 elections. However, it was destined to receive increasing attention both because of the high cost of its program time and its purported tremendously high persuasive power. Politicians were strongly aware of television and watched its development with great interest.

Political parties spent more money than ever before on broadcasting in the 1948 campaign. Expenditures totaled $1.7 million, with the Republicans accounting for about $600,000 and the Democrats about $494,000 of the total. Although television was available, the majority of the expenditures were for radio time.

It might be added that after Truman's unexpected and overwhelming victory in the presidential election, the Democrats were extremely enthusiastic about the role of the broadcast media, and particularly radio, in bringing about the success. Ken Fry, radio director of the Democratic National Committee, commented, "This campaign proved, if any proof were needed after the Roosevelt campaign, that outside of personal


contact, radio is by far the most effective means of reaching the mass of the public."\(^1\)

Broadcasting's role in the 1948 elections received a vote of confidence from Wayne Coy, FCC Chairman. He indicated:

... in the heated presidential campaign of 1948 the complaints reaching the F.C.C. concerning political broadcasts numbered less than six. And so far as I know, all of them were adjusted during the progress of the campaign.

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... the total performance of American broadcasting has resulted in the presentation of a breadth and diversification of opposing viewpoints that has established it as a people's forum of high utility to the functioning of our democracy.\(^2\)

However, Coy's endorsement was not unequivocal. He indicated that he, as well as the Commission, felt fair and responsible performance in the field of political broadcasting was no cause for abolishment of regulation, "... it is not safe to assume that things will always so continue ... here more than in any other field eternal vigilance is always indispensable."\(^3\) [Emphasis supplied]

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3Ibid.
FCC Rules Primary and General Elections Are Separate Considerations under Section 315

Also in 1948, the Commission further clarified Section 315 in a letter to a Texas station made public on October 22.\(^1\) It held that primary and general elections could be considered separately under Section 315. It also reemphasized the public service responsibility of licensees in political broadcasting.

Sam Morris, a candidate for U. S. Senator from Texas, had demanded equal-time on the basis of broadcasts made by an unsuccessful candidate for Senator in the primary. Morris was not a candidate in the primary.

The Commission ruled that since Morris was not entered in the primary he could not make demands for equal-time on the basis of broadcasts made by other candidates then. It also held that primary and general elections could be considered separately:

The Commission believes that while both primary and general elections are comprehended within the terms of Section 315, such elections must be considered independently of one another and equal opportunities . . . need only be afforded to legally qualified candidates for the same office at the same election.\(^2\)\(^{[\text{emphasis supplied}]}\)

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\(^1\)Letter from F.C.C. to Clair L. Stout, made public October 22, 1948, 4 RR 885.

\(^2\)Ibid., p. 886.
Duty to Carry Political Broadcasts is Reemphasized

However, the Commission qualified this separation of the equal opportunity considerations in primary and general elections by noting:

Elementary principles of fairness may dictate that a station which has afforded considerable time during the primary to candidates for nomination as the candidate of a party for a particular office should make a reasonable amount of time available to candidates for that office in the general election. No general rule can be laid down on this matter, and the licensee's responsibility to make such time available under its obligation to serve the public interest in a fair and impartial manner will obviously depend on the facets of the particular case.\(^1\) [emphasis supplied]

Thus, licensees were given the opportunity to refuse the requests of candidates in a general election for equal-time retroactive to broadcasts by other candidates in a primary. However, they were left somewhat confused as to what the Commission might consider a "reasonable" balance of time for candidates of parties for broadcasts in primary and general elections, if one of the parties was not entered in the primary.

The Rate Issue Arises Again

In 1949, a new issue arose in the regulation of political broadcasting. Some stations had been following newspaper precedent by charging higher than card rates for political broadcasts. \textit{Broadcasting-Telecasting} had commented, \(^1\)\textit{Ibid.}
"Some stations are playing with matches around a keg loaded with political dynamite. They are charging premium—oftimes double—rates for time purchased for political broadcasts."¹ The previously mentioned survey of political broadcasting taken by Broadcasting-Telecasting in 1948 indicated that the practice of charging higher rates was fairly limited. Of the commercial AM stations surveyed, only 24% indicated that they had special rates for political broadcasts.² However, the practice was definitely indulged in to a certain extent.

Early in 1949, Senator McGrath of Rhode Island introduced a bill to place sanctions, ranging from a 30-day suspension to license revocation, upon stations charging more than the price on their rate cards for political broadcasts.³ McGrath was particularly concerned about the political broadcast rate situation because of the high rates which had been charged by stations in Pennsylvania during the special election to fill the seat of Representative Coffey.

Broadcasting-Telecasting called the McGrath bill "mischievous and dangerous." It pointed out the bill was dangerous because it reflected a growing sentiment in Congress and because in proposing to fix rates it, "veers toward

¹"McGrath's Wrath," editorial, Broadcasting-Telecasting (July 25, 1949), p. 34.
³Ibid.
placing radio on a common carrier footing." Broadcasting-Telecasting concluded:

... Senator McGrath's irritation is understandable. We think stations should see to it that they are reimbursed, including all extra expenses. But the rate card should apply.¹

Senator McGrath's bill did not receive the consideration of the full Congress. However, the rate issue was not dead by any means and it was eventually decided in political broadcast regulation passed by the 82nd Congress in 1952.²

FCC's Report on Editorializing

The public service responsibility of licensees to carry political broadcasts, which had been stated in the FCC's WDSU decision in 1944 and its decision regarding the Texas Quality Network in 1948, was reemphasized in 1949 in the Commission's Report on Editorializing by Broadcast Licensees.³ Here it pointed out:

The Commission has consequently recognized the necessity for licensees to devote a reasonable percentage of their broadcast time to the presentation of news and programs devoted to the consideration and discussion of public issues of interest in the community served by the particular station.

It is this right of the public to be informed, rather than any right on the part of the government, any broadcast licensee or any individual member of the public to broadcast

¹Ibid.

²Infra, chap. IV, pp. 141, 142.

³Report on Editorializing by Broadcast Licensees, F.C.C., 1 RR 204.
his own particular views on any matter, which is the foundation stone of the American system of broadcasting.\footnote{1}{Ibid.}

The Commission obviously pointed to a responsibility on the part of broadcast licensees to provide reasonable amounts of time for the presentation and discussion of public issues. It was obvious that the election of officials to public office was of prime importance. If there was any doubt in any broadcaster's mind that a licensee could still refuse to carry any political broadcasts—under the provision in Section 315 that, "... no obligation is imposed upon any licensee to allow the use of its station by any such candidate," --the Commission's report served to eradicate it.

Felix v. Westinghouse

Court Rules Section 315 Applies to Supporters of Candidates

In March, 1950, a new controversy arose over the scope of the provisions of Section 315. The court decision in Felix v. Westinghouse Radio interpreted Section 315 as including supporters of candidates as well as candidates themselves.\footnote{2}{Felix v. Westinghouse Radio Stations, Inc., 89 F. Supp. 740 (1950).}

In the case, W. F. Meade, Chairman of the Republican Central Campaign Committee in Philadelphia, had made two speeches over the Philadelphia stations of Westinghouse on behalf of four Republican candidates who had authorized him...
to do so. The speeches contained defamatory statements and
the stations were sued.

The court determined that Section 315 applied in the
broadcasts, noting in its interpretation:

If a candidate for office who authorizes another to
make an address in the furtherance of his campaign for
office does not 'use' the station within the meaning of
the law, the purpose of Section 315 fails. . . . If 'use'
be given the narrow interpretation for which the plaintiff
contends it would be perfectly feasible and legal for a
broadcasting station to refuse its facilities to all the
candidates . . . . and then allow spokesmen for one side
unlimited time, to the total exclusion of all speakers on
the other side, thus frustrating the policy underlying the
act and its plain intent.¹

This was a totally new interpretation of Section 315.
Although suggestions had been made that authorized spokesmen
of candidates to be included in the section, never before had
it been interpreted as already encompassing them. The court
had based its reasoning for the interpretation primarily on
what it thought the section ought to be.

Westinghouse Asks FCC for Ruling
on Court Decision

After the decision, Westinghouse radio stations called
upon the FCC to enlarge its definition of a "legally qual-
ified" candidate to include, "any individuals specifically
authorized by the candidate to speak for him or authorized by
the appropriate campaign or finance committee . . . ."²

¹Ibid., p. 742.
²"Political Rules," Broadcasting-Telecasting
Westinghouse cited the opinion of the court and suggested the Commission should recognize it to relieve the confusion of broadcasters.

The CIO strongly supported the Westinghouse proposal. General Counsel Arthur Goldberg pointed out:

While the best practice of radio chains and stations is at present in accord with the Westinghouse proposal, some stations do take advantage of the personal unavailability of a candidate to deny time. The right to equal use of radio facilities should not depend upon such adventitious circumstances as the personal unavailability of a candidate. ¹

The NAB strongly opposed the Westinghouse proposal. It suggested that the court decision, "should not be a basis for a regulation imposing a new duty on a broadcasting station--that of making its facilities available to sponsors as well as candidates."² The Association also pointed out that, "... since the weight of authority is contrary to the Felix case it seems most unwise for the Commission to adopt the dicta of that decision as the basis for imposing an added obligation on station licensees."

The Commission did not accept the change proposed by Westinghouse into its rules on Section 315.

Decision of the Court is Reversed

In December, in the appeal verdict on Felix v. Westinghouse, the court reversed the previous decision and

¹Ibid. ²Ibid.
repudiated the interpretation that Section 315 included "authorized spokesmen." The court noted:

"... the language of the section itself and its legislative history compel the conclusion that the section applies only to the use of a broadcasting station by a candidate personally and that it does not apply to use of such a station by other persons speaking in the interest or support of a candidate."

Thus, with no contrary interpretation from the Commission, broadcasters could assume that Section 315 did not include authorized spokesmen or supporters of candidates.

1Felix v. Westinghouse Radio Stations Inc. (appeal), 186 F 2d 1 (1950).
CHAPTER IV

THE ADVENT OF TELEVISION--NEW PROBLEMS
IN THE DEVELOPMENT OF SECTION 315

General Background

The increasing growth and popularity of television in the early 1950's brought new problems to political broadcasting and served to bring the controversies over Section 315 to an all-time high. The question of rates for political broadcasts was becoming of more concern to candidates, particularly in light of the fact that television time charges were considerably more than those for radio. Politicians were extremely concerned over the increase in campaign costs posed by the effective use of television as a "vote-getter."

The increasing controversy over political broadcasts also served to awaken more minority and fringe candidates to the "equal-time" benefits available to them under Section 315 if they were "legally-qualified"--a status that it was extremely easy to obtain under most state laws. Many began to take advantage of the section in every way possible. As a result, broadcasters were deluged with equal-time requests and they began to adopt a policy of restricting political broadcasts during campaigns to non-candidates to avoid equal-time liability.
The prominence of television on the political scene had increased considerably in 1950. Ed Ingle, Director of Radio-TV for the Republican National Committee, commented, "TV provides a new and exciting medium alongside the nation's broadcast stations and networks. With the growth of TV coverage we have already taken into consideration its enormous political potential."¹ This expressed the viewpoint of most politicians on the subject.

**The Rate Problem: Discrimination and High Cost**

The increasing use of television brought increasing emphasis on the issue of rates for political broadcasts. In November, 1950, Senator Guy Gillette, Chairman of the Subcommittee of Privileges and Elections of the Senate Rules Committee, expressed concern over the high cost of campaigning particularly in view of television's arrival on the political scene. He commented, on a television broadcast, that broadcasting expenses in campaigns had gotten so far out of hand that they "virtually preclude a poor man from running for political office."²

During that same month, another facet of the rate problem again became an issue when Representative Mike Mansfield

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sent a strongly-worded protest to NAB President Justin Miller against the practice of some stations in charging higher rates for political broadcasts than regular commercial broadcasts. This was the same practice which had incurred the wrath of Senator McGrath and others in 1949. Mansfield called it, "discrimination against democracy" and pointed out that Congress had the authority to prevent such a practice.¹

The protest was received at the time of an NAB Board of Directors meeting. The board discussed the issue and subsequently approved a resolution urging all broadcasters not to sell political time at rates in excess of established charges for commercial broadcasts.

Mansfield indicated that he was "pleased to note that the NAB has since sent a directive to all its member stations to desist in this practice if they have indulged in it."

Political Broadcasts and the McFarland Bill

In spite of the efforts of the NAB to smooth over the situation, the rate issue came to head in the 82nd Congress. In the first session in 1951, hearings were held before the House Committee on Interstate and Foreign Commerce on S. 658, a bill introduced by Senator McFarland and previously passed

¹Ibid.
by the Senate.¹ The bill included no regulation of political broadcasts.

However, the issue of rates had arisen in earlier consideration of the same bill. In hearings in 1950, FCC Chairman Wayne Coy was asked if broadcasters could charge more than their "normal commercial rates" for political broadcasts. He reminded the committee that, "So far as the Commission's regulations are concerned, he can. We do not regulate rates."²

Other Political Broadcast Bills Introduced

Also in April, 1951, Senator Edward Johnson introduced a bill (S. 1379) to clarify Section 315. It contained a provision which would have specified that "equal opportunities" be accorded "any person authorized" by a candidate to speak on or for his behalf.³ His bill was designed to clarify the controversy which had arisen over the original Felix v. Westinghouse decision that interpreted Section 315 as including spokesmen as well as candidates. No hearings were held on the bill.

¹U.S., Congress, House, Committee on Interstate and Foreign Commerce, Hearings on S. 658, Amending the Communications Act of 1934, 82nd Cong., 1st Sess., April 5, 6, 9, 24, 25, 26, 27, and 30, 1951.

²Ibid., p.133.

The FCC strongly supported S. 1379, for, as Acting Chairman, Paul Walker noted, Section 315 could be "effectively circumvented," if stations were to allow candidates' spokesmen to use broadcast facilities without obligation to afford equal time to other legally qualified candidates.\(^1\)

Later in 1951, Representative Walter Horan introduced H.R. 5470, also designed to clarify Section 315. It would have extended Section 315 to legally qualified candidates in primary elections; and also, specified that an authorization to speak on behalf of a candidate would have to be in writing.\(^2\)

It also included a section relating to the "no censorship" provision of Section 315 which has been previously discussed.

Congress Passes Law Prohibiting Rate Discrimination

On June 17, 1952, S. 658 reached the floor of the House. Representative Horan planned to introduce an amendment to the bill which would incorporate the plan for revision of the "no censorship" provision of Section 315 and its extension to authorized spokesmen, contained in H.R. 5470, and also a political broadcast rate regulation proposed by Representative McCormack.

In floor debate, Representative McCormack stated his views on rates for political broadcasts:

\(^1\)"Political Shows," *Broadcasting-Telecasting* (January 14, 1952), p. 25.

\(^2\)"Political Shows," *Broadcasting-Telecasting* (October 1, 1951), p. 54.
there should not be two different sets of rates. A political party or an individual during a political campaign should not be required to pay more for a political speech than commercial interests over the same station. It seems to me this is something that should concern each and every one of us as individuals. If we are going to do something about the matter now is the time to do it, because it is going to be difficult after a bill of this kind is enacted into law to correct the situation.

Representative Horan introduced his amendment which would have revised subsection (A) of Section 315, and added subsections (C) and (D):

(A) If any licensee shall permit any legally qualified candidate for any public office in a primary, general, or other election, or any person authorized in writing by such candidate to speak on his behalf, to use a broadcasting station, such licensee shall afford equal opportunities in the use of such broadcasting station to all other such candidates for that office or to persons authorized in writing by such other candidates to speak on their behalf.

(C) The licensee shall have no power to censor the material by any person who is permitted to use its station in any of the cases enumerated in subsection (a) or who uses such station by reason of any requirement specified in such subsection; and the licensee shall not be liable in any civil or criminal action in any local, State, or Federal court because of any material in such a broadcast, except in case said licensee shall wilfully, knowingly, and with intent to defame participate in such broadcast.

(D) The charges made for the use of any broadcast station for any of the purposes set forth in this section shall not exceed the minimum charges made for comparable use of the station for other purposes.

1 U.S., Congressional Record, 82nd Cong., 2nd Sess., XCVII Part 6, p. 7402.

2 Ibid., p. 7415.
In debate of the amendment Representative Ellsworth pointed out to Representative McCormack a deficiency in the amendment:

Rep. Ellsworth: . . . I call the attention of the gentleman to the wording of the amendment which says that the charge shall not exceed the minimum charge made for comparable use of such station for other purposes.

* * * * *

... the practical effect of the wording of this amendment . . . is that it would require stations to give to political candidates its lowest contract rate given to anybody for any other purpose. [emphasis supplied]

Rep. McCormack: I might say it is going to conference. What I have in mind is that the national rate is higher than the local rate, and I do not think they ought to charge candidates for political office more than they charge on the national level for commercial advertisers or on the local level for commercial advertisers. But, I agree that there is something to that wording and that can be considered in conference.1 [emphasis supplied]

The Horan amendment passed by a vote of 92 to 27.

Broadcasters were quick to object to the provision in the House amendment regulating rates. Broadcasting-Telecasting noted:

In the absence of further explanation, this subsection could be interpreted most unfairly. Suppose the political broadcast replaced a show regularly scheduled under a long-term contract earning a favorable discount. Would the discount be figured in when computing the 'minimum charges'?2

The NARTB urged clarification of the rate regulation portion of the amendment by deletion of the word "minimum" and addition of the phrase, "For the purpose of this subsection.

1Ibid., p. 7416.

charges shall include base rates and all other terms and conditions affecting charges.\(^{1}\) Ralph Hardy, Government Relations Director of the NARTB, emphasized that, "Basically, however, the industry is opposed to any government rate-making."\(^{2}\)

The conference committee followed the suggestion of Representative Ellsworth and the NARTB and modified the provision regulating rates for political broadcasts by striking out the word "minimum." The provision to extend Section 315 to spokesmen for candidates was deleted with the explanation:

\[ \ldots \text{it has not been adequately studied by the Committees on Interstate and Foreign Commerce of the Senate and House of Representatives.} \ldots \text{The proposal involves many difficult problems and it is the judgement of the committee of conference that it should be acted on only after full hearings have been held.}^{3} \]

President Truman signed S. 658 on July 16, 1952, and the provision regulating charges for political broadcasts was duly added to Section 315.

Broadcasters were not pleased with the new regulation. They saw difficulties ahead in applying the admonition, that they must have "comparable charges" for political broadcasts, to specific situations. Broadcasting-Telecasting pointed out,


\(^2\)Ibid.

"immediately, of course, the question arises: What does 'comparable' mean? In the absence of official interpretation, broadcasters will have to follow their own best judgement in applying this rule."¹ The NARTE suggested that broadcasters should charge local rates for local candidates and national rates for national candidates. Broadcasting-Telecasting suggested, "Each candidate who seeks to buy time to advertise his candidacy should be regarded exactly as a commercial sponsor who wants to advertise his product."

**Political Broadcast Problems in the 1952 Campaign**

While Congress had been reviewing political broadcast regulations, the 1952 campaigns had been gathering momentum, bringing with them new problems for the broadcasters. Broadcasting-Telecasting emphasized:

In no other national campaign can we recall anything approaching the tugging and hauling over radio and TV time. Section 315 . . . is becoming better known than Point Four. Crackpots and other irresponsible people seeking public office are being given open sesame to the microphones and cameras on equal footing with bona fide candidates, by simply citing Section 315 to the FCC.²

Section 315 was becoming more well-known and this created a dilemma for broadcasters as many politicians, some


of them extremely obscure, began to indiscriminately demand equal-time. Several major incidents highlighted the problem in the 1952 campaign.

The Case of William Schneider: Fringe Candidate Problems

Early in 1952, William F. Schneider, an unknown self-proclaimed candidate for the Republican nomination demanded equal-time under Section 315 to that received on CBS by certain other candidates for the nomination. CBS refused his request. CBS Vice President Richard Salant later pointed out that:

It has always been the policy of CBS to provide broadcast exposure for all significant viewpoints in important matters of public controversy. Mr. Schneider was deemed ineligible for air time under this policy because there was no evidence that his viewpoint fulfilled the requirement 'significant.' CBS felt that Mr. Schneider was not sufficiently well-known nor was there sufficient interest in his views to warrant giving him time . . . [emphasis supplied]

Schneider then filed as a candidate in the New Hampshire Republican presidential primary, in which he received 230 votes, and the Oregon primary. He again asked CBS for time equal to that given other Republican presidential candidates claiming that he was now a "legally-qualified" candidate.

CBS refused his demand asserting that he had no chance for the nomination and was merely motivated by a desire for personal publicity. Schneider asked the FCC for a ruling on the situation. The Commission held that:

The clear policy of Section 315 is that time shall be made available to all legally-qualified candidates if it is made available to any. There appears to be no question but that the opportunities made available by CBS to other qualified candidates constitute a 'use' of a broadcasting station within the meaning of Section 315. Mr. Schneider is a legally qualified candidate within Section 315 of the Communications Act... [emphasis supplied]

After determining that CBS should accede to Schneider's demands for equal time, the Commission ruled that a station had no authority to make the granting of equal time under Section 315 hinge on "any subjective determination by the station or stations involved with respect to a candidate's practical chances of nomination or election."2

CBS then granted Schneider the two free network half-hours he had demanded. Ironically, Schneider was unable to get a ticket to the 1952 Republican convention itself.

Thus, broadcasters were made sharply aware of the fact that Section 315 opened the way for the use of broadcast facilities by all manner of obscure publicity seekers. It was not difficult to become a "legally-qualified" candidate in most states and generally certification was not contingent on the seriousness of an individual's intentions. The all inclusiveness of the Commission's determination of "legally qualified" candidate posed real problems.

1F.C.C. letter to Julium Brauner, Sec'y and General Attorney to CBS, May 28, 1956, 7 RR 1189.
2Ibid., p. 1190.
The immediate reaction of broadcasters was to consider limiting use of facilities by candidates through restriction of free time made available to them during campaigns. Many obscure candidates could not afford the cost of programs and thus would be unable to demand equal paid time.

Richard Salant of CBS pointed out, "Through Mr. Schneider's victory over the networks, broadcasters learned the imperative wisdom of acting with extreme caution in granting free time to candidates for the presidential nomination." He warned:

Once the dimensions of Section 315 are more generally discovered, it may fairly be expected that at least hundreds, if not million, of publicity-seekers would be claimants entitled to free time. In the circumstances, Section 315 leaves a broadcaster with no choice but to restrict free time sharply.¹ [emphasis supplied]

The Eisenhower Case: Is a News Event Covered by Section 315?

In June, another equal-time issue arose. All the networks carried General Eisenhower's homecoming and press conference from Abilene, Kansas. Senator Taft and Senator Kefauver demanded equal-time. They claimed that the speech and conference were of a political nature and that they were entitled to equal coverage.

CBS refused, saying the Abilene address was "a news event and not a political speech." This prompted a reply

¹Salant, op. cit., p. 345.
from Kefauver's campaign manager that, "It is inconceivable to assume how anyone at CBS could be so politically naïve as to assume that this is a fact." The issue of whether or not a news event or news coverage came under the provisions of Section 315 was to come to a head in the "Lar Daly" decision of the FCC in 1959, which will be discussed below. ABC and NBC also refused to grant requests of Taft and Kefauver.

Both Taft and Kefauver submitted complaints to the FCC. As the pressure and controversy over the issue increased the networks finally capitulated to the demands. Both CBS and NBC granted each of the candidates a half-hour of evening network time.

Progressive Party Case:
Fringe Party Problems

During 1952, the Progressive Party also contributed to the increasing complexity of Section 315. They first demanded time of the networks equal to that received by candidates for the nomination of other parties. The FCC reminded them that:

... it would appear that the making available of time to a candidate for nomination by another party for the Office of President, would not entitle the candidate of the Socialist Labor Party for the office of President to equal facilities under Section 315 ... \(^1\)

\(^1\) "Candidates' Complaints," Broadcasting-Telecasting (June 9, 1952), p. 27.

The FCC thus indicated that making time available to a candidate for nomination by one party does not entitle the candidate of another party to equal time, under the provisions of Section 315.

In July, the Progressive Party again complained to the FCC. They criticized the networks for not planning to carry their party convention or the acceptance speeches of their candidates for president and vice president. They felt they should receive equal coverage with other parties.

The FCC indicated that Section 315 did not require stations or networks to give equal coverage to party conventions. However, it qualified the ruling in terms of "fairness" and "general interest":

With respect to the question of coverage of the Progressive Party convention, as such, no questions relating to the applicability of Section 315 of the Communications Act are presented. . . . It is, of course, clear that the extent of the coverage afforded national political conventions must be determined on the basis of fairness and general interest in the presentation of public events.1 [emphasis supplied]

The Commission did hold that licensees were required to give equal coverage to acceptance speeches.

On the other hand, acceptance speeches by the candidates themselves are matters within the purview of Section 315 of the Act. Accordingly, a broadcast licensee who has made or proposes to make opportunities available for acceptance speeches by one candidate for a public

office is under a firm obligation to make equal opportunities available to all other legally qualified candidates for that office.\textsuperscript{1}

The situation was further complicated by the fact that the presidential candidate of the Progressives was in jail. After receiving the ruling from the FCC, the party sent a letter to stations on July 30th suggesting in strong terms that they would have to carry a speech on behalf of the party's candidate.\textsuperscript{2} Of course, spokesmen were not included in Section 315 and, as mentioned above, Congress had specifically rejected their inclusion in the regulation until the matter could be further studied. The party nevertheless demanded equal coverage. Also, in their letter, the party quoted the FCC ruling out of context, interpreting it to mean that the Commission had indicated that the party's candidates should be granted equal time in every situation.\textsuperscript{3}

Broadcasters were highly disturbed at the beligerent tactics of the party. Broadcasting-Telecasting noted:

Though it would be clearly within its rights to request broadcast opportunities for its candidates equal to those granted the Democratic and Republican nominees, the Progressive Party is abusing these rights and indeed resorting to unadorned blackmail in the tactics it has adopted.\textsuperscript{4}

\textsuperscript{1}Ibid.
\textsuperscript{2}"Progressives," Broadcasting-Telecasting (August 11, 1952), p. 46.
\textsuperscript{3}Ibid.
\textsuperscript{4}"Sec. 315 Skidoo," Broadcasting-Telecasting editorial (August 11, 1952), p. 50.
Broadcasting-Telecasting severely criticized the Commission for not announcing that the Progressives had misquoted its ruling. It suggested that, "In this case the Commission could at least redeem itself by telling the Progressives to behave with more propriety and quote the Commission correctly."  

Eventually, many stations yielded to the demands of the party and broadcast the acceptance speech of the Progressive candidate on September 6th, after he was released from jail. 25 stations refused to carry the broadcast and were reported to the FCC by the party. Broadcasting-Telecasting suggested:

Here is a chance for the 25 courageous stations to make a fight for clarification of the political broadcasting law.

If nothing more were settled than a clearer definition of what constitutes 'equal opportunity' and who is entitled to receive it, a step forward would be made. To the 25 stations that told the Progressives to jump in the Volga the broadcasting business must accord respect.  

The FCC did not give full consideration to the charges and no hearings were held. However, the situation served to illustrate how effectively a minor party could belligerently use Section 315 to work unfairly to its advantage, at the expense of broadcasters.

How stations were handling political broadcasts in the 1952 campaign was reflected in the results of a study for a

1Ibid.

doctoral dissertation by Richard W. Mall of the Ohio State University, reported in Broadcasting-Telecasting.\textsuperscript{1} The survey included 32.8\% of all AM and 30.8\% of all TV stations.

The results indicated that 99\% of radio and 100\% of TV stations were selling political time. This was consistent with the practice of broadcasters revealed in the Broadcasting-Telecasting survey taken in 1948.\textsuperscript{2} The survey also revealed that a minority of radio and TV stations, 20.1\% and 24.2\% respectively, gave free time for broadcasts. This tendency not to grant free time was apparently primarily a protective measure on the part of broadcasters to avoid instances such as the "Schneider decision." The broadcaster's liability for equal time requests was great indeed when he granted free time for political broadcasts.

As the 1952 campaign and elections ended, Broadcasting-Telecasting noted:

In the 1952 campaigns, as in no others of the past, politicians realized the power of radio and television. What is more important, they began to understand the almost intolerable difficulties imposed on broadcasters in an election year. Enough of these problems have come up during this campaign to make politicians of both parties acutely aware that an overhauling of the political broadcasting law is needed before another political season arrives.\textsuperscript{3} [emphasis supplied]

\textsuperscript{1}"How Stations Handle Politics--A National Survey," Broadcasting-Telecasting (October 20, 1952), p. 28.

\textsuperscript{2}\textit{Supra}, chap. III, p. 124.

This "overhauling of the political broadcast law" looked for by many broadcasters was not to be readily forthcoming.

One other note on the 1952 campaign, television was largely responsible for a great increase in 1952 campaign expenditures in broadcasting. The Republican party spent over $2 million on broadcast facilities, while the Democrats spent at least $1.2 million.\(^1\) This eventually led to more controversy over the rates for political broadcasts.

**FCC Explains Section 315**

The next intensive scrutiny of Section 315 came in 1954. The FCC, in September, 1954, after many years of controversy stated that:

> We believe it is appropriate at this time to recapitulate the provisions . . . of the act and the Commission's rules . . . together with a brief summary of some of the important questions which have been raised in recent years with respect to the obligation of licensees under this section . . .\(^2\)

The recapitulation of which the Commission spoke was titled *Use of Broadcast Facilities by Candidates for Public Office.*\(^3\) It was primarily a compilation of various rulings.

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\(^1\)"The Electronic Tab," *Broadcasting-Telecasting* (November 10, 1952), p. 25.

\(^2\)Federal Register, XIX, No. 178 (September 14, 1954), p. 5948.

\(^3\)Ibid., p. 5949.
published and unpublished, of the Commission concerning Section 315. Inasmuch as this was the first widely distributed Commission document on the subject, a summary of pertinent previously controversial points is indicated.

**Explanation of "Use" of Broadcast Facilities by a Political Candidate**

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 other candidates. In other words, any use whatsoever of the facility of the station constitutes use. For instance, a candidate discussing matters not related to his candidacy is still "using" broadcast facilities.

"Legally Qualified Candidates" Defined

Only legally qualified candidates are entitled to the privileges of Section 315 and not speakers on behalf of the candidate, political parties as such, or speakers in support of or opposition to a question to be voted on by the public. Candidates for all offices which are filled by a general or special election on a local, county, state, or national level are included in the provisions of the section. The status of a candidate is determined by reference to the law of the state in which the election is being held. The Commission indicates

1Tbid. 2Tbid.
that, "... broadcast stations may make suitable and reasonable requirements with respect to proof of the bona fide nature of any candidacy."\(^1\) [emphasis supplied]

"Equal Opportunities" Defined

In defining the phrase "equal opportunities" the Commission emphasizes, "... no discrimination in charges, practices, regulations, facilities, or services rendered to candidates for a particular office."\(^2\) The equal opportunity clause can be, so to speak, retroactive: "Once a station makes time available to one qualified candidate its obligation to provide equal facilities to future candidates begins."\(^3\)

Censorship and Rate Considerations

Stations may not delete libelous material from broadcasts and they might not be liable under state law.

In the rate area, the Commission notes that stations cannot charge a national rate for a local candidate and that a candidate is entitled to receive standard station discounts.

Admittedly, the interpretations still left many questions unanswered, particularly in the areas of the "legally-qualified" candidate and "equal opportunities."

\(^1\)Ibid., p. 5950. \(^2\)Ibid. \(^3\)Ibid.
The Question of Free Time for Political Broadcasts

In April and May, 1955, in the first session of the 84th Congress, Senate subcommittee hearings were held on S. 636, a bill to revise the Federal Election Laws. During the course of these hearings the question of broadcasters donating free time for political broadcasts arose. This proposal had been receiving considerable attention in Congress, particularly in light of the high broadcast expenditures in the 1952 campaign.

Views of Free Time Advocates

In testimony before the committee, Paul M. Butler, Chairman of the Democratic National Committee, advocated such a proposal:

... I do suggest that our committee would certainly favor some provision for the presidential elections which would make equal free time at comparable advantageous times and days of the week - available to both the major political parties having a certain number of votes in the last election so that it would not be confined to just the two major parties, if any others could qualify upon a reasonable basis. ...¹

Dr. Alexander Heard, Professor of Political Science at the University of North Carolina, suggested:

... the most obvious, most discussed, most feasible, most important, and most agreed upon step that can be taken: Use Federal authority over the air waves to guarantee that responsible political competitors have balanced and limited access to radio and television time, either at reduced cost or no cost to themselves. The Federal Government has the jurisdiction and, through its regulatory and licensing activities, it has the machinery.¹ [emphasis supplied]

Senator Curtis objected to the proposal by Butler and Heard:

I just have a feeling that it would mean that the Government is going to one particular business and saying 'Here, you give us property of value without compensation,' a demand they are not making of anybody else.²

FCC Commissioner Hennock also advocated a cost-free political broadcast plan:

... it seems to me incontestable that television and radio, which are made available to licensees to be operated in the public interest, should likewise be made available without cost on an equal basis to the candidates of the major political parties.

Television, as you all know, is a costly medium and its cost is skyrocketing from year to year.

Commissioner Hennock did admit that the cost of such a plan might be prohibitive for broadcasters, but if that proved to be the case, she said, "... the cost could be shared by the public treasury."

¹Ibid., p. 104.
²Ibid., p. 113.
³Ibid., p. 133.
Broadcast Opposition to Free Time Proposals

Broadcasters were unequivocally opposed to the proposals that they be required to donate specific amounts of time for political broadcasts.

Harold E. Fellows, president of the NARTB, cited three reasons why he felt the present system of paid political broadcasts should be maintained:

First, it puts all of the mass media on a relatively equal footing as regards public affairs. It would be manifestly discriminatory to have two fully competitive instruments of communications [press and broadcasting] operating with different ground rules where candidates for public office are concerned.

Any substantial breakdown in program service, which is now carefully regulated and controlled by the broadcaster could result in adverse reactions which may reflect negatively on the candidates themselves.

... the candidates for public office under the present system of paid time on radio and television, share with other established users of broadcast facilities the costs of maintaining diversified program service to the listeners and viewers of America.\(^1\)

Richard S. Salant, CBS vice president, called the free time proposals:

... unsound, unwise, and unworkable. It is a superficially easy solution to a complex political issue, it is not fair or practical, and it creates more, and deeper, problems than it is supposed to solve.\(^2\)

Salant pointed out that CBS, as well as other networks, devoted a large percentage of free time to coverage of

\(^1\)Ibid., p. 93. \(^2\)Ibid., p. 168.
political issues during the campaigns. He also indicated that perhaps newspapers did not cover campaigns as conscientiously as broadcasters (broadcasters were extremely sensitive to the fact that the press was not included in the political regulation proposals). After mentioning that 50% of the CBS Douglas Edwards news programs during October, 1952, were devoted to the presidential campaign, he pointed out:

While I do not contend that the comparison is completely meaningful, as compared to our 50%, the New York Times devoted 20% of its news and editorial space to the national campaign during the week of October 26 to November 1, while the St. Louis Post-Dispatch devoted 31% on the same basis.

Salant also put forward an argument, stated by many broadcasters, that the present political broadcast regulation was responsible for lack of free time for political candidates during campaigns. He blamed Section 315 for what he termed a "diminution in the number of sustaining political programs featuring presidential candidates once they were nominated:

This phenomenon - this drying up of presentation of candidates once the campaign gets underway - finds its roots in Section 315 of the Communications Act. . . . without recognizing the implications of Section 315, there can be no understanding of the role of a broadcaster during a political campaign. . . . For whatever the generous and nondiscriminatory impulses which underlie Section 315 our own experience most vividly establishes its restrictive effect. [emphasis supplied]

1Ibid., p. 172. 2Ibid., p. 174.
Salant emphasized that granting free time to major candidates would immediately open the door, under Section 315, for splinter candidates to demand equal free time. This could conceivably deluge broadcasters with requests.

Joseph Heffernan, financial vice-president of NBC, in objecting to the free-time proposals, stated, "We are opposed to any such requirement. We are not opposed to the voluntary furnishing of free time by networks or stations to candidates or political groups, but are opposed to an attempt to compel them by law to do so."1

Thus, broadcasters indicated their opposition to the restriction of a regulation which would force them to grant free time for political broadcasts. While admitting that increasing costs were a problem they indicated that:

1) the regulation would discriminate unfairly against the broadcast media since similar restrictions were not proposed for other media;

2) that determining which candidates would receive the free time would be extremely difficult;

3) that broadcasters already had a commendable record of granting free time; and

4) that Section 315 prevented the granting of more free time to candidates since broadcasters could be deluged with equal-time requests from splinter candidates.

1Tbid., p. 184.
NBC Plan to East High Costs of Political Broadcasts

Some constructive developments did arise out of the hearings. Mr. Heffernan of NBC announced four proposals which the network planned to put into effect in the 1956 campaign to help ease the problem of the higher costs of political broadcasts. Heffernan indicated that the proposals were intended to "serve the dual objectives of reducing costs and creating flexibility in campaigns."¹

The first part of the plan encouraged political parties to reserve broadcast time in advance, in order to reduce preemption costs. Previously, parties had followed a policy of requesting time at the last minute, thus making it necessary for the networks to charge them customary preemption fees for the time of the regular commercial show they preempted. Heffernan indicated that in the 1952 presidential campaign, preemption costs for political broadcasts on the NBC TV network totaled $175,000.

The second NBC proposal provided for the sale of five-minute periods for political broadcasts. Heffernan pointed out:

"It has been suggested to us that the parties could save money and increase the effectiveness of their campaigning if 5-minute and 1-minute network periods were made available for political broadcasts."²

¹Ibid., p. 186. ²Ibid., p. 187.
Heffernan also promised that during the 1956 campaign NBC would, "... make available for the first time on the NBC television network 1-minute periods for use by candidates and parties," and "the sale of 5- and 1-minute periods on local stations."

These proposals were constructively implemented by NBC and the other networks in the 1956 campaign.

Responsibility of Broadcasters
Complimented by FCC and Senate Committee

In a letter commenting on S. 636 addressed to the subcommittee broadcasters received a vote of confidence from the FCC concerning their handling of political broadcasts. The Commission stated:

Nor does the Commission know of any case in which the fairness provisions of Section 315 have not, in fact, been adhered to, in spite of some of the close questions of interpretation which have inevitably arisen from time to time.2

Obviously the subcommittee was impressed with the validity of the broadcaster's arguments against the free-time proposals, and also the responsibility they had demonstrated in handling political broadcasts. In its report the subcommittee noted:

Because of the many problems which would arise from such a system, and because of the many factors that would have to be considered, the subcommittee is not prepared

1Ibid. 2Ibid.
1956 marked the beginning of the ninth presidential campaign in which broadcasting had been available to candidates and the second in which TV was to play an important role. It was a year of intense controversy over political broadcasting which emphasized the problems broadcasters faced under the regulations of Section 315.

A host of legislation was introduced in the second session of the 84th Congress in 1956 intending to regulate several aspects of political broadcasting. The bills would have modified Section 315 in one of four major ways:

1) by withdrawing the privileges of Section 315 from communist candidates;
2) by exempting certain programs from the section;
3) by attempting to restrict the use of the section to "major" candidates; or
4) by requiring broadcasters to give free time to candidates.

\[\text{emphasis supplied}\]

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Early in 1956, a subcommittee of the House Committee on Interstate and Foreign Commerce held hearings on a group of the bills. Each of the proposals considered had been introduced jointly in the House and Senate.

The Question of Communist Party Rights under Section 315

H.R. 3789, introduced by Representative Miller (the companion bill in the Senate was S. 771) would have withdrawn the equal-time rights of Section 315 (A) of the communications act from any person who had been convicted of subversive activities and from members of certain subversive organizations.¹

This would have corrected an aspect of Section 315 which had concerned Congress for some time. Early in 1950, the FCC had indicated that, as far as it was concerned, stations were required under the provisions of Section 315, to grant equal-time to Communist candidates.² Since that time there had been increasing concern over communist activities and extensive congressional investigations of subversive activities had been conducted, spearheaded by Senator McCarthy. In 1954, Congress passed the Communist Control Act (68 Stat.

¹U.S., Congress, House, Subcommittee of the Committee on Interstate and Foreign Commerce, Hearings on Misc. Bills to Amend the Communications Act of 1934, Communications Act Amendments, 84th Cong., 2nd Sess., January 31, February 1, 2, 3, 7, 8, and April 19, 1956, p. 3.

but there was some question as to whether this precluded political broadcasts by Communist candidates. No ruling had been handed down on the subject. The purpose of H.R. 3789 was to clarify the responsibility of broadcasters in carrying broadcasts by Communist candidates under Section 315.

The FCC supported the purpose of H.R. 3789 but raised the question of who would determine whether a person fell into the category of a subversive. FCC Chairman McConnaughey surmised that licensees would make the initial determination but questioned who would review their decisions. He indicated that if the Commission was to be the reviewer, delay would be inevitable. He noted, "And as you well know, time is often of the essence in deciding these matters when an election is taking place."¹

FCC Asks to be Relieved of Duty of Interpreting Section 315

McConnaughey then proceeded to make a suggestion which indicated that the Commission had had its fill of attempting to interpret the provisions of Section 315 during the pressure of a political campaign. He noted, "... the problem of securing expeditious review of all the various determinations which must be made under the existing provisions of Section 315 has posed difficulties for the Commission for some time." He proposed:

Therefore, the Commission wishes to suggest that Congress should give consideration to enacting a provision which would permit a person who has been refused time pursuant to Section 315 to apply to the Federal District court for the district in which the broadcast station is located for an immediate determination of his rights. This would provide a speedy review of the station licensee's determination in a competent forum at the place the election campaign is taking place and where the parties to the dispute are located.\(^1\)

**Objections of Broadcasters to H.R. 3789**

While broadcasters generally favored the purpose of H.R. 3789, they had some reservations as to their obligations under its provisions. The viewpoint was expressed by Robert Heald, chief attorney of the NARTB:

While this Association approves and supports the objectives sought to be achieved by H.R. 3789, it feels that the practical difficulty in determining whether or not a person is a member of one of the proscribed organizations will place an undue burden on a licensee of a broadcast station and may result in the purpose of the bill being defeated.\(^2\)

In commenting on the companion bill (S. 771), Thomas Ervin of NBC, in a letter to Senator Warren Magnuson, noted:

The bill in its present form . . . requires a broadcaster to be investigator, judge, and jury. It is apparent from the nature of his business that the broadcaster is not equipped to discharge this heavy responsibility without assistance.\(^3\)

\(^1\)Ibid. \(^2\)Ibid., p. 308. \(^3\)U.S., Congress, Senate, Subcommittee on Privileges and Elections of the Committee on Rules and Administrations, 1956 Presidential and Senatorial Campaign Contributions and Practices, Part I, 84th Cong., 2nd Sess., Sept. 10 and 11, 1956, p. 188.
It was apparent that broadcasters did not want the responsibility of deciding whether or not a candidate was a Communist. They felt some machinery should be devised to place this burden on some other agency.

H.R. 6810: To Exempt Some Programs from Section 315

H.R. 6810 (the companion bill in the Senate was S. 2306), which was introduced by Representative Oren Harris, Chairman of the subcommittee, would have amended subsection (A) of Section 315 by adding the phrase:

Appearance by a legally qualified candidate on any news, news interview, news documentary, panel discussion, debate or similar type program where the format and production of the program and the participants therein are determined by the broadcasting stations, or by the network, in the case of a network program, shall not be deemed to be use of a broadcasting station within the meaning of this subsection.

This bill embodied the proposal made by CBS President Frank Stanton in 1955. Stanton had suggested that if the equal time provisions of Section 315 were amended to apply only to major party candidates then CBS would make its facilities available for debates between the candidates in the "Lincoln-Douglas" style. He pointed out that as long as the section was continued, broadcasting could not make this type of contribution for fear of being deluged with requests for equal time from minor candidates. Stanton later implemented

\(^1\)Hearings on Misc. Bills to Amend the Communications Act., 84th Cong., op. cit., p. 29.
this proposal with the program exemptions noted in H.R. 6810. He indicated that if these types of programs were exempted from the equal-time provisions of Section 315 then broadcasters could expand the free time given to major parties without fear of unfair demands for equivalent time from all quarters.

FCC Opinions on H.R. 6810

During the hearings, the FCC indicated its opposition to H.R. 6810. Chairman McConnaughey stated:

We believe the present proposal might result in more free time being granted to the major party presidential candidates. However, it would also permit discrimination between candidates and parties to an extent not possible under the existing law. Instead of having to comply with the existing equal time requirements, broadcasters would have only to meet a vague standard of 'overall' fairness... the question inevitably arises: what sort of treatment, short of equal treatment is nevertheless 'fair'?... let me assure you there will be an avalanche of such questions... for our experience has shown that numerous disputes arise even under the relatively precise terms of the law.1

Thus, McConnaughey indicated that even if certain programs were exempted from Section 315 the Commission would still expect broadcasters to adhere to a "vague standard of 'overall fairness'." This could have promised to be more difficult to follow than the at least partially explicit "equal-time" requirement.

1Ibid., p. 55.
Later in his testimony, McConnaughey admitted that he knew of no cases of serious discrimination among broadcasters toward political broadcasting. He noted:

There were a lot of accusations and a lot of them were accused of not giving equal time. Let me put it that way. But, I do not know of any judgement ever having been rendered against any of them.1 [emphasis supplied]

Nevertheless, McConnaughey reiterated his position that the amendment would be unsatisfactory:

I think that if you put it up to the judgement of the individual as to what is fair and what is not fair, and then you come to interpreting that, that puts a station operator, or network, in - I think - a very difficult if not impossible position.2

FCC Commissioner Doerfer presented a different viewpoint on the bill. He first pointed out the restrictive effect of Section 315 on the democratic flow of information to the public and then suggested that Congress take action:

If the broadcaster through an abundance of caution will refuse to put any candidate on the air because he may be involved in interminable demands by other candidates, you have to that extent deprived people of the opportunity to see those who aspire for public office.  

***

I feel perhaps that this Congress will some time have to face up to an experiment. It will have to try out the rule of reason. If not with respect to candidates, certainly in the field of forums, debates, and discussions.3 [emphasis supplied]

1 Ibid., p. 58.
2 Ibid., p. 60.
3 Ibid., p. 74.
Industry Support for H.R. 6810

Richard Salant, vice-president of CBS, also strongly supported H.R. 6810. He indicated that, "its only purpose is to permit broadcasters, in the exercise of their news and journalistic functions, greater opportunity to inform the American public."1

Salant also strongly advocated the complete repeal of Section 315. He agreed with Commissioner Doerfer in suggesting that, "... Section 315 (A) stifles and suppresses public information and knowledge; its consequence is to inhibit radio and television from fulfilling to the fullest potential their roles of informing the electorate."

In pointing out the liability broadcasters faced under Section 315 to minor parties, he noted, "... whatever the voter may think and whatever may be the practical political fact, for broadcasters there is no such thing as a two-party system. For example in 1952 there were 18 parties with presidential candidates who qualified in one or more states."2 He emphasized that if CBS had given free time to major party candidates it would have been required to give an equal amount to the other 16 parties' candidates. Salant pointed out that, "... we have in general been forced as a matter of simple commonsense, in the interests of our self preservation, as well

1 Ibid., p. 172. 2 Ibid., p. 174.
as the protection of our listeners, to adopt restrictive policies during campaign periods."1 [emphasis supplied]

Salant promised that if H.R. 6810 was enacted the 1955 promise of CBS president Frank Stanton would be put into effect:

We would give greater coverage in news, news interviews, news documentary, and similar types of programs to the leading candidates. And most important of all CBS, with the approval of our affiliates, to who this question was submitted last spring, would provide free evening time during the campaign for the major presidential candidates to debate the main issues.2

Congressmen Doubt Responsibility of Broadcasters

That some Congressmen continued to be dubious of the responsibility broadcasters might exercise if freed from the regulation of Section 315 was revealed in Representative Flynt's questioning of Mr. Salant:

Rep. Flynt: Would it not be possible if a television broadcast network system which desired, they could pick up, say a third candidate and by giving him what you might call excessive coverage develop him into one of the two leading candidates, where he otherwise might not have been one?

Mr. Salant: It is possible. If by excessive coverage you mean greater coverage than the other two candidates, I think not. I think the standards of fairness which are in the act . . . would prevent that.3

Representative Rogers indicated another fear of some Congressmen concerning the passage of H.R. 6810: that it

1Ibid. 2Ibid. 3Ibid., p. 186.
might tend to encourage broadcasters to stifle minority parties. Salant's rejoinder reflected the feeling of many broadcasters:

Rep. Rogers: Wouldn't that [H.R. 6810], though, place in your industry the power to limit the parties in the United States to a 2-party system, and, if you decided to, put it into a 1-party system?

Mr. Salant: I think that power now resides in newspapers, in magazines, in the people themselves.


Mr. Salant: Why pick us for the safety valve?¹

The inevitable congressional answer to Salant's perturbed question was expressed by Representative Rogers who noted, "The medium you have is one which uses public property, that is to say, the radio airwaves, and you are allocated a certain portion of the waveband. Therefore, in a sense, you have a different kind of responsibility from the newspaper people in that respect."² [emphasis supplied]

Democratic National Chairman Supports H.R. 6810

Paul Butler, Chairman of the Democratic National Committee, appeared before the subcommittee to register his support for H.R. 6810 with "certain reservations." He felt that some broadcasters might not exercise responsibility if restrictions were removed:

¹Ibid., p. 194. ²Ibid., p. 192.
If the proposed amendment is approved, I feel certain that, for most networks and most local television and radio stations, it will be an incentive for these broadcasters to expand their election year activity. . . . But what of the minority - the sponsor of a network news program or a discussion program, 'with an axe to grind,' or the local station owner who sees in this amendment 'an out' to load his regularly scheduled programs with guests from one party.1

Butler indicated that, "... if changes are to be made in Section 315 (A), . . . provisions must also be included to make certain there is not abuse, in any area, of this proposed amendment."2 He suggested two amendments to H.R. 6810: that equality of representation and time on the networks or on a given station should be maintained for major political parties; and that in order for a party to be considered a major political party its candidates should have received a certain minimum percentage of the popular vote cast for President in the last presidential election.3 These suggestions were later to be incorporated in another bill, H.R. 10,527, which will be discussed below.

It was apparent that broadcasters strongly supported H.R. 6810 as partial relief from the liability to give equal time that they faced under Section 315. They pointed to the fact that the only other alternative which they could pursue was to restrict the granting of free time to candidates to prevent a deluge of requests from minority parties. They

1Ibid., p. 236. 2Ibid., p. 237. 3Ibid., p. 238.
argued that the responsibility they had exercised with respect to political broadcasts was commendable and that they could be expected to handle the situation fairly and without regulation.

Many congressmen, on the other hand, were dubious as to the fairness broadcasters might be expected to exercise. They obviously feared discrimination if regulation of political broadcasting was abolished. Some also felt that without Section 315 the rights of minority parties to express themselves on stations might be denied by broadcasters.

S. 3308: Restrict Section 315 to Major Candidates

In addition to the legislation which was considered by the subcommittee of the House Interstate and Foreign Commerce Committee, several other bills were introduced in Congress in 1956 affecting political broadcasting. They were generally concerned with either relieving the broadcaster of the problem of large numbers of equal-time demands from minority parties under Section 315 or attempting to surmount the increasing cost of broadcast campaigning to make it more readily accessible to candidates.

In February, Senator Lyndon Johnson introduced S. 3308. It would have left the equal opportunity clause unchanged except for presidential and vice-presidential
candidates. In the case of these offices, candidates of parties other than the Republican or Democratic could have qualified for equal time by polling 4% of the votes in the previous presidential election or presenting a petition with names totaling 1% of the vote at the previous presidential election. The bill was designed to exclude minority parties from the equal-time provision of Section 315, thus answering complaints of broadcasters.

The bill initially received strong support in the Senate and from representatives of broadcasting. Broadcasting-Telecasting noted, "It cannot be passed a moment too soon."2

In commenting on the companion bill to S. 3308 (H.R. 10,217), Richard Salant, vice president of CBS, noted the disagreement developing on whether S. 3308 applied only to nominees for the presidency or to candidates for the nomination as well. Salant took exception to the position of the FCC that it did not apply to candidates for the nomination. He suggested that this be clarified and also that the bill be limited to programs specified in H.R. 6810 (news, news documentary, panel discussion, debate, or similar type programs).3 In regard to the petition requirement, he commented:

1"Bill Would Amend 'Equal Time' Proviso," Broadcasting-Telecasting (March 5, 1956), pp. 84, 85.


3Supra, chap. IV, p. 166.
Had these provisions been in effect in prior campaign years, we would have had to demand petitions with 200,000 signatures before General Eisenhower, Wendell Wilkie, or Herbert Hoover (in 1928) could have qualified for a broadcast appearance as a candidate for the Republican presidential nomination. We think, the way to avoid embarrassing problems such as this is to allow the broadcaster some limited discretion in determining who is and who not a substantial candidate for the presidential nomination of a major party. ¹

Broadcasting-Telecasting pointed out that there was a movement to add a free-time requirement to the bill:

... there have been behind-the-scenes maneuvers connected with the bill that are somewhat unsettling. Some of the bill's supporters have unofficially let it be known that their support would intensify if networks volunteered substantial gifts of free time to political candidates. It would be very wrong if networks yielded to such pressure. ²

This movement, of which Broadcasting Telecasting spoke, was to become more pronounced in coming months.

H.R. 10,529: Another Attempt to Define Major Candidates

In April, Representative Percy J. Priest, Chairman of the House Commerce Committee, introduced H.R. 10,529. The bill, similar to S. 3308, would have required that equal time be given to presidential and vice presidential candidates of the major parties (parties with candidates polling 4% of the vote at the preceding election) or to those candidates supported by petitions with names totaling 1% of voters in the

¹Hearings on Misc. Bills to Amend the Communications Act, 84th Cong., 2nd Sess., op. cit., p. 351.

last election. However, the bill went farther than S. 3308 in clarifying the scope of the regulation to include candidates for nomination. It would have provided equal time to candidates for the presidential nomination by a party which polled 4% of the votes and who (A) was the incumbent of any statewide or federal elective officer, or (B) had been nominated for one of these offices at any prior convention of his party, or (C) was supported by petitions totaling at least 200,000 valid signatures.¹

Priest's bill also would have granted equal time to major party nominees seeking election to Congress or those who could muster on petitions enough names to equal 1% of the total votes cast for the respective office in the preceding congressional election.

Most broadcasters still supported H.R. 6810 although they felt either the Priest or Knowland bills would be acceptable as substitutes.

H.R. 11,150: Representative Priest Initiates a Free Time Movement

Then on May 10, Priest, who had strongly urged broadcasters to promise free time to "major" candidates, re-introduced H.R. 10,529 as H.R. 11,150 with an added provision that would require all TV stations and networks to give to

each major candidate for President and Vice President one half-hour of time per week during September, an hour of time per week during October, and one hour in November preceding the election. A candidate would have to notify a broadcaster 15 days in advance if he desired free time, and segments could not be less than a quarter-hour.¹

As Broadcasting-Telecasting noted, the Priest bill imposed a very expensive obligation on broadcasters. The total time cost per candidate would have amounted to about $2,200,000. A minimum of four candidates would have been entitled to time, which would have totaled $8,880,000.²

Broadcasting-Telecasting expressed the feeling of most broadcasters toward the Priest bill when it stated:

Now that Mr. Priest has attached a ridiculous price tag to that relief, he may expect the universal opposition of broadcasters.

The present laws governing political broadcasting are so inane that they contain the potential of driving broadcasters to the booby hatch. Mr. Priest's amendment would drop them off at the booby hatch on the way.³

In early June, Senator Hubert Humphrey introduced S. 3692, identical with the second Priest bill. He stated that the American people not only have an "interest" in television but also a "property right." He suggested that:


³Ibid.
... a modification in the terms of a current television licensee would be a kind of rental upon such property. In a sense, the bill I have offered would provide for such a public rental by requiring in certain limited cases applicable only to presidential and vice presidential candidates the granting of free time for government purposes.¹

It is noteworthy that Democratic Congressmen had not only proposed the "free-time" legislation but also provided its major support. The Democratic party had also complained for some time that its lack of funds had limited its access to broadcasting in comparison with the Republican party.

**Broadcasting-Telecasting charged:**

The Democratic party may not as yet have achieved unanimity on the candidate it will back this fall but it apparently is solid on how to finance the man's television campaign. Solution: Make the nation's networks and stations provide it free.

** *** **

The strategy is obvious. The Democratic campaign coffers are low. The party is up against a rugged test; and it is counting on television as the medium it knows to be most effective.²

It seemed obvious that there was some partisan motivation on the part of the Democrats to aid their broadcast campaign in 1956. Apparently the Democratic campaign coffers were not sufficiently stocked to provide funds for what the party considered effective television coverage.


The legislation introduced in Congress in 1956 showed that Congressmen were becoming increasingly aware of the broadcaster's problems under Section 315, particularly the effect of increased demands for "equal-time" by minority parties and candidates. It also indicated that Congressmen were concerned with the increasing burden imposed on campaigning by the high cost of broadcast facilities, especially television. Broadcasters strongly supported all bills designed to limit Section 315 to major parties and opposed all "free-time" bills. Whether Congress would have taken any definitive action remains in the realm speculation. None of the bills affecting Section 315 received the consideration of the full Congress.

Problems in Political Broadcasting in 1956

Several incidents occurred in the 1956 campaign which served to emphasize the problems of broadcasters in dealing with political broadcasts under the provisions of Section 315.

Eisenhower Case

On February 29th, President Eisenhower conveyed his reasons and conditions for running for re-election at a press conference and later in an address to the nation. The networks carried both the press conference and the speech.
The following day, Paul Butler, Chairman of the Democratic National Committee, and Senator Kefauver’s campaign manager asked ABC, NBC, CBS, and Mutual for equal-time. They claimed Eisenhower’s speech was political in nature.

Since at the time, Eisenhower was declaring his candidacy for the Republican nomination the networks would only have been legally obligated under Section 315 to give "equal-time" to a Republican candidate for the nomination. The Democratic request had to be considered on the broader base of public service responsibility.

All networks turned down the request. NBC stated it had carried the speech "because it was news of unusual importance." ABC concluded, "... we are neither legally nor morally obligated to allocate time ..."¹ The other networks made essentially the same declaration.

Butler then made a second request for time, "in the name of fair play." He hinted that if the networks did not grant time, Congress might want to change the law "to assure fair treatment to both major political parties."²

After this request by Butler, Mutual granted time to the Democrats but the other networks held firm.

¹"Ike's Declaration Sets off Political Time Free-for-All," Broadcasting-Telecasting (March 5, 1956), pp. 31, 32.
²Ibid.
Lar Daly Demands Free Time

The controversy was gradually subsiding when a new problem arose. Lar Daly of Chicago demanded time equal to that given the president. He claimed he was an "America First" candidate for the Republican nomination for president. Personnel at the networks had never heard of Lar Daly, although he was known in the Chicago area as somewhat of a "crackpot." After hastily examining his qualifications the networks denied time on the ground that there was some question as to the legality of his status as a candidate.

On April 11th, the FCC upheld the network position. It turned down Daly's complaint and held that he had not made an unequivocal showing that he was a "legally qualified" candidate.

Undaunted, Daly filed a $2.5 million damage suit against ABC, NBC, CBS, and MBS in the Chicago district court. It was later dismissed because of lack of jurisdiction. Daly also filed another request on October 3rd with the FCC asking the networks for time equal to that given Eisenhower during the campaign from February 29th to August 22nd. He indicated that he had new evidence that he was a "legally-qualified" candidate.

The Commission took some time to consider Daly's second request. On October 29th, the day it reached a decision, Daly was picketing the FCC offices nattily attired in an
Uncle Sam costume. He carried posters demanding that he be given equal time.

The Commission held that the "new evidence" Daly claimed he had in his possession was introduced too late. After noting that the campaign was over, the Commission pointed out, "accordingly, it would be academic to determine at this time whether you were then a legally qualified candidate."¹ It was concluded:

Since no contest presently exists for said nomination, it is clear that you cannot be considered as a competing candidate for that office so as to entitle you to the 'equal opportunities' available prior to the Republican convention. While we do not suggest that there is no post election remedy against broadcasters . . . a licensee cannot satisfy the requirements of 315 (A) by offering time after the nomination, for the event of nomination terminates the possibility of equal opportunity.² [emphasis supplied]

Thus, Lar Daly's efforts to gain equal network time were effectively thwarted. Nevertheless, his activities served to remind broadcasters how belligerently aggressive minor fringe candidates could be in attempting to turn the provisions of Section 315 to their own ends. Broadcasters reiterated their position that men like Daly forced them to restrict the granting of free time to candidates during campaigns. Broadcasting-Telecasting noted that through Daly's actions, "the lunacy of present political broadcasting law

¹F.C.C. letter to Lar Daly, Chicago, Illinois, October 31, 1956, 14 RR 713.

²Ibid., p. 352.
could not have been made more apparent.1 Ironically, it was to be another "equal-time" campaign by Lar Daly in 1959 that was to lead to legislation giving broadcasters partial relief from the regulation of Section 315.

Broadcasters were also receiving requests from other fringe candidates for equal time. After broadcasting acceptance speeches at the Republican and Democratic conventions they were forced to give time to the presidential candidates of the Socialist Labor Party, the Socialist Party, the Socialist Workers Party, and also the vice-presidential candidate of the Socialist Workers Party.

The Community Fund Case

What could have been another equal-time crisis in 1956 was averted by the intelligent cooperation of major and minor party presidential candidates. The networks had been asked to broadcast President Eisenhower's opening of the annual Community Fund campaign in September. They first queried the FCC and found that Eisenhower's participation would be considered a "use" under Section 315, since Eisenhower was the Republican candidate for president. Thus, the networks were liable to give equal time to all other "legally qualified" presidential candidates, of which there were approximately 16. However, Mr. Stevenson, the Democratic candidate, waived his rights and

all other candidates with the exception of one followed suit. Networks were able to broadcast the very worthy appearance of the President for the Community Fund Drive without fear of a deluge of equal-time demands.¹

New Issues Arise in Suez Crisis Case

In another appearance of the President, opposing candidates were not so quick to give up their privileges under Section 315. On October 31st, President Eisenhower requested time to broadcast to the American people concerning the Suez crisis. The networks granted the request and Eisenhower spoke as President and Commander-in-Chief of the Armed Forces.

However, the Administration's Middle East policies were a campaign issue and Eisenhower, of course, was a candidate for re-election. On November 1st, Stevenson, the Democratic candidate, sent identical telegrams to each of the networks stating, "Due to grave crisis in the Middle East and the granting of fifteen minutes of radio and TV time to the Republican candidate yesterday, I request that equivalent time be made available to me."² Shortly afterwards, four other candidates made similar requests.

CBS immediately submitted the problem to the FCC pointing out that while the FCC had ruled that speeches of candidates did not have to be political in nature to constitute

¹Salant, op. cit., p. 350.
²Ibid., p. 351.
a "use", it had not ruled on the President broadcasting "to deal with grave national or international circumstances."¹

The situation was remarkably like a hypothetical case which CBS vice president Richard Salant had posed earlier (in 1956) to a Congressional subcommittee during a hearing on miscellaneous communications bills. At that time he had pointed out that if the President broadcast in a national emergency, and he was also a candidate, stations might be required to give equal-time to other candidates. But at that time his argument seemed very far-fetched to many of the committee members, who agreed with a remark of Representative Hale, "If that is what the law means, I think it is an almost ridiculous situation . . . ."²

Ridiculous, or not, it did occur, and when the networks handed the hot "Middle East potato" to the FCC, the Commission stalled for time by sending identical telegrams to the networks:

In effect you have asked us for a declaratory ruling that Section 315 does not apply. For the FCC to conclude that Section 315 does not apply in the circumstances you have outlined is dependent on such an involved and complicated legal interpretation that we are unable to give you such a declaratory ruling at this time.³

¹Ibid., p. 351.
²Hearings on Misc. Bills to Amend the Communications Act, 84th Cong., 2nd Sess., op. cit., p. 198.
³F.C.C. Public Notice 38337, November 1, 1956, 14 RR 720.
This was little comfort to the networks who faced extreme pressure, particularly in view of the fact that there were only a few desirable broadcast time periods left before the end of the campaign. The situation was an excellent example of the kind of problem discussed by FCC Chairman McConnaughey earlier in 1956 before the House Subcommittee of the Committee on Interstate and Foreign Commerce, as he had asked that Congress specify that the district courts review Section 315 complaints requiring interpretations, since the Commission had faced difficulty in speedily and "expeditiously" ruling on many situations.¹

Finally, broadcasters could wait no longer for an FCC ruling since there were only four periods of time left comparable to that during which the President had made his earlier speech. Mr. Stevenson and the other candidates were all given network time periods between November 1st and November 5th.²

The ultimate confusion was reached when the Republican party demanded equal time for Mr. Eisenhower to that given Mr. Stevenson, claiming that, "President Eisenhower went to the people Wednesday night with a completely non-partisan report in his role as president."³

¹Supra, chap. IV, p. 164.
²Salant, op. cit., p. 352.
³Ibid.
Finally, on November 5th, the FCC handed down its ruling which indicated that the networks need not have given the time to the candidates:

... we do not believe that when Congress enacted Section 315 it intended to grant equal time to all presidential candidates when the President uses the air lanes in reporting to the nation on an international crisis.¹

Since the networks now realized that they had given the other candidates time for partisan speeches without being required to do so, they offered more time to Mr. Eisenhower on election eve. He did not accept the offer.

**Senate Committee Considers High Costs and Other Political Broadcast Problems**

Section 315 and the problems presented to campaigners by the rising costs of broadcasting were again considered in 1956 in hearings before the Senate Subcommittee on Privileges and Elections of the Committee on Rules and Administration.

At the hearings, Paul Butler, Chairman of the Democratic National Committee, reiterated his suggestion, made in 1955, that the networks donate time to candidates:

The cost of television time, especially, being as high as it is, such a measure would greatly reduce the dependence of political parties upon special-interest contributors. Whatever burdens this imposes upon the networks

¹F.C.C. Public Notice 38387, November 5, 1956, 14 RR 722.
and stations should be accepted by them as a public duty, in return for the public license they receive.¹

The difference of opinion on free-time, even between political parties, was indicated by the fact that Leonard Hall, Chairman of the Republican National Committee, opposed Butler's suggestion:

To my mind, you would be starting a chain reaction there, and I don't know where it would end.

. . . . if you asked TV chains and radio chains to give you free time, . . . . Why shouldn't you ask the newspapers to give you free space instead of buying space?

. . . . I would oppose it because I think it would begin a chain which might mean the destruction of a strong two-party system in the United States of America.²

Broadcasters Oppose Free-Time Proposals

Broadcasters, in testimony before the subcommittee, opposed the "free-time" proposals, as they had in 1955. They maintained that they were private businesses, in spite of their government licenses, and should not be imposed upon. They also argued that if broadcasting was forced to give free-time to candidates then other media should be subject to the same requirement.

Richard Salant of CBS, and other broadcasters took the opportunity of appearance before the subcommittee to defend their conduct and attack Section 315. Salant noted:


² Ibid., p. 31.
the CBS radio and CBS television networks do devote - at no cost to the political candidates - a very substantial amount of time to the political campaigns. CBS believes it indisputable that section 315 has had unanticipated results. It has severely limited broadcasters in carrying and broadcasting without charge face-to-face appearances of candidates.

Joseph McDonald, treasurer of NBC, noted:

I think a repeal of 315, would result in improved programming all around, and I do not think it should be feared. Now, it may never come to pass, but in my judgement I feel that the broadcasting industry would to a very fair job of giving appropriate time and making it available on a fair basis.

Harold E. Fellows, president of NATB, stated:

Section 315 places broadcasters in a legal strait-jacket. Once a broadcaster makes time available to a political candidate, he opens up a Pandora's box of trouble. The easy solution, of course, would be to decide not to do any political broadcasting which the present law permits. This obviously is not consonant with our view of the industry's public service obligations.

The members of the subcommittee were sympathetic to the problems broadcasters faced under Section 315. Senator Mansfield commented:

Well, there is such a thing as equality of opportunity, but this seems to be drawing the line pretty fine. I would hope, Mr. Chairman, that this committee would seriously go into the section 315 and be prepared to make recommendations to ameliorate the present difficulty.

Senator Gore gave a more cautious support to the broadcasters' case:

1Ibid., p. 127. 2Ibid., p. 131. 3Ibid., p. 145. 4Ibid., p. 165. 5Ibid., p. 167.
I would like to observe that you and the other spokesmen have, in my opinion, made an appealing case for the repeal of section 315. The Congress must, however, proceed with caution in this regard.1

After hearing the testimony of broadcasters the committee did not recommend that stations be required to give free-time to major party candidates. They were also obviously sympathetic to the problems licensees faced under Section 315. However, they proposed no solution to correct the dilemma.

1956 had posed more political broadcast problems for broadcasters than ever before. Congress had considered a variety of legislation, some which would have increased, and some which would have diminished, political broadcast regulation. None of the proposals had passed.

The major problem which broadcasters had hoped to deal with remained unsolved, namely, how to grant free time to major candidates without being forced to grant time to the host of minor party candidates. As a result, many broadcasters continued to refrain from granting any free time to a candidate during campaigns. This, of course, aggravated the problem of the high rates of broadcast campaigning.

No relief for broadcasters from their political broadcast problems was immediately forthcoming.

1Ibid., p. 169.
New Questions on the Definition of "Use"

In 1957, the FCC ruled on the issue of whether appearances of candidates in news broadcasts constituted a "use" under Section 315 thereby entitling other candidates to equal-time.

WWJ-TV, Detroit, televised ceremonies in which a number of judges were sworn in by the governor. The coverage was on a news broadcast and it showed Common Pleas Judge Elvin Davenport and mentioned him briefly in the oral script. Davenport was a candidate for Judge of the Common Pleas Court in the spring primary. After the broadcast, his opponent demanded equal time to that given Davenport in the news broadcast.

The FCC, after reviewing the case, indicated:

There is no evidence before us that Mr. Davenport in any manner or form, directly or indirectly, initiated or requested either filming of the ceremony or its presentation by the station, or that the broadcast was more than a routine news broadcast by station WWJ-TV in the exercise of its judgement as to newsworthy events.1

The Commission's conclusion was:

WWJ-TV did not 'permit' . . . a legally qualified candidate for public office to use a broadcasting station by showing and referring to Mr. Davenport in its routine newscasts in the manner indicated.2


2Ibid., p. 1200.
Much to the relief of broadcasters the Commission, thus, apparently excluded regularly scheduled routine newscasts from the provisions of Section 315 as long as a candidate neither "directly or indirectly initiated or requested" the broadcast. However, in the "Lar Daly decision", in 1959, which will be discussed in the next chapter, the Commission took a completely different view, holding that appearances of candidates on newscasts were a use under Section 315. This interpretation led to eventual amendment of the section by Congress to clarify the issue.

In October, 1958, the Commission revised its Use of Broadcast Facilities by Candidates for Public Office. In it the Commission re-emphasized the public service responsibility of broadcasters to carry political programs:

In this respect it is particularly important that licensees recognize that the special obligations imposed upon them by the provisions of Section 315 of the Communications Act with respect to certain types of political broadcasts do not in any way limit the applicability of general public interest concepts of political broadcasts not falling within Section 315 of the Communications Act. On the contrary, in view of the obvious importance of such programming to our system of representative government it is clear that these precepts are of particular applicability to such programming.1

The broadcasters were thus again warned officially that they would be "damned if they didn't." But when the Lar Daly

1Use of Broadcast Facilities by Candidates For Public Office (revised), F.C.C. Public Notice 63585, October 6, 1958, p. 2.
decision was reached, they found they were also "damned if they did." It was not, as we shall see, the happiest time for the industry.
CHAPTER V

THE LAR DALY DECISION

General Background

In early 1959, broadcasters were already becoming somewhat uneasy about the difficulties Section 315 would pose for political broadcasts in the 1960 presidential campaigns. The demands of splinter candidates for equal-time posed a dilemma which had not been solved. Since the advantages offered by Section 315 were becoming better known to minority parties, demands by minority candidates were increasing. For this reason, broadcasters continued their policy of refusing free time to candidates of any party during campaign periods. Thus, they were relieved of the necessity to grant equal time to the large number of legally-qualified minority candidates who could demand time under Section 315. Broadcasters had made it a point to emphasize this restrictive effect of the political broadcast regulation to Congress. They continued to hope, somewhat forlornly by now, that some sort of legislation might be passed by Congress in 1959 which would relieve the situation.

Then, in February, 1959, an incident involving an interpretation of Section 315 by the FCC generated a storm of
controversy which brought this regulation into the national spotlight, and provided the impetus for a campaign which led Congress to pass the second amendment to Section 315 since its inception in 1927.

This is the background of the Lar Daly decision.1

In the campaign for Mayor of Chicago in February, 1959, Richard Daley, the incumbent, was a candidate for re-election in the Democratic primary; Timothy Sheenan was a candidate in the Republican primary; and Lar Daly cross-filed and was a candidate in both primaries. Stations WBBM-TV (CBS), WGN-TV, and WNBQ (NBC) showed certain film clips on their regularly scheduled newscasts of Daley and Sheenan participating in campaign events such as filing for candidacy. WBBM also broadcast a film clip in which Daley, as Mayor, initiated a polio fund drive, and another in which he greeted President Frondizi of Argentina. Lar Daly, who had attained the reputation of being a perennial and unsuccessful "fringe" candidate, asked WBBM-TV and WNBQ for time equal to that Sheenan and Daley received in the film clips. His request was denied by all the stations. He subsequently filed a complaint with the FCC.

The Commission, on February 19th, unanimously agreed that the film clips showing Sheenan and Daley in campaign activities, such as filing for candidacy, were a "use" of broadcast facilities by a political candidate and that Lar Daly was entitled to "equal-time" under the provisions of Section 315. By a 4-3 decision, the FCC held that the film clips of Daly carrying out business in his official capacity as Mayor were also a "use" and that Lar Daly was also entitled to an amount of time equal to that of those film clips.¹

Station WBNQ complied with the Commission's decision and gave Daly equal time, which amounted to about 9 minutes and 51 seconds. Station WBBM-TV, however, still refused Daly's request and CBS immediately filed a petition for reconsideration with the FCC on behalf of the station. NBC later followed suit with a petition on behalf of WNBQ. WGN-TV, on the other hand, merely capitulated to Daly's demands.

FCC's Lar Daly Ruling Brings Strong Protest

The Commission's decision brought a storm of protest from broadcasters. They realized that the interpretation, in effect, extended the equal-time provision of Section 315 to any coverage of a candidate in a newscast or broadcast of a news event. They charged that the decision would force them to

¹Ibid.
drastically curtail their normal news coverage of political campaigns. Otherwise, they would be subjected to demands for equal-time from a host of candidates every time they showed a news film in which a candidate appeared.

Harold Fellows, the president of the National Association of Broadcasters, spoke for many broadcasters when he called the decision a "genuine threat to freedom of information."

Noting that the Chicago broadcasters, "... have just experienced a perfect illustration of the imbecilic section 315 at work," Broadcasting pointed out:

"The main point is that as long as section 315 is on the books, no FCC can administer it intelligently. It is the law itself which is unintelligent, and unintelligent law cannot be converted into intelligent administration. The law may even be unconstitutional."

"Nothing less than elimination of Sec. 315 will assure the introduction of realistic good sense into the art of political broadcasting."

Remedial Legislation is Considered

Some Congressmen were immediately ready to initiate legislative steps to correct the FCC decision. Early in March, Representative Cunningham announced plans to introduce a bill to amend Section 315. He said the Commission's decision would result in a decided reduction in radio-TV coverage of

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charity drives and news events which "must of necessity show a person who is incidentally a candidate for election or re-election." ¹

Shortly afterward, Cunningham introduced H.R. 5389, which would have amended Section 315 so that it would not apply to candidates who appear on "regularly scheduled news programs." This was the first of many bills to be introduced in Congress dealing with the problem created by the Lar Daly decision.

The Press Joins the Battle

Meanwhile, the press of the country had taken up the cause of the broadcasters. A host of editorials appeared in newspapers throughout the nation in a campaign that was to continue until Section 315 was amended. The editorials almost without exception demanded repeal of the Lar Daly decision or some remedial legislation to clarify Section 315. Their viewpoint was well represented in Editor and Publisher, which stated:

Many persons in public life are 'news' because of the offices they hold or because of traits in personality. It is nonsense to suggest that these things must be counter-balanced in news reports when the political affiliation of the individual may have nothing to do with the element of 'news.'

If the FCC won't clarify and simplify its position on this, then Congress ought to amend or eliminate the law.1

FCC Chairman Supports Broadcasters

The growing tide of protest over the Lar Daly decision was reinforced at the NAB convention by FCC Chairman Doerfer. He had dissented in the part of the Commission decision which had held that the broadcast of official activities of a mayor, who was also a candidate, would be a "use" under Section 315. In a press conference at the NAB Convention, on March 17th, he said he favored wiping Section 315 off the books and following a "rule of reason."2 Later in a speech at the convention, he noted:

In my opinion a broadcaster should be given some discretion other than a Hobson's choice. This is either a plethora of bland political programming ad nauseam or a complete blackout. This will be the ultimate result if Sec. 315 is meant to be construed in an inexorable manner.3

Doerfer then again advocated the repeal of Section 315. He defined the "rule of reason," which he had mentioned could replace the section, by indicating that broadcasters, "... would under any interpretation of fairness and in his general responsibilities as a journalist, be obliged to equalize opportunities regarding an intentional or a designed use by such


3Ibid.
candidates, such as speeches, rallies, etc., whether paid for or not.\textsuperscript{1}

Doerfer seemed to feel that broadcasters would naturally apply the "rule of reason" in dealing with political broadcasts. Needless to say, the over-all sentiment at the NAB Convention was strongly against the Lar Daly decision. The convention adopted a strong resolution calling on broadcasters to continue their fight for complete freedom in electronic journalism and to urge Congressional action "that the right of people of America to know may not be impaired."\textsuperscript{2}

The resolution said that Section 315 handicapped the broadcaster in fulfilling his responsibility to keep the people informed. Broadcasters at the convention seemed to feel that the best solution to their political broadcast problems was complete repeal of the section.

The President Joins Protest Over the Ruling

A new boost was given to the campaign against the Lar Daly decision when, on March 18th, President Eisenhower termed it "ridiculous."\textsuperscript{3} The President ordered Attorney General William Rogers to "consider whether any remedial legislation can be drafted or whether any other appropriate action can be taken in this connection."\textsuperscript{4} Presidential News Secretary

\textsuperscript{1}ibid., p. 34. \textsuperscript{2}ibid. \textsuperscript{3}ibid., p. 32. \textsuperscript{4}ibid.
James Hagerty delivered the statement of the President emphasizing that it was not intended to criticize the Commission. Hagerty indicated the President's opinion had been influenced by newspaper editorials, public discussion, and a copy of a speech by Dr. Frank Stanton, President of CBS.\(^1\)

Broadcasting Protests Continue

The speech to which Hagerty referred was a copy of an address by Stanton delivered before the 1959 convention of CBS-TV affiliates in Chicago on March 21st. Stanton had stated that the Lar Daly decision posed "very serious implications not only for television but for the whole question of the effective working of democracy under modern life."\(^2\)

He charged that:

If upheld, the decision will have two inevitable results. One will be an immediate practical effect on news broadcasting that can abridge radically both the usefulness of radio and television to our society and their total freedom as media. The second will be to set loose a thoughtless quantitative theory governing the role of journalism in a democracy that can be described only as a wholesome negation of principles that have been safeguards and supports of our democracy from its beginnings.\(^3\)

Stanton warned that, "The Daly decision, for all practical purposes, makes it a mathematical impossibility for broadcasting to report any political campaign in its own way.

\(^1\)Ibid.


\(^3\)Ibid.
and take advantage of its own technical capabilities." He concluded by pointing out that the grant of equal time to the twenty or so minority candidates in an election would have taken "approximately 20 per cent more time than all the time spent by all our TV network newscasts on all the news."1 [emphasis supplied]

The tide of protest over the FCC's decision had probably served to make most Americans at least vaguely aware of the problems broadcasters faced under Section 315. It had stirred more congressional activity over political broadcast regulation than had existed for several years. The complaints also placed a great deal of pressure on the FCC as it considered the petitions of CBS and NBC for reconsideration of the Lar Daly decision. The influence leaders in the campaign had been President Eisenhower and Chairman Doerfer.

Some broadcasters began to feel that perhaps, through increasing pressure on Congress, they might obtain outright repeal of Section 315. Broadcasting noted that it would not be easy:

"... however influential the President and Mr. Doerfer may be, repeal of Sec. 315 will not come about automatically now that they have spoken. It will be extremely difficult to persuade the perpetual candidates on Capitol Hill to relinquish their grip on political broadcasting."2

1Ibid.

Broadcasting then sounded a rallying cry which was to be repeated many times in coming months:

Repeal of Sec. 315 will be achieved only by the most energetic work by broadcasters: They must exercise their most persuasive influences among members of Congress.¹

Attorney General Attacks
Lar Daly Ruling

Early in May, the Lar Daly decision received another blow which indirectly undermined the prestige of the Commission. In answering President Eisenhower's earlier request, the Attorney General released a memo to the FCC detailing the view of the Justice Department on the decision. In strongly opposing the FCC view, the memo stated:

Urging reconsideration and reversal of this decision, the United States' position is that Sec. 315 does not support the holding that every time a candidate is shown on a regular news program, at the station's sole initiative, such showing constitutes a use by him. Especially so since such holding, by requiring the grant of equal time for all other candidates, might effectively bar all direct news coverage of important campaign events.² [emphasis supplied]

The memo also indicated the restrictive effect of the ruling on the public service responsibility of licensees. It noted that the ruling, "... would make impossible the successful news programming of a campaign. Thus, the public interest which is best served by the widest coverage of campaign

¹Ibid.

events would be frustrated." It concluded that, "An opinion reversing its previous determination ... seems called for."

Remedial Legislation is Proposed

Shortly after Representative Cunningham introduced his bill (H.R. 5389), several other measures were introduced in both the House and the Senate. Congressmen were obviously sharply aware of the growing public sentiment against Section 315.

On May 5, 1959, Senator Hartke introduced the broadest and most detailed of the provisions designed to amend the political broadcasting law. His bill, S. 1858, went far beyond merely correcting the situation created by the Lar Daly decision. It first attempted to define "major" candidates by specifying that nominated candidates for the presidency or vice presidency would receive equal time only if they were nominees of a party who had polled 4% of the total popular vote in the preceding election, or who submitted petitions bearing 1% of the total popular vote cast in the preceding election. Candidates for office would be entitled to equal time only if they were incumbents; had been nominated at a prior convention; or filed a petition with names equal to 1% of the popular vote cast in the preceding election.2

1 Ibid.
2 Hearings on S. 1585, 1604, 1858, 1929, 86th Cong., 1st Sess., op. cit., p. 3.
The bill would also exempt from the equal-time provisions "any regularly scheduled or bona fide newscast, news documentary, panel discussion, debate or similar type program . . . ." The bill qualified the exemptions by stating that details of presentation of the exempted programs must have been "determined in good faith in the exercise of the broadcaster's judgment to be a newsworthy event and in no way designed to advance the cause of or discriminate against any candidate . . . ."

Hartke stated in support of his bill:

Having recently emerged from a strenuous campaign . . . . I am acutely aware of the shortcomings of the present law. Because of interpretations of the existing law, many broadcasters refuse to take any part in a political campaign. Who suffers? The American public suffers. It suffers in its right to know. 3

Dr. Stanton, of CBS, and Robert Sarnoff, of NBC, were among the first of a large group of broadcasters to endorse the Hartke bill. S. 1858 received strong support primarily because it offered broadcasters more protection from Section 315 than other bills. However, another viewpoint toward the legislation was reflected by Leonard Goldenson, president of ABC, who urged a more moderate approach than Hartke's. He seemed to feel that a compromise would more readily pass Congress.

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1 Ibid. 2 Ibid. 3 "Sen. Hartke Offers Sec. 315 Corrections," Broadcasting (May 11, 1959), p. 28.
Some Congressmen rallied behind the Hartke bill. Twelve other Senators made public their support of it, and Hartke's efforts to initiate hearings on the political broadcast bills and obtain early congressional action were successful as Senator Pastore, Chairman of the Communications Subcommittee of the Senate Committee on Interstate and Foreign Commerce, announced that, in spite of a crowded calendar, hearings would be held on the Senate bills in June. Broadcasting gratefully noted that, "Principally through the efforts of a freshman senator—Vance Hartke, Democrat of Indiana—the broadcasters' plight in trying to conform with Sec. 315 of the Communications Act will be aired by the 86th Congress."

In early June, the two main bills pending before Congress were the Hartke bill, S. 1858, and the Cunningham bill, H.R. 5389. Both had some support from broadcasters and both had a certain amount of opposition in Congress.

At this point, in the approaching skirmish, Broadcasting noted with some alarm that:

At the time this was written only three witnesses representing broadcasting had applied to testify before the Senate Commerce Committee's forthcoming hearings on repair of the political broadcasting law.

* * * * *

... if broadcasters muff this, they'll have to live with Sec. 315 for a long time.2

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This complacency on the part of some broadcasters, and their seeming lethargy toward the need for Section 315 revision, was reflected in the NAB Freedom of Information Committee meeting on June 11th. At the meeting, some broadcasters frankly stated they liked Section 315 in its present form because it relieved them of the strain of making editorial judgments. Others, with special interests, argued for acceptance of minor revision of the law to exclude news broadcasts from the equal-time provisions of Section 315. The committee adopted a compromise resolution which retreated from the previously adopted NAB stand for repeal of the section. It endorsed the bills which would give, "... immediate relief in the area of news operations ...".

FCC Refuses to Reconsider Its Lar Daly Decision

Before Congressional hearings on the political bills commenced, another event occurred which served to highlight the Lar Daly controversy.

As noted earlier, NBC and CBS (and later Westinghouse and the Justice Department) had petitioned the FCC for reconsideration of its Lar Daly decision. Essentially the petitions held that

1"Fight Against Sec. 315," Broadcasting (June 22, 1959), p. 55.

2Hearings on S. 1585, 1604, 1858, and 1929, 86th Cong., 1st Sess., op. cit., p. 32.
1) if the ruling remained in effect, the editorial judgment of stations would be disrupted;
2) unrestricted interpretation of the word "use" was twisted and distorted; and
3) the ruling conflicted with the FCC's Blondy decision which held that appearance of a candidate on a newscast was not a "use" under Section 315.¹

In mid-June, the Commission denied the petitions by a vote of 5-2. Commissioners Doerfer and Craven dissented.

In the most noteworthy and controversial paragraph of the interpretation, the Commission said the word "use", as provided in Section 315, meant exposure to the public or appearance, irrespective of the format of the program in which the candidate appeared. Thus, virtually any appearance of a candidate in any type of program would make a station liable to grant equal time to his opponents. The Commission justified its broad all-encompassing definition in a paragraph tracing the semantical development of the word "use."

In other important points in its interpretation, the FCC held:

1) the main purpose of Section 315, based on the legislative history of the regulation, is "to put it beyond the power of a licensee to determine

which legally qualified candidates for a particular office should be heard via radio once the station had permitted one candidate for that same office to use its facilities;  

2) any appearance of candidate in any type of broadcast is bound to benefit the candidate—therefore, the appearance in a newscast falls within the purview of Section 315;  

3) the language of Section 315 is unequivocal and unconditional. The Commission has no room for interpretation in the cases it considers;  

4) the Blondy case was decided on one set of facts, the situation at hand on another. Also, the appearance of the candidate in the Blondy case was decidedly brief, at the most a second or two.¹  

Commissioner Doerfer, in a dissenting statement noted:  

In my opinion the majority has construed section 315 too narrowly.  

* * * * *  

I would grant the petition for reconsideration to determine what is or is not news and permit the casting of news without requiring equal time under the claims that such broadcasts constitute a 'use' by political candidates.²  

In his dissent, Commissioner Cross stated:  

... in my opinion, the Commission must continue to interpret the present statute with due regards to the needs of the public to be informed and with equal regard to the  

¹Ibid.  

²Hearings on S. 1585, 1604, 1858, and 1929, 86th Cong., 1st Sess., op. cit., p. 265.
concept of fair play—to do otherwise would place the Commission in the untenable position of usurping the prerogatives of the Congress.\textsuperscript{1}

The reaffirmation of its Lar Daly decision by the Commission heightened the controversy over Section 315. President Eisenhower again called the ruling "ridiculous" and asked the Attorney General to investigate the matter further.\textsuperscript{2}

The developments prompted broadcasters to become more optimistic for a rapid settlement of the problem. \textit{Broadcasting} noted:

It is not unrealistic to hope for a major repair job on the political broadcasting law at this session of Congress. The law will not be repealed, although repeal must be the ultimate objective, but it will be corrected in significant respects—if broadcasters maintain the momentum of their campaign against it.\textsuperscript{3}

Thus, on the eve of hearings on the political broadcast bills in the Senate, the pressure on Congress for swift passage of remedial legislation continued. Sparked by the stand of the President, FCC Chairman Doerfer, the Attorney General, and the NAB, broadcasters initiated a flow of correspondence to Capitol Hill. However, the lethargic attitude noted earlier among broadcasters still seemed to prevail to a certain extent. Some broadcasters displayed a degree of apathy toward the pressure campaign on Congress. Those who stood for the passage of compromise legislation, rather than complete repeal of Section 315,

\begin{itemize}
\item \textsuperscript{1}Ibid., p. 34.
\item \textsuperscript{2}"FCC Affirms its Daly Ruling," \textit{Broadcasting} (June 22, 1959) p. 55.
\item \textsuperscript{3}"A Winning Fight Begins," \textit{Broadcasting} editorial (June 22, 1959), p. 146.
\end{itemize}
seemed to be becoming the guiding forces in the campaign for correction of Section 315. The thought seemed to be that Congress would more readily accept a bill specifically clarifying the Lar Daly controversy than one completely repealing or drastically limiting Section 315.

The press of the country continued its support of broadcasters. A flood of editorials urged repeal of the Lar Daly decision or rapid passage of corrective legislation. Ironically, it seemed that the campaign by the journalists was more far-reaching and effective than that of the broadcasters. This, in spite of the fact that broadcasting had a larger stake in the issue.

**Senate Considers Political Broadcast Time Bills**

On June 18, 1959, hearings were held before the Communications Subcommittee of the Senate Committee on Interstate and Foreign Commerce on the four political broadcast time bills which had thus far been introduced: S. 1585, S. 1604, S. 1858, and S. 1929.

Generally, the bills were very similar in nature. S. 1604, introduced by Senator Strom Thurmond, and S. 1929, introduced by Senator Spessard Holland, provided that the equal opportunity requirement of Section 315 would be suspended on "appearances by a legally qualified candidate on any news
However, the bills qualified the exemption by indicating that it would apply only, "... if the candidate in no way initiated the recording or broadcast." Both S. 1604 and S. 1929 were obviously intended to prevent a recurrence of the Lar Daly situation.

S. 1585, introduced by Senator Gordon Allot, was substantially similar to S. 1604 and S. 1929 except that in addition to exempting regular news program from Section 315, it extended exemption to "... news interview, news documentary, panel discussion, debate or similar type programs ...".

S. 1858, the previously mentioned bill introduced by Senator Vance Hartke, was the broadest and most complex of the bills. It exempted from Section 315, appearances by a legally-qualified candidate on a newscast, news documentary, panel discussion, debate or similar type program. In addition, it attempted to limit the protection of Section 315 to legally qualified candidates for the office of President or Vice President representing "major" political parties and to "major" candidates for nomination to these offices. This was essentially the same as restrictive proposals which had been introduced in earlier Congresses. The bill also indicated that

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1Hearings on S. 1585, 1604, 1858, and 1929, 86th Cong., 1st Sess., op. cit., pp. 3-4.

2Ibid., p. 2.

3Ibid.
there must be an evidence of "good faith" by broadcasters in handling the exempted programs.

Congressmen Support the Legislation

Appearing in support of his bill (S. 1929), Senator Holland indicated the purpose of the bill was "to overcome the strained interpretation of Section 315 . . . which was made by the Federal Communications Commission in the so-called Lar Daly case in Chicago." He borrowed from the President, as he called the ruling "a ridiculous meaning though possibly required by the present law."

Holland noted the support of the press for the broadcasters' stand against Section 315--support which had impressed many Congressmen:

. . . I do not think I have seen in many years the press of this nation--which is in direct competition with radio and television in the news field--so unanimous or adamant in its position on any given issue.

Editorials strongly criticizing this ruling have come from every corner of the Nation, and I have yet to see one which approves it.

Holland also pointed to the changed conditions in broadcasting since Section 315 was first initiated:

I think we all realize . . . that we are dealing with an industry which is relatively new and with an activity which, at the time of the passage of this act, at the time of membership of Senator Dill in the senate . . . the importance of radio was not developed nearly to the point that it has since been developed . . .

\(^1\)Ibid., p. 38. \(^2\)Ibid., p. 39. \(^3\)Ibid., p. 40. \(^4\)Ibid., p. 43.
Interestingly, Holland's point that changed conditions in broadcasting warranted a change in the political broadcast regulation was to be echoed by Senator Dill, himself, who testified later in the hearings.

At this point, Senator Pastore expressed the inevitable congressional fear that perhaps broadcasters were not trustworthy:

But truly you could even use the newscast at times if it were fully arranged to promote the candidacy of a candidate.

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I think the rules of fair play must apply. If we did exclude newscasts we ought to have added guarantees.

Both Senator Hartke and Senator Holland defended the responsibility of broadcasters in a short colloquy which followed:

**Sen. Hartke:** I wonder if you wouldn't agree with me that television and radio industry is a responsible industry, and that they are going to try to do that to the best of their ability.

**Sen. Holland:** I think without question in the main that that is true. Of course, the Senator knows that we have black sheep in every profession . . .

**Sen Hartke:** It is not fair to penalize the good that can come from this for whatever small abuses you might find, is that right?

**Sen. Holland:** That is correct.2

Senator Pastore, however, remained adamant. He stated, "I tell you very frankly I think there must be some restraint if you are going to serve the public."3

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1Ibid., p. 46. 2Ibid., p. 50. 3Ibid., p. 52.
Senator Holland objected, as did many congressmen, to Senator Hartke's attempts in S. 1858 to exclude "nuisance" or "splinter" candidates from Section 315. He noted:

"When I have been running for public office I have been inclined to think that everybody else running at the same time is a nuisance candidate.\(^1\)

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... I don't like to see the Federal Government bringing in a standard for qualification which will vary from that imposed by the State law, because after all, these people run ... under State law.\(^2\)

Senator Allot, appearing in support of this bill (S. 1585), called the Lar Daly decision a decision "which cannot help but undermine one of our most precious freedoms--freedom of the press."

Allot questioned the power of the FCC to make the interpretation:

Although this decision was based upon language in section 315 ... it seems to me that scope of the FCC as described in the preamble to that act has been broadened far beyond anything that was contemplated by the Congress.\(^4\)

While admitting that Section 315 might eventually be repealed, Allot echoed other Congressmen as he urged caution:

It may well be that the equal right concept should be reviewed--many have so advocated. But that would require a long and complicated investigation. On the other hand, the problem created by the recent decision is an urgent one ... .\(^5\)

\(^1\)Ibid. \(^2\)Ibid., p. 54. \(^3\)Ibid., p. 57. \(^4\)Ibid. \(^5\)Ibid., p. 58.
Senator Cotton objected to the phrase in Allot's bill, and also in S. 1604 and S. 1929, that programs were exempted only if the candidate "in no way initiated" the broadcast:

... doesn't it place a pretty heavy burden, one, on the station, on the network, and two, on the enforcement agency to ferret it around to find out if some friend of mine said to some friend of an employee in the station that Senator Cotton is going to judge some cows at the country fair, and that would be very interesting to the farmers, and why don't you fellows get it in your newscast. In other words a farfetched interpretation which might lead to difficulty in enforcement ...

Allot agreed with Senator Cotton that such a problem could arise but he proffered no solution to the possible dilemma.

**FCC Comments on the Bills**

In comments it submitted to the committee, the FCC generally opposed, or had serious reservations about, all the bills.

In commenting on S. 1585 it noted:

Whether or not the exemption proposed by S. 1585 would be reasonable rests ultimately on the determination of Congress as to which competing public interest factor deserves to be favored here: the right of all candidates for the same office to be treated equally ... as against the right of the public to be assured of a program service which was not threatened by an imbalance of political programs ...

The Commission seemed to lean toward the first public interest factor, feeling that equal opportunity for candidates was extremely important.

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1Ibid., p. 64. 2Ibid., p. 67.
In examining S. 1604 and S. 1929, the Commission suggested problems arising from the phrase, "... has in no way initiated the recording or broadcast." It pointed out that, "In this connection, serious problems of proof would arise as to what conduct by a candidate was sufficient to show that he had initiated the recording or the broadcast."¹ The FCC suggested that if the language was left in the bill Congress should define what constitutes "initiated."

In its comment on S. 1858, the Commission noted the similarity between the restrictive proposal attempting to limit the section to major candidates and bills introduced in earlier Congresses:

As the Commission has stated in its comments on such earlier bills, insofar as the substantive aspects ... are concerned, whether it is in the public interest to limit the equal time feature of section 315 to candidates of major or substantial parties involved a fundamental matter of policy for the judgment of Congress.²

The Commission also made a proposal for an addition to S. 1858, which it was later to incorporate in its rules regarding Section 315:

... we feel that appropriate language should be added to this bill to place the responsibility on applicants for equal time themselves to demonstrate satisfactorily their eligibility under section 315.³

The Commission suggested the addition because, "... time is usually of critical importance in resolving

¹Ibid., p. 77. ²Ibid., p. 71. ³Ibid., p. 72.
factual disputes in claims for equal opportunities, and the Commission staff resources available for such work is limited.¹ In support of its suggestion, it pointed out, "... considering the diversity of local election laws and the fact that Commission has no special competency regarding either the particular or current requirements of local election laws ... local officials are in a far better position to determine ... the eligibility of an applicant ...."²

The Commission objected to use of the words "bona fide" and "regularly scheduled" to describe newscasts in S. 1858, suggesting that the words merely confused the issue and could lead to controversy. It noted that, "While in many cases such questions could be decided fairly simply it is not difficult to imagine that in some cases the question would be a close one."³

The Commission also urged the deletion of the "good faith" clause in S. 1858. It stated:

... the Commission will almost certainly be called upon to decide claims for equal time by candidates whose activities have not been given exposure, who will claim that the appearances of opposing candidates did advance the cause of such candidate, and did therefore discriminate against the claimant and hence, that the appearance was not of a type intended to be excepted from section 315.

FCC Commissioner Ford, testifying on behalf of the Commission, indicated that, in spite of opposition to the

¹Ibid. ²Ibid. ³Ibid., p. 73. ⁴Ibid., p. 74.
pending bills, the Commission did not necessarily oppose a change in Section 315:

**Sen. Pastore:** ... is it the position of the Commission ... that the law should be left exactly the way it is?

**Mr. Ford:** I don't think so.¹

Commissioner Ford then proposed his own suggestion for a legislative remedy to the problem:

Provided that newscasts and special events, such as political conventions shall not be considered a use within the meaning of this section. But this proviso shall not exempt licensees who broadcast news and special events from an objective presentation thereof in the public interest.²

Ford explained his suggestion would preclude immediate rulings on newscasts by the Commission. However, he pointed out, "After a campaign was over, then there would be the opportunity for documented complaints to be submitted to the Commission ... things which the Commission would be concerned with respect to newscasts, as such."³ Ford indicated that a majority of the Commissioners concurred with his suggestion.

The minority view of the Commission was represented by Chairman Doerfer who had been urging repeal of Section 315 since February. He told the subcommittee:

In my opinion section 315 should be repealed. Programming of political candidates should be left to the judgment of the broadcast licensee. Bias or prejudice should be subject to the same sanction as the unfair treatment of controversial matters today.

¹Ibid., p. 78. ²Ibid., p. 80. ³Ibid., p. 79.
⁴Ibid., p. 81.
Doerfer also gave strong endorsement to the ability of broadcasters to exercise responsibility in handling political broadcasts; and indicated their record had been good;

Applying the measures of experience, the bad outweighs the good. This provision, like prohibition, has been 'a noble experiment'. The weaknesses of prohibition brought on its repeal, and I suggest that section 315 is ripe for the same treatment.¹

The need for correction of Section 315, in view of its increasing reputation among "minority" candidates, was emphasized in a colloquy between Senator Hartke and Mr. Doerfer:

Sen. Hartke: Now, as a result, quite frankly, of your decision . . . don't you feel there is going to be a greater demand for equal time by any candidate for the Presidency in 1960 than there has been in the past?

Mr. Doerfer: Absolutely, I agree, and I think whatever the reasons were why we got by as well as we did in the last 32 years are not going to exist in the future.²

Doerfer made a final point that was later to be reinforced by Senator Dill. He indicated that he felt Section 315 was not absolute but should have flexibility through Commission interpretation:

The very fact that Congress gave the administration of this law over to the administrative agency suggests to me that it wanted it to remain flexible enough so that an administrative agency could fulfill its primary functions, and that is to adjust a broad standard or directive to changing times and conditions.³ [emphasis supplied]

Doerfer felt that the Commission could have avoided the Lar Daly controversy by sensible interpretation, rather than viewing Section 315 as inflexible. Commissioner Ford disagreed.

¹Ibid. ²Ibid. ³Ibid.
with Doerfer, stating, "... I don't think the rules and regulations necessarily do in fact give us the authority to change the law."¹

Senator Dill's Viewpoint

Former Senator Dill, the author of the amendment which became section 18 of the Radio Act of 1927 and later section 315 of the Communications Act of 1934, strongly backed Doerfer's position that the Commission should have broad interpretive power. He testified:

When you attempt to apply the intent of Congress at the time you must necessarily recognize there are changed conditions.

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... it seems to me that rather than tie the Commission down by specific definition or language, it might be better to leave the power of regulation and maybe extend that power...

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... you must leave large discretion in the Commission.² [emphasis supplied]

However, Dill did not agree with Doerfer and the broadcasters that Section 315 should be repealed. He emphasized:

... I think it would be extremely unfortunate if the Congress should repeal section 315, and I think also that the shorter you can make whatever amendment you make, the more fortunate you will be when it comes to actually carrying out the law.³

Senator Pastore asked Senator Dill his interpretation of the word "use" in Section 315 (referring to the "use" of facilities by a legally qualified candidate):

¹Ibid., p. 97. ²Ibid., p. 112. ³Ibid.
Sen. Pastore: Mr. Dill, when you chose the word 'use' that appears in section 315 . . . 'If any licensee shall permit any person who is a legally qualified candidate for any public office to use' — did you mean that the candidate was responsible for initiating the broadcast? emphasis supplied

Sen. Dill: Yes. That was the thought.

... the term 'use' was intended to be a use initiated by the candidate. No doubt about that. Nobody ever had any other thought.

... I am glad you asked the question about 'use' because that is a fact. Nobody ever thought of it in any other way.1 [emphasis supplied]

Dill's explanation of "use", of course, directly contradicted the rigid definition used by the Commission in its interpretation of the Lar Daly decision.

Industry Proposals for Legislation

Frank Stanton, President of CBS, was the first broadcaster to testify at the hearings. He strongly endorsed the Hartke bill, stating:

This bill is not only of first importance to broadcasters, of electronic journalism; it is, I am persuaded, even more important to the public and its full participation in the democratic process.2

Stanton emphasized the restrictive effect of Section 315, stating that Section 315 did "far more harm than good," and added:

... time and time again radio and television have been unable to present candidates to the American people because broadcasters have known that under section 315 a

1Ibid.  2Ibid., p. 97.
half-hour to a Democratic or Republican candidate can mean a total of 4, 8, or 16 half-hours to obscure and unknown opponents.

The result has been less, not more broadcasting in the public interest.¹

In spite of his strong statement Stanton did not advocate outright repeal of Section 315 as he had earlier, but noted, "I shall leave to future consideration the more sweeping remedy of Section 315's repeal." Although Stanton supported S. 1858 he indicated a fear that Congress might feel broadcasters were "asking for too much." He indicated that a compromise would be better than nothing since, "... we are in a straitjacket at the present time."²

Stanton indicated that if no remedial legislation was passed by Congress the results could be disastrous:

"It seems to me that the conclusion is inescapable: Simple mathematics establishes that we will have no choice but to turn our microphones and cameras away from all candidates during campaign periods. For the first time in American history so far as I know, there will be a federally enforced blackout on full electronic news coverage on grounds which have nothing to do with national security."³

Stanton promised that if legislation was passed CBS would not operate to drastically restrict its coverage of any political group:

"... I assure the Congress that we will not be niggardly in our interpretation of what is a major party and who is a substantial candidate. Any party, any candidate, with significant support nationally or regionally in

presidential elections, or locally in State and local elections, will be covered by the CBS networks or stations.\(^1\)

Harold Fellows, president of the NAB, also supported the Hartke bill, and was even stronger in his denunciation of Section 315 than Stanton:

It has been our position in previous appearances before committees of Congress that section 315 should be repealed in its entirety. I would like to reiterate this position, because I still believe it to be the only way to completely remedy the unrealistic situation in which we find ourselves.\(^2\)

Emphasizing the broadcasters' problems under the section, Fellows pointed out:

The broadcaster knows that once a candidate appears on his facilities, there is opened up a Pandora's box of legal and technical difficulties caused by the requirement that all bona fide candidates for a particular office must be granted equal time in the use of a station's facilities.\(^3\)

Fellows suggested that the provision of S. 1858 limiting Section 315 to "major" candidates be "extended so as to apply to all offices," because the "Hartke bill does not solve the problem of the stations on the local level in dealing with the numerous candidates for local, State, and other national offices."

As had Stanton, Fellows indicated that although the broadcasters would like repeal of the political broadcast regulation, "... it is absolutely essential that legislation be adopted which reverses the Commission's Lar Daly decision."

\(^{1}\text{Ibid., p. 103.}\) \(^{2}\text{Ibid., p. 199.}\) \(^{3}\text{Ibid., p. 200.}\)
Ralph Renick, president of the Radio Television News Director Association, strongly advocated repeal of Section 315:

I think it fair to suggest that newsmen of radio and television would prefer to discuss outright repeal of section 315 rather than modification or amending the act to prevent such an obvious fiasco as presented in the Lar Daly case.

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My question is—why should broadcasting continue to be singled out and subject to interfering censorship on the part of the Federal Government? 1

Although Renick felt outright repeal was the best solution he saw as the next desirable step, "... passage of legislation to drastically dilute the present restrictive of section 315." Of the proposals before the committee he felt the Hartke bill "would be best from that regard."

Robert Sarnoff, president of NBC, was also emphatic in his stand against Section 315 and in his support of S. 1858—as were Stanton, Fellows, and Renick. He strongly attacked the Lar Daly decision charging:

The ruling is unsound in principle, unrealistic in practice, and harmful in effect. Its clear and immediate result is to clamp a political gag on the special techniques of television and radio journalism virtually on the eve of a national political campaign. 2

He urged legislative action to correct the situation:

I believe it is a matter of compelling urgency to remove these destructive effects of section 315. It is our conviction at NBC that this can best be done not through fresh administrative interpretations or rulings in the courts but by clear-cut congressional action on section 315 itself. The Lar Daly ruling is only the latest example

1 Ibid., p. 237. 2 Ibid. 124.
of how the letter of this law tend in practice to destroy its spirit.¹

Sarnoff qualified his position somewhat under questioning from Senator Hartke:

... I am not urging that we go after the whole ball of wax right now. I would like to get a reversal of the Lar Daly ruling.²

John Daly, ABC vice president in charge of news, special events, and public affairs, was somewhat more cautious than other broadcasters in urging political broadcast legislation. He apparently felt that asking Congress for too much of a change might result in a lack of cooperation which would lead to no change at all. He pointed out to the subcommittee:

... the ultimate goal of a completely revised section 315 should not be allowed to divert this committee from the immediate resolution of the one urgent problem arising out of this section. Legislative action is critically necessary in view of the Federal Communications Commission's recent decision to apply this section to regular news broadcasts.³

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... in the larger view, there isn't one of us in the broadcasting area who would not like a wholesale consideration and modification of section 315, but at ABC we are concerned that this terrible restriction on our ability to cover next year's elections ... be taken out of the way and then we can approach the larger problems.⁴

In support of S. 1858, Daly noted:

... ABC would welcome legislation such as is proposed in S. 1858. ... We have reservations regarding those sections of S. 1858 which establish new criteria for nominees and

¹Ibid., p. 125. ²Ibid., p. 141. ³Ibid., p. 143. ⁴Ibid., p. 145.
candidates... We also have reservations concerning the portions... which would exempt debates, panel discussion and similar type programs... We feel that legislation on both these points must have a great deal of further discussion and study. [emphasis supplied]

The "Minority Candidates" Give Their Views

Lar Daly, whose request for equal time had initiated the latest controversy over political broadcast regulation, appeared before the subcommittee to represent the viewpoint of the "minority" candidate. He, first, strongly criticized those who had criticized the FCC decision, and chided the President, although not mentioning him by name:

... I object to the words 'horrible' and 'terrible' and 'ridiculous' in respect to the February 19 ruling... and because an individual, no matter what his dignity or station uses the word 'ridiculous' it means nothing at all.

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... I would say that the individual who used the word 'ridiculous' knows practically nothing about section 315. And I believe I am far more qualified than he to talk about section 315 of the Communications Act of 1934.

Secondly, ... I object to the Attorney General of the United States sticking his snout into this matter in any way whatsoever...

Mr. Daly's strong language in his attack on the critics of the FCC drew a rebuke from Senator Pastore:

... I would hope in the presentation you would do your cause a lot more good, Mr. Daly, if we would temporize our language.

... let's be careful how we use our words here because after all we all love America...

1 Ibid., p. 154. 2 Ibid., p. 158. 3 Ibid., p. 159.
Daly strongly endorsed Section 315, calling it, "... the fairest and most just 79 words ever put together by the U. S. Congress. Section 315(a) must be preserved in its entirety as it is now written."¹ He also noted Senator Pastore's remark that Section 315 was enacted for the public's interest, and disagreed, stating the section, "... was enacted for the interest of an individual only, who possessed the unique status in law of 'legally qualified candidate.' It wasn't enacted for the public's use or benefit in any way whatsoever."²

Daly seemed to feel that he had some magical solution to the problems inherent in the political broadcast regulation. He noted:

I could show the TV and networks and licensees how they could give candidates for public office free and equal time, even on a televised newscast and still be fair and square with everybody. But so long as they have not done right by me, I am not going to help them in any way.³

Daly did not propose his solution but he did deliver a warning: "... so long as this law sec. 315 is on the books I am going to take every advantage of it."⁴

Joseph Schafer, a candidate for the Republican nomination for Mayor of Philadelphia in the May primary, also represented the view of the minority candidate. He attacked the responsibility of newspapers, as well as radio and

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¹Ibid.
²Ibid., p. 163.
³Ibid., p. 166.
⁴Ibid., p. 175.
television, and suggested that political broadcast regulation be extended to all forms of journalism.

Schafer indicated that Section 315, "... must be extended beyond radio and television to provide for equal space in our newspapers, which are an important means of communication during political campaigns." Schafer apparently based his feeling on incidents occurring in the May primary. He noted that:

During the May primary campaign news stories concerning me and my program were virtually blacked out in the two main daily Philadelphia newspapers ... 1

In regard to broadcasters Schafer emphasized:

... I can testify to the desirability of continuing the requirement that radio and television must accord equal time to all political candidates. There is no doubt in my mind that otherwise I would not have received as much time as I did on the air during the recent campaign.

** * * * *

It is my opinion that radio and television stations would not voluntarily give equal time to all political candidates during election campaigns unless they would be compelled to do so. 2

Schafer also defended the rights of "legally qualified minority candidates":

If there are to be elimination of crackpots and political hacks, I think it should be done in the State laws, where they provide how the election machinery is set up, which candidates should become qualified. But once they are legally qualified, they are entitled to their say, whether it is over radio and television, or whether it is in the newspapers. 3 [emphasis supplied]

1 Ibid. 2 Ibid., p. 248. 3 Ibid.
Nathan Karp, a member of the Executive Committee of the Socialist Labor Party of America, also defended the rights of minority parties which he charged would be undermined by tampering with Section 315:

Unquestionably the renewed clamor to change or amend the FCC regulations is based on a desire to reduce, or eliminate entirely, the participation of minority parties in free radio and television time under the so-called equal opportunity provision, section 315, and thereby confer upon the two major political parties what amounts to a monopoly on the use of the airwaves, which are the private property of no man or group of men.1

Commenting on the legislation pending before the committee, Karp noted that . . . any of the language that is contained in any of the bills before this committee are in themselves allowable of so many ambiguous interpretations that it will merely enable the networks to then have a weapon to eliminate every political minority in the country.2

As the Senate hearings ended several points were fairly apparent:

1) there was a division of opinion on the subcommittee as to how much of a change should be made in Section 315, ranging from Senator Hartke's endorsement of the sweeping proposals in his bill, S. 1858, to Senator Pastore's constant admonishments for caution;

2) broadcasters' opinions were also divided, ranging from the strong endorsements of S. 1858 by Dr. Stanton and Ralph Renick, to the more cautious approach of John Daly

1Ibid., p. 252. 2Ibid., p. 274.
who felt a reversal of the Lar Daly decision was enough to ask for;

3) broadcasters were unanimous in feeling that if the Lar Daly decision remained in effect, broadcast coverage of the 1960 campaigns would be virtually "blackened-out";

4) broadcasters all felt they were qualified to handle political broadcasts fairly without regulation;

5) representatives of the "minor" candidate group strongly opposed any amendment of Section 315, feeling it would seriously restrict their access to broadcast facilities.

Broadcasting criticized the cautious approach adopted by such broadcasters as John Daly during the hearings:

In the testimony of a few of the broadcasters who have appeared at the Senate hearings, the debilitating advice of the tut-tut type of lawyer has been evident. This is not the kind of advice that makes Peter Zengers or Joseph Pulitzer's. The more of this advice that creeps into the present proceedings, the less chance there is for broadcasting to gain emancipation.

FCC Clarifies Ford's Amendment

After the hearings, the Commission submitted a "clarification" of the proposal made by Commissioner Ford which would exempt from equal-time requirements newscasts and "special events such as political conventions." It contained the phrase:

But this proviso shall not except licensees who broadcast such news from an objective presentation thereof in the public interest.¹

The clarification submitted by the Commission to explain this phrase seemed particularly ambiguous.

Broadcasting charged:

Last week's clarification struggled for 818 words to define 'newscast,' 'special events,' and 'objective presentation' without succeeding in defining any of them. It did succeed, however, in making clear that if the Commission's amendment were adopted, there would be infinitely more work for lawyers and less freedom for broadcasters.²

Broadcasting then made its own proposal to solve the political broadcast dilemma. It suggested a simplified version of Section 315:

If a broadcast licensee allows a political candidate to make a broadcast in time which is paid for by the candidate, his party, or his supporters, the licensee must make equally desirable time available to all other candidates for the same office under the same commercial conditions.

No charge shall be made for the appearance of a candidate which exceeds the charge that would be made for the same time period if bought by a commercial advertiser.³

In support of its proposal Broadcasting pointed out:

If there is an outstanding virtue in the revised Sec. 315 suggested here, it is its simplicity. Not even the most addled FCC could create more than momentary confusion in interpreting so uncomplicated a law.

* * * *

The less rigid Sec. 315 is made, the more access reputable candidates will have to radio and television.⁴

¹Ibid. ²Ibid. ³Ibid., p. 95. ⁴Ibid.
House Hearings on the Political Broadcast Bills

On June 29th, 1959, the same day that Broadcasting made its suggestion, the Communications and Power Subcommittee of the House Committee on Interstate and Foreign Commerce began hearings on the political broadcast time bills introduced in the House. The proposed legislation included H.R. 5389, 5675, and 6326, which were identical with S. 1929 and 1604 in the Senate—they would have exempted from the equal-time provision, "... any news program, including news reports, and news commentaries." The exemptions applied only if the candidate, "... in no way initiated the recording or broadcast."

H.R. 7122, 7180, 7206, and 7602 were identical to S. 1858. They would have exempted from Section 315, appearances by a legally qualified candidate on a newscast, news documentary, panel discussion, debate, or similar type program. In addition, they attempted to limit the protection of Section 315 to legally qualified candidates for the office of President or Vice President representing "major" political parties and to "major" candidates for nomination to these offices. The bills also indicated that there must be an evidence of "good faith" by broadcasters in handling the exempted programs.

H.R. 7985, introduced by Representative Oren Harris, Chairman of the Interstate and Foreign Commerce Committee,
seemed to be most popular with Congressmen of the bills introduced. It would have exempted from the equal-time provisions, "... any news, news interview, news documentary, on-the-spot news coverage of newsworthy events, panel discussion or similar type program where the format and production of the program and the participants therein are determined by the broadcasting station, or by the network ..."1

The testimony before the House subcommittee was essentially the same as that delivered in the Senate. Most of the same witnesses appeared before both committees.

At the beginning of the hearings, Representative Harris noted the problems involved in considering the legislation:

I think most persons will agree that section 315, in view of the Lar Daly ruling of the Commission, requires some amendment.

There, however, I am constrained to believe the general agreement ends. There may be a great number of divergent views as to exactly what amendment should be adopted and how far reaching the exemptions from the equal time requirement contained in section 315 should be.2

Doerfer Modifies His Stand

In testimony before the subcommittee, FCC Chairman Doerfer modified his earlier stand against complete repeal of Section 315 and supported Commissioner Ford's suggested amendment:

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... I would repeal section 315, but this may be unacceptable to a sufficient number of Congressmen so as to make it unrealistic to press for it further at this time.¹

Representative Rogers pointed out to Doerfer that he doubted Section 315 would ever be repealed:

You know as well as I do most laws are passed because they are concerned with what a few people do. This is what the situation is to me. You might have 5,000 broadcasters who are just as fair and honest as they may be. You might have one mountebank in this whole thing that would upset the apple cart. That would be the fellow that makes it necessary for a law to be passed.²

The Opinion of the Attorney General

Robert A. Bicks, Acting Assistant Attorney General delivered the opinion of the Justice Department on the Lar Daly decision to the subcommittee:

... this Department's position is that we would suggest that Congress act now to overturn Lar Daly's construction of 315 as applied to news casts.³

After the hearings Chairman Harris stated, "I think we will be able to work out something on relieving broadcasters from the FCC's interpretation of Sec. 315 but it is not going to be what broadcasters want."⁴ This was essentially the same position taken by Senator Pastore, Chairman of the Senate Communications Subcommittee.

¹Ibid., p. 55. ²Ibid., p. 56. ³Ibid., p. 92. ⁴"Sec. 315 Prospect: Partial Relief," Broadcasting (July 6, 1959), p. 56.
CBS and Senator Humphrey—Effect of Lar Daly Ruling Emphasized

In mid-July, the effect that the Lar Daly decision could have on political broadcasting was emphasized in an action taken by CBS. In fact, critics accused CBS of deliberately taking the action to increase pressure on Congress to amend Section 315. CBS withdrew Senator Hubert Humphrey's invitation to appear on "Face the Nation" after his candidacy for the presidency was announced by Senator Eugene McCarthy and Minnesota Governor Orville Freeman.

Sig Mickelson, CBS vice president in charge of news and public affairs, pointed out:

This decision is impelled by the danger that we would be required, if Senator Humphrey appeared, to devote 'Face the Nation' to insignificant or obscure or unknown aspirants for the Democratic presidential nomination. Such a requirement would destroy 'Face the Nation' as an important information program.¹

A few days later, on July 26th, CBS devoted its entire program, "Behind the News," to Section 315. The program concluded with an editorial by CBS President Frank Stanton, who urged swift passage of remedial legislation pending before Congress. He noted:

It is possible for the American people to be the best informed electorate the world has ever known. The

problem is simply for Congress to act, and to act promptly, so that the 1960 election campaigns will be freed from the present blackout.1

The Fight for Remedial Legislation Moves to the House and Senate

More Pressure from Broadcasters is Called for

The next step in the broadcasters' fight for legislation to correct Section 315 was to be on the floor of the House and Senate, as bills were reported out of the House and Senate Interstate and Commerce Committees. Broadcasting summed up the situation:

A crucial point has been reached in the broadcasters campaign for relief from some of the most undesirable features of the political broadcasting law. If the fight is not won in the next few weeks it is as good as lost.

Congress is expected to adjourn in September. It will not be easy to force these measures to a vote in the little time that remains, but it can be done. Broadcasters in all parts of the country must at once begin a thorough educational campaign among their own senators and congressmen.2

There was still a certain amount of apathy among broadcasters. As in previous months, the newspapers seemed to be taking a position as strong, if not stronger, than that of broadcasters. Broadcasting pointed out:

1"Section 315," Behind the News with Howard K. Smith, CBS program script for July 26, 1959, (mimeo.), p. 15.

2"What You Can Do About Sec. 315," Broadcasting editorial (July 20, 1959), p. 69
According to a reliable compilation made by CBS, nearly 400 editorials urging reform in the political broadcasting law have been published. To our knowledge no more than half a dozen stations and the CBS network have broadcast editorials on the same subject. Nor have substantial numbers of broadcasters taken any other action to advise their congressmen of the valid need for changes in the law. It remains in the closing weeks of this session of Congress, for all broadcasters to show whether they deserve even the limited freedom which the amendment of Sec. 315 would give them.¹

A New Bill Reported Out

On July 22nd, the Senate Interstate and Foreign Commerce Committee, rather than endorsing any of the legislation it had considered, reported out an original bill, S. 2424.

Sec. A of the new bill would have exempted from the equal-time provision "any newscast, news interview, news documentary, on-the-spot coverage of new events, or panel discussion." Section 2(a) would require Congress to re-examine the amendment "... at or before the end of the three-year period beginning on the date of the enactment of this act, to ascertain whether the remedy provided by such amendment has proved to be effective and practicable." Section 2(b) would require the FCC to include in its annual reports to Congress "... (1) the information and data used by it in determining questions arising from or connected with such amendment, and (2) such recommendations as it deems necessary to protect the public

interest and to assure equal treatment of all legally qualified candidates for public office under section 315. . . ."  

In its report the committee indicated why it had opposed complete repeal of Section 315:

If the number of radio and television stations were not limited by available frequencies, the committee would have no hesitation in removing completely the present provision regarding equal time and urge the right of each broadcaster to follow his own conscience in the presentation of candidates on the air. However, broadcast frequencies are limited and, therefore, they have been necessarily considered a public trust.

The committee also pointed to the restrictive effect of the Lar Daly decision:

If the present position of the Federal Communications Commission with regard to section 315 remains unchanged, the committee feels that this would tend to dry up meaningful radio and television coverage of political campaigns.

The report also took note of the fear of some Congressmen that broadcasters would not exercise responsibility in handling the exempted programs:

The committee is not unmindful that the class of programs being exempted from the equal time requirements would offer a temptation as well as an opportunity for a broadcaster to push his favorite candidate and to exclude others. That is a danger.

The public benefits are so great that they outweigh the risk that may result from the favoritism that may be shown by some partisan broadcasters. [Emphasis supplied]

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3Ibid.  
4Ibid., p. 10.
However, the committee noted the "two provisions which serve as a warning to all broadcasters that the discretion being granted them and the manner in which they employ it will be carefully screened." This referred, of course, to the provisions for Congressional re-examination and reports from FCC.

The committee also attempted to answer the Congressional argument that, "... the adoption of legislation creating special categories of exemptions from section 315 would tend to weaken the present requirements of fair treatment of public issues." It emphasized:

The committee desires to make it crystal clear that the discretion provided by this legislation shall not exempt licensees ... from objective presentation ... in the public interest.\(^1\)

**Senate Debate on S. 2424**

On July 28th, the Senate debated, amended, and passed S. 2424.

In the debate on the bill, several Senators expressed a fear of discrimination by broadcasters. Senator Douglas asked Senator Pastore:

*Sen. Douglas:* If we give this group complete freedom to emphasize one party or the other, or one set of candidates or the other, do we not give to them exceedingly great powers over public opinion, and in effect deny to others the opportunity of being fairly heard?

*Sen. Pastore:* ... No. We are not repealing section 315.

\(^1\)Ibid., p. 13.
Sen. Douglas: ... the radio and television industry has come to control the Commission rather than the Commission has control over the radio and television industry, and I doubt very much whether any radio or television station would have its license revoked because it supported the candidates of one political party or because it played favorites in a local race.¹

Senator Magnuson agreed with Senator Douglas that it was unlikely that the FCC would repeal a station's license simply because the station was unfair in handling political broadcasts. He suggested:

Perhaps our committee ought to establish a permanent subcommittee to be a sort of watchdog in this matter, so a person could complain and get some action on his complaint.²

Senator Pastore responded to Magnuson's proposal, "If the Senator ever creates such a subcommittee, please, do not put the junior Senator from Rhode Island on it."³ Senator Magnuson later established the type of "watchdog" subcommittee he mentioned, although he denied the purpose of its formation was to enforce Section 315.

In response to further questioning of broadcasters' responsibility Senator Pastore noted:

We are not met with a situation in which Congress is impotent. We are still the instrumentality to correct abuses if abuses occur. We propose to watch the situation very closely.⁴

²Ibid., p. 13176. ³Ibid., p. 13179.
⁴Ibid., p. 13178.
The Question of Exempting Panel Discussions from Sec. 315

As Senators considered the specific program exemptions in S. 2424, Senator Holland asked Senator Pastore for a definition of "news documentary":

Sen. Pastore: The best way I can describe and define 'news documentary' is by taking a case where a news event of contemporary value occurs. In order to give it the graphic and dramatic appeal it deserves, the program will go into the background, giving the genesis which led to the event of the moment, and develop it from that point on.¹

The inclusion of "panel discussions" as exempted programs was strongly questioned by several Senators. Senator Pastore noted in response to the comments:

In the committee it was argued that we should not deal with that subject, because if we did, we would be making a complete innovation . . . I say frankly that we are not wedded particularly to the inclusion of a provision of that type.² [emphasis supplied]

Shortly afterward, Senator Engle offered an amendment to strike out the words "panel discussion." In support of the amendment he stated:

... panel discussions go to the point where it is possible to intrude into the field of favoritism and thus violate the basic intention of the law, the purpose for which it has been on the books for a period of 32 years, during which time there have been no complaints about it . . . ³

Senator Javits opposed this viewpoint, however. He supported the inclusion of panel discussions, stating:

¹Ibid., p. 13173. ²Ibid., p. 13175. ³Ibid., p. 13183.
I think we should preserve panel discussions and not make the requirement ridiculous. I refer to the opportunity of Americans to hear face-to-face debate by opponents.  

In spite of some opposition, the amendment was passed and "panel discussions" were not included in the classes of programs exempted from Section 315.

Earlier Review by Congress Urged

Then Senator Long proposed an amendment to establish the date for review of the legislation by Congress as 1960, instead of 3 years from the date of enactment. He stated:

even with the action the Senate has taken on the last amendment, which I believe to be desirable ... it seems to me this bill would nevertheless permit great discrimination in favor of a particular candidate if stations so desired.

* * * *

I submit that we should place upon the Congress the burden of watching this matter very carefully for the next year, to see how it will work out. * * * If it works out then we can continue it.

Senator Long's amendment was defeated.

The Question of Controversial Public Issues

Still another amendment was proposed by Senator Proxmire to strengthen the regulation against possible discrimination by stations in the presentation of public issues:

but nothing in this sentence shall be construed as changing the basic intent of Congress with respect to the provisions of this act, which recognizes that television and radio frequencies are in the public domain, that the

\[1\text{Ibid.}, \ p. \ 13185. \ 2\text{Ibid.}, \ p. \ 13186.\]
licensee to operate in such frequencies requires operation
in the public interest, and that in newscasts, news inter-
views, news documentaries, on-the-spot-coverage of news
events, and panel discussions, all sides of public contro-
versies shall be given as equal an opportunity to be heard
as is practicably possible.\[emphasis supplied\]

Senator Pastore objected to the use of the words "as
equal an opportunity" in the amendment. He indicated that the
change might be acceptable "If the Senator will change the
wording to 'as fair an opportunity,' with a clear understanding
that this does not substantially defeat the purpose of the
exemption . . . " Proxmire agreed to the change. Nevertheless,
Pastore called the amendment "surplusage," saying that the
provision calling for review of the act by Congress accom-
plished the same purpose.

In clarification of his amendment, Proxmire stated:

... a broadcaster is not required to give an equal
opportunity to each legally qualified candidate. What
the broadcaster should do is to consider all sides of
public controversy, and make certain that not only the
conservative or liberal viewpoints or ideas are ex-
pressed, but that the public has a chance to hear both
sides, in fact all sides . . . ."

Essentially it seemed that Proxmire was proposing a
regulation stipulating that broadcasters must give fair presen-
tation to all sides of a public question--this was quite
similar to the proposal made in S. 1333 in the 84th Congress.

The Senate passed Proxmire's amendment and then
S. 2424 as amended, both by voice votes.

1Ibid., p. 13189. 2Ibid. 3Ibid.
S. 2424, as amended, provided for exemption from Section 315 of "any newscast, news interview, news documentary, or on-the-spot-coverage of news events." It provided for Congress to re-examine the section in three years and stipulated that annual reports on activities under the section be submitted by the FCC. It also included Proxmire's admonition that stations provide as "fair an opportunity as possible" for all viewpoints on the exempted programs.

During the Senate debate, Senators had displayed a considerable lack of confidence in the ability of broadcasters to responsibly handle political broadcasts without regulation. Their doubt was exemplified in the passage of the Proxmire amendment.

Broadcasters were generally unhappy with S. 2424, particularly the section introduced by Proxmire. Broadcasting stated:

No broadcaster who aspires to be a force in free journalism can see anything but new restrictions against his development in that direction. Leave the closing phrases intact and the doctrine of fairness will be an invitation to every malcontent who fancies himself wronged by any news show to appeal to the FCC and thus set in motion the costly machinery of investigation. The fight for relief from Sec. 315 must now be waged in the House.1

FCC Changes Its Rules on Political Broadcasting

Before the House began debate on its bill to amend Section 315, the FCC made the first change in its rules and regulations since 1952. The Commission amended the rules to require that a request for equal opportunities on a broadcast station under Section 315 must be submitted to the licensee within one week of the day on which the prior use occurred. Also, the Commission held that the burden of proving his bona fides as a candidate or that of his opponent should be on the candidate requesting equal opportunities of a licensee, or complaining of alleged non-compliance to the FCC.

Prior to the amendment a candidate could ask for equal time at any time. Also, investigation as to the bona fides of candidates had been carried out by the station or the FCC.

The amendment to the rules was identical with the proposal made by Commissioner Ford to the Senate Subcommittee on Communications in June. The Commission stated in explanation of the amendments that it was making the changes so that candidates for public office and station operators "may be more fully informed of their rights and obligations under

1Ibid.
Sec. 315 . . . and to insure orderly and expeditious dispo-
sition of requests submitted to the broadcast stations and
to the Commission.  

The changes in the rules were somewhat of a victory
for broadcasters. Stations had long complained that ascem-
taining the bona fides of candidates was a difficult task and
time-consuming. Also, some candidates had not announced their
candidacy until late in a race, then demanding equal time
retroactive to the first broadcasts of other candidates.

House Debate on H.R. 7985

On August 18th, the House considered H.R. 7985. The
bill, which was originally introduced by Oren Harris, had been
amended by the Committee on Interstate and Foreign Commerce.

H.R. 7985 provided:

Appearance by a legally qualified candidate on any
bona fide newscast (including news interviews) or on any
on-the-spot-coverage of news events (including but not
limited to political conventions and activities incidental
thereto), where the appearance of the candidate on such
newscast, interview, or in connection with such coverage
is incidental to the presentation of news shall not be
deemed to be use of a broadcasting station within the
meaning of this subsection.  

After a three-hour debate the House passed H.R. 7985.

During the debate, several charges were made against the
legislation and broadcasting in general:

\[1\]Ibid.

\[2\]U.S., Congressional Record, 86th Cong., 1st Sess.,
CV, No. 142, p. 15011.
1) the bill sought to protect networks and large stations from damage suits;
2) American journalistic efforts lean heavily in favor of the Republican party;
3) stations should not be permitted to endorse candidates editorially;
4) broadcasters could, and would, show favoritism in coverage of political news.

House Debate on the Questions of Panel Discussions and Station Accountability

Representative Harris pointed out to the House that the language in H.R. 7985 exempting, as separate categories, news documentaries, panel discussions, and similar type programs had been deleted because "the committee felt . . . that these categories are simply too vague and cannot be defined with sufficient definiteness." However, he strongly emphasized:

On the other hand, and I want you to get this, on the other hand, the elimination of these categories by the committee was not intended to exclude any of these programs if they can be properly considered to be . . . coverage of news events. [Emphasis supplied] The issue of panel discussions prompted some heated debate, as it had in the Senate. Representative Moss, who

2Ibid.
strongly objected to the exemption of panel discussions from Section 315, opposed Representative Harris' interpretation of the bill as including these programs:

Rep. Moss: I am not willing to have [panel discussions] opened up. It is wide open to abuse. Never forget that these are not super beings who run these radio stations. They are subject to the same prejudices as each one of us.¹

Representative Younger closely questioned Representative Moss on his viewpoint. In the colloquy, Moss indicated his position was unequivocal:

Rep. Younger: Does the gentleman contend that on the programs known as 'Face the Nation' and 'Meet the Press' where a qualified candidate appears, candidates for all the other parties must also be given an opportunity to appear?

Rep. Moss: I contend the program is not a bona fide newscast, nor is it spot coverage of a news event . . .

Rep. Younger: And it would still be under the jurisdiction of Sec. 315 according to the gentleman's interpretation, and the gentleman wants to leave that as a record in consideration of this measure?


* * * *
I think the committee's intent is very clear. We changed the language. We inserted the condition that the news must be bona fide and that the first-person reporting by the candidate be incidental to the reporting of the news. I would not construe that the entire program 'Meet the Press' would be deemed exempt as being incidental to the reporting of news . . .²

Both Representative Younger and Representative Bennett stated they would not vote for the bill if they did not construe it to exempt such panel shows as "Face the Nation" and

¹Ibid., p. 14883. ²Ibid.
There was an obvious difference of opinion in defining shows of this type with the Moss group contending they were "panel discussions" while others defined them as "news interviews."

Representative Bennett and others objected to the phrase "incidental to the presentation of the news."

Bennett pointed out:

... [the language seems] innocent enough at first sight. However, a little closer examination ... may persuade many of you, as it did me, that this is an impossible yardstick for the broadcaster and the Commission to apply.¹

Representative John McCormack advanced a partisan charge as a basis for caution in considering the legislation. He felt the press of the country was "decidedly unfair to the Democratic party ..." He charged:

We all know that many newspapers throughout the country control radio and television stations and we ... know what we are up against. It is an unusual situation with such slanting of the news and unfairness to the Democratic Party ... While I realize that something has to be done to correct the Chicago situation, I certainly do not want to do something where the Democratic party is going to be penalized.²

Two amendments were proposed to H.R. 7985.

Representative O'Hara offered an amendment similar to the Proxmire provision in S. 2424, providing that all licensees should be held to a "strict accountability" by the Commission. He withdrew the proposal after a strong protest from Representative Harris.

¹Ibid., p. 14881. ²Ibid., p. 14867.
Representative Coad attempted to amend the bill by extending Section 315 to include equal-time for all representatives "of any political or legislative philosophy." He stated that his amendment would make it possible for "the people of America to have presented to them fairly and squarely and honestly the issues on political and legislative philosophy."¹

Representative O'Brien, and others, opposed the Coad proposal. O'Brien stated:

I wonder how many weeks it might take us to determine who would be the representative of any political or legislative philosophy. There might be 1,000 variations of the philosophy.²

The Coad amendment was defeated.

After three hours of debate, H.R. 7985 was passed by the House.

Broadcaster Reaction to the House Debate

Broadcasting strongly criticized the House debate:

... it will take years for broadcasters to overcome the ill effects of the debate on the House floor last Tuesday. The attempt to write a 'legislative history' to document Congressional intent was twisted into an indictment of broadcasting.

** * * * *

After the House performance last week, there can't be any doubt about where broadcasters stand. The only answer lies in full and absolute repeal of Sec. 315.³

Broadcasting also called on broadcasters to increase pressure on Congress:

There is no time for leisurely letter writing. Broadcasters who pretend to be involved in journalism should telegraph their support to their senators and congressmen.1

Joint Conference Committee Consideration of S. 2424 and H.R. 7985

There were several differences between S. 2424 and H.R. 7985 which would obviously have to be resolved by a conference committee. The major differences between the House and Senate bill were:

1) H.R. 7985 exempted programs from the equal-time provision only where the appearance of a candidate was "incidental to the news"--the Senate bill contained no similar provision;

2) S. 2424 exempted "news interview programs," while House bill exempted such program-types only if they were part of a bona fide newscast;

3) S. 2424 exempted news documentaries, while the House bill did not;

4) S. 2424 contained the "Proxmire provision," calling on stations to give all viewpoints "as fair an opportunity as possible" in the exempted programs, while the House bill contained no similar provision.

1Ibid.
A Compromise Bill is Reported

After carefully considering the differences between the two bills, on August 27th, the joint conference committee reported out a new version of S. 2424 which represented a compromise between the differing viewpoints of the House and the Senate. It provided:

That sec. 315 (a) of the Communications Act of 1934 is amended by inserting at the end thereof the following sentences: 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 discussions of conflicting views on issues of public importance.

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

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

¹"Congress Votes Sec. 315 Revision," Broadcasting (September 7, 1959), p. 46.
In summary, these were the compromises effected by the conference committee: (1) Deletion of that portion of the House bill exempting programs only where appearance of candidate was "incidental to the news"; (2) news interviews were required to be "bona fide." The committee further explained this category, which was controversial since many felt that it could be interpreted to include panel discussions:

It is intended that in order for a news interview to be considered 'bona fide' the content and format thereof, and the participants, must be determined by the licensee in the case of news interview originating with the licensee of a station and by the network in the case of a news interview originating with a network; and the determination must have been made by the station or network, as the case may be, in the exercise of its 'bona fide' news judgement and not for the political advantage of the candidate for public office. ¹

(3) Since the Senate bill exempted news documentaries and the House bill did not, the conference provided exemption only if its appearance was incidental to the presentation of the subject or subjects covered by the news documentary; (4) bona fide news events instead of news events were specified to, "... emphasize the intention to limit the exemptions for the equal time requirement to cases where the appearance of a candidate is not designed to serve the political advantage of that candidate."; ² (5) the "Proxmire provision" was carried over in essentially the same form except the phrase calling for "as

²Ibid.
fair an" expression of viewpoints as possible was changed to require that stations afford a "reasonable opportunity."1

Representative Moss, the only member of the conference committee who did not sign the report, promised a fight on S. 2424 when it was reconsidered in the House. He stated, "I buy none of it."2

The End of the Fight

When the conference bill was considered in the House, Moss, and a few other representatives, bitterly opposed it. He stated:

... you have just heard about all of the safeguards built into this legislation. I want to show you that you have no safeguards. The restatement of so-called Proxmire amendment is virtually meaningless ... a rule of fairness which can only be tested at the time the station's license comes up for renewal ... It gives an opportunity to seek a remedy when the case is cold and forgotten. And if you are a defeated candidate it is of little comfort to know that you may have had a remedy.3

Moss also indicated that he had little faith in the fairness of broadcasters. He charged, "I say there has been no showing to justify this type of act ... I think the record shows that some who enjoy privileges in this field have certainly failed to live up to their responsibilities."4

1Ibid.
4Ibid.
Representative Dingell joined Representative Moss in protesting the bill. He charged:

... I think it [S. 2424] not only repeals it [Sec. 315 (a)] but virtually completely repeals it and that it just about eliminates the requirement for fair play in those subtle instances of discrimination which are possible between candidates on a radio or television program.¹

Representative Harris strongly defended the bill. In response to the criticism, he noted:

... when someone on a program ... tries to go beyond the spirit and the letter of the law and begins to abuse it, it is going to be detected immediately. Then is when you have the response from the general public.²

In spite of the protests from Representative Moss, and others, the majority of the House supported S. 2424 and it was passed by a vote of 142-70.

Passage by the Senate

The main objection to S. 2424, during debate in the Senate, seemed to be that the conference bill could be interpreted to include panel discussions among exempted programs. The Senate, of course, had originally passed an amendment striking panel discussions from the classes of exempted programs.

Senator Pastore noted that the House had interpreted the "bona fide news interview" clause to include panel discussions. However, he noted that strict requirements were outlined for the programs.

¹Ibid., p. 16311. ²Ibid., p. 16312.
Senator Engle not only complained about the danger of discrimination in local panel shows: "That is where a panel discussion can be manipulated, because conditions outside of the conscience of the broadcaster itself can no longer be a controlling factor," but also objected to the entire bill. His views seemed to sum up the opinion of the Senate opposition:

... I would be less than frank if I did not say that I have a deep sense of concern about this proposed legislation.  

*** *** ***

... I wish to serve notice on this Senate floor that I propose to watch the administration of this act with great care. ...

Senator Case summed up the viewpoint of the Senate members of the conference committee:

We believe we steered a proper course between excesses on the one side and on the other. If history or experience proves that we are wrong, the law can be changed, this plus the fact referred to already that the stations hold their licenses subject to reconsideration upon their expiration, and when applications for renewal are before the Commission.

The Senate passed S. 2424 by a voice vote.

**The New Bill is Approved**

On September 18th, President Eisenhower signed S. 2424 into law. He endorsed the ability of broadcasters to handle political programming under the new exemptions as he noted:

1Ibid., p. 16344. 2Ibid. 3Ibid., p. 16345. 4Ibid., p. 16347.
The legislation makes reference to the continuing obligation of broadcasters to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on important public issues. There is no doubt in my mind that the American radio and television stations can be relied upon to carry out fairly and honestly the provision of this act without abuse or partiality to any individual, group, or party.¹

Although many broadcasters would have preferred a stronger exemption from Section 315 than was passed by Congress, Harold Fellows, President of the NAB, expressed their viewpoint when he said:

Now that this requirement of the law has been modified, the broadcasting industry is in a much better position to serve our country through dissemination of news . . . I am sure all broadcasters join me in thanking the President for this recognition of our approach to the coverage of news and broadcasting's contributions to a well-informed America.²

Senator Magnuson's Watchdog Committee

Concurrent with the signing of the new political broadcast regulation, an ominous note was struck by the announcement of Senator Warren Magnuson that he had established a three-man "watchdog" subcommittee to investigate charges of unfairness in news broadcasts over radio-TV. Although Magnuson denied that the purpose of the group was to enforce Section 315, many broadcasters felt that the group seemed strikingly similar to the "watchdog" committee

¹"The Signs Sec. 315 Amendment into Law," Broadcasting (September 21, 1959), pp. 72-74.
²Ibid.
Magnuson had proposed during debate on S. 2424 to assure the enforcement of political broadcast regulation.

Magnuson noted that it was the duty of broadcasters to "insure freedom, fairness and impartiality in the treatment of news by media operating under government license." He stated that the subcommittee would, "... receive information and complaints concerning the operation of the communications media." 1

Broadcasters strongly opposed the formation of the committee. Broadcasting stated:

Too often nowadays when politicians speak of 'freedom of radio and television' they mean freedom of politicians to get themselves and their views on radio and television. This corruption of the word 'freedom' was most widely used during the recent debates on the amendment of Sec. 315. If Sen. Magnuson is truly interested in protecting the freedom of radio and television, he will either disband the subcommittee or redirect its course. As now constituted it cannot be anything but a deterrent to the development of radio and television news. 2

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**Award to Dr. Stanton is Final Chapter in Lar Daly Drama**

A footnote was added to the Lar Daly decision in October, 1959, when Dr. Frank Stanton was presented with the Distinguished Service Award of the Radio Television News

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1"Watchdog Committee Set," Broadcasting (September 21, 1959), p. 72.

Directors Association for his campaign to obtain correction of the decision.

The citation with the award noted:

Dr. Stanton . . . by his sharp definition of the issues, his clear and persistent call for early remedial legislation and his vigorous labors to inform the public of the implications of the situation, he contributed greatly to a swift correction of the problem.

In so doing, Dr. Stanton was widely recognized by all the news media for having advanced significantly their freedom to report the news and for having eloquently re-stated a basic principle: the right to know is the life-blood of a free people.1

In accepting the award, Dr. Stanton emphasized the support the press had given broadcasting in the campaign for remedial legislation, pointing out that, "Never in all my years in this field have I seen the press take such an emphatic and unanimous view of any issue affecting broadcasting . . . ."2 He stated that, "This almost universal recognition of the indivisibility of the freedom of the press strikes me as one of the most significant milestones in the coming of age of broadcast journalism."3

Stanton warned, however, that with right come new responsibilities:

1 Distinguished Service Award of Radio Television News Directors Association, October 16, 1959. (Mimeographed.)


3 Ibid., p. 3.
We must abandon all thought that the revision of Section 315 has brought the broadcasting any privileges. It has not. It has brought only the acknowledgement of a right and rights involve responsibilities. . . . We will be on trial to see if we can measure up to the responsibility.¹

Dr. Stanton concluded his speech with a thought that might well close a significant chapter in a long fight by broadcasters for relief from political broadcast regulation:

The slide-rule has been rejected as an appropriate device for governing the coverage of campaign news by broadcast journalism. Human judgement has been widely established in its stead. In many cases it will be your judgement. Exercise it with wisdom, with insight, with detachment, with respect for the most powerful medium in modern communications.²

¹Ibid. ₂Ibid., p. 6.
CHAPTER VI

SUMMARY AND CONCLUSIONS

The development of Section 315 is an extremely complex subject. Development of the area is complicated by the fact that full picture can be gained only by considering the myriad of state laws, FCC decisions and rulings, Congressional bills, hearings, and debates, and court cases which have implemented the regulation.

A review of the development of the section and its role in shaping political broadcasting points to certain major areas.

The Question of Political Discrimination by Broadcasters

There was no substantial evidence of discrimination by broadcasters in the area of political broadcasting when Congress passed Section 18 of the Radio Act of 1927, the forerunner of Section 315. Apparently Congress adopted the political broadcast regulation to forestall discriminatory practices which it felt could conceivably arise. The original premise of the regulation was that if any station gave or sold time to a candidate for a speech it must give equal time to all other candidates for that same office. Congress originally
intended the law to be flexible. It empowered the FRC to make rules and regulations to adapt the section to changing conditions and situations which the Congress could not foresee in 1927.

The FRC accepted its job of interpreting and clarifying Section 315 with some reluctance. Its early rule on the section simply restated the provision. Later, the FCC adopted more detailed rules to clarify the regulation. However, these were general in nature and their very broadness limited their effectiveness. The Commission's most helpful clarification—in the form of a compilation of its rulings on Section 315—did not come until 1954. Generally, the FCC has considered Section 315 as being somewhat inflexible. Its interpretations, rather than adapting the section to increasingly complex conditions in broadcasting, have tended to hold to the letter of the regulation. This has resulted in such questionable decisions as the "Suez Crisis decision" and the "Lar Daly decision."

Since 1927, Congress has been extremely reluctant to remove or modify Section 315 to give broadcasters more freedom in handling political broadcasts. In fact, many of the legislative efforts of Congress have been directed toward extending the coverage of Section 315 into such areas as public discussions and speeches by public officials. The argument being
that: (1) broadcasters might discriminate in these areas; and (2) since broadcasting is a public trust, and access is limited, regulation is justified. The recent modification of Section 315 in the 86th Congress came only after bitter debate. The view of many congressmen still seemed to be that broadcasters could not be trusted to handle political broadcasts fairly unless they were regulated.

Although broadcasters have long complained of the problems Section 315 has posed for political broadcasting, they have been somewhat apathetic toward pressure campaigns to obtain change or repeal in the section. The campaign against the section has been led by: the networks (who have suffered the most difficulties under the section), the National Association of Broadcasters, and Broadcasting magazine. The most concerted effort for repeal of Section 315 was conducted after the Lar Daly decision in 1959. In this pressure campaign the press contributed almost as much as broadcasters.

The "No Censorship" Issue

One of the two major areas of deepest concern to broadcasters has been the "no censorship" proviso in Section 315. It has prevented them from censoring broadcasts of political candidates made under the provisions of the section, yet it has seemingly given them no relief from liability if the candidate made defamatory remarks during the broadcast. Sorenson v. Wood,
the first major court decision in the area, held that Section 315, in spite of apparent wording to the contrary, gave broadcasters the power to censor defamatory remarks from speeches by candidates, but not remarks as to their political and partisan trend. This delicate job of differentiation was an assignment the broadcasters had no desire to accept. However, many broadcasters adopted a policy of censoring political speeches to protect themselves from defamation suits. Congress took no action to clarify the situation.

The status quo prevailed until 1948, when the FCC issued its Port Huron decision interpreting Section 315 as preventing any censorship of political broadcasts and probably relieving broadcasters of liability for any defamatory remarks uttered by candidates. This decision was noteworthy for its dubious legality. The Commission received strong criticism for its action which threw the situation into new controversy. Congress strongly rebuked the FCC but it took no legislative action to clarify the problem even though remedial legislation was considered.

Finally, in 1959, a Supreme Court decision apparently resolved the situation by holding that broadcasters could not censor political broadcasts under Section 315 but were relieved of liability for defamatory remarks made by candidates during the broadcasts.
The Question of Equal Opportunity for Legally Qualified Candidates

The admonition of Section 315, that broadcasters must give equal opportunity to all candidates for the same office if they give opportunity to one candidate, has been another constant source of difficulty for broadcasters. The major source of the problem has been an increasing awareness of Section 315 among "minority" candidates. If a broadcaster has granted time to one candidate for an office he has often been faced with demands for equal time by as many as five to ten other candidates for the same office.

The problem has been particularly difficult on the national level in presidential campaigns, where there are generally two major party presidential candidates. Networks found that "splinter" candidates were demanding time equal to that given "major" candidates and under Section 315 they were entitled to it. Thus, broadcasters found they were being forced to give substantial blocks of time to insignificant candidates who were generally given no chance of obtaining more than a few votes in the election. Their immediate reaction was to prevent the use of broadcast facilities by any candidate during a campaign. This was a privilege accorded them by Section 315.
The advent of television served to emphasize the problem of "minority" candidates, as political broadcasting gained in popularity and Section 315 became more well-known in political circles. In the 1952 and 1954 campaigns several "splinter" candidates took every possible advantage of Section 315, at the expense of the networks.

The Cost Factor in Political Broadcast Campaigns

The high cost of television programs also created a problem for political broadcasts. Politicians began to complain of the high cost of television campaigning. Legislation was considered in Congress to extend Section 315 to require broadcasters to give free time to all presidential candidates in a national election. Some proposals would have even included congressional candidates as recipients of free time.

Section 315 has been amended twice.

The first amendment in 1952 was prompted by the policy some broadcasters had been pursuing of charging higher rates for political broadcasts than regular commercial broadcasts. The practice seemed to arise from two main factors: Some broadcasters wanted to discourage political broadcasts and the resulting problems that went with them; some broadcasters followed newspaper precedent. The amendment passed
by Congress prevented broadcasters from charging higher rates for political broadcasts than for regular commercial programs.

The other amendment to Section 315 was passes by Congress in 1959. Arising out of the Lar Daly decision, it exempted certain programs from the provisions of Section 315. Thus, broadcasters received some of the freedom they had long sought.

**Basic Continuing Questions in the Regulating of Political Broadcasts**

Basically, the issues arising out of the development of the political broadcast regulation problem have been:

1) has Section 315 inhibited the full value of political broadcasting by restricting its freedom?
2) can broadcasters administer political programs fairly without regulation?
3) would minority candidates be prevented from use of broadcast facilities if Section 315 were repealed?
4) is the FCC equipped to adequately handle the problems arising in the administration of Section 315?
5) should broadcasters be required to give free time to candidates in view of the high costs of programming?
6) has the recent amendment to Section 315 corrected the problem which have existed in political broadcast regulation?
From these basic questions certain general conclusions can be drawn:

_Has Section 315 inhibited the full value of political broadcasting by restricting its freedom?_—In recent years, particularly since the advent of television, Section 315 has had a suppressive effect on political broadcasts. To prevent large numbers of equal time demands from "minority" candidates broadcasters have: (1) sold rather than donated broadcast time to political candidates; (2) excluded debates between candidates; (3) barred candidates from panel and press interview programs; and (4) limited party spokesmen who might appear on political programs, since they were often candidates as well.

The networks have been particularly careful to avoid incurring equal time liability. In view of the fact that there were some eighteen legally qualified presidential candidates in the 1956 campaign, all of whom could potentially demand equal time, the position of the networks seems understandable. Among the minority candidates and parties, unfortunately, are such belligerents as the Progressive Party, who harassed broadcasters with equal-time demands in 1952, and Lar Daly, who declared that as long as Section 315 remained in effect, "... I am going to take every advantage of it." It would seem that the recent amendment to Section 315, exempting key types of programs, may serve to alleviate the restrictive effects of the regulation.
Can broadcasters administer political programs fairly without regulation?--Much controversy has existed over whether or not broadcasters could be expected to fairly handle political broadcasts if Section 315 were repealed. Many Congressmen, FCC commissioners, and political candidates have doubted the ability of broadcasters to be fair. There seems to be little justification for this viewpoint. There have been some isolated instances of discrimination by broadcasters but they have been few and relatively minor. More important, in the nine months of each year when Section 315 has not been in effect, because there have been no candidates, there have been no noteworthy instances of discrimination by broadcasters in political broadcasts.

The one area where broadcasting has been guilty of some discrimination has been in rates charged for political broadcasts. Some broadcasters have charged unfairly high rates to candidates for use of their facilities. Although the problem has not been universal, it has been corrected by Congressional amendment to Section 315. It should be noted that this discrimination exercised by broadcasters was not favoritism to one candidate over another--the same high rates were charged to all candidates.

Broadcasters have received compliments on their record of handling political broadcasts fairly and honestly from the FCC, congressmen, and even their proverbial opponents--the press of the nation. Critics have often cited the
discriminatory record of newspapers in politics as a basis for refusing to trust broadcasting. This comparison seems unfair indeed.

Without the existence of substantial evidence in broadcasting practice it seems unjustified to say that broadcasters must be regulated to assure fair handling of political broadcasts, or that if Section 315 were repealed, broadcasters would show favoritism to certain political candidates.

Would minority candidates be prevented from use of broadcast facilities if Section 315 were repealed?—Minority parties and candidates would undoubtedly receive less than equal free or paid broadcast time to that given major parties and candidates if Section 315 were repealed. The problem here is a difficult one and requires more detailed study. It would seem that minority parties, by virtue of their relative insignificance on the political scene, should not be entitled to equal broadcast exposure with the Republican and Democratic parties. However, our country was built on the premise that the political arena should be a free marketplace of ideas. It could be considered a restriction on the democratic process, if minority parties were prevented from realizing a potential strength they possessed because of denial of access to the broadcast media. Broadcasters have always held that their editorial judgement would be adequate to determine when a minority party was gaining in popularity,
and that its exposure would be increased accordingly. This writer feels that the editorial judgement of broadcasters can be trusted, if Section 315 is removed, to at least partially relieve the problem, by giving broadcast time to minority parties who are sufficiently active and have sufficient support to warrant it. Admittedly, what constitutes "sufficient activity" or "sufficient support" is difficult to determine.

Is the FCC equipped to adequately handle the problems arising in the administration of Section 315?--Due to the increasing use of broadcast facilities by political candidates, and their increasing awareness of the benefits available to them under Section 315, the complexity of overseeing political broadcast regulation has increased to the point where it is doubtful that the FCC can adequately act as its administrator. Many of the legal problems, based on complaints arising from alleged violations of Section 315, would present the most experienced expert in election procedure and legislative interpretation with a tough job of analysis. The Commission is not composed of experts in election laws and procedures. It does not have men with the background to handle some of the more complicated interpretations required during campaigns. Also, the process used by Commission in considering complaints and rendering interpretations have been time-consuming and ponderous. When stations or networks have asked for rulings on whether an individual has been entitled to the benefits of
Section 315, time has often been of the essence, as in the Suez crisis in the 1956 campaign. Broadcasters have needed an answer during a campaign and not when it was over. The Commission itself has recognized these difficulties and has asked that rulings on Section 315 be referred to district courts where the problems could be handled more "expeditiously."

When Congress empowered the Commission to interpret Section 315 it probably did not foresee what a complex and difficult job this would become.

Should broadcasters be required to give free time to candidates in view of the high costs of programming?—It would be unfair to require broadcasters to give free time to candidates during campaigns. First, the cost of such a proposal would be monumental, particularly in the light of rising television costs. If, for instance, networks had been required to give one half-hour of free time to all the candidates for president in the 1956 election (there were 18), the loss incurred would have been quite staggering. Secondly, it seems unfair to discriminate against broadcasting as opposed to other media. Admittedly, access to broadcasting is limited and licensees are admonished to operate in the public interest. Nevertheless, broadcasting is a private enterprise and depends on its financial solvency to adequately function. Simply because broadcasting happens to be the most attractive media for many candidates does not seem a valid reason for
discriminating against it. To do so, would, in a sense, penalize the broadcast media for their popularity and effectiveness. Thirdly, a requirement that broadcasters must give free time to candidates could be construed to be a violation of the first amendment. By telling them what to broadcast, it could sharply restrict their editorial judgement and the "freedom of the press" which the media hold so dear. Finally, it might be noted that broadcasters have granted substantial amounts of free time to candidates of their own volition. The grants have been mainly to "major" candidates. Only in recent years, as the complexity of our political system has increased, and thus contributed to the restrictive effect of Section 315 on political broadcasting, have the amounts of free time been reduced. These reductions have been primarily a defensive measure.

Minority parties seem to be the biggest complainers about the high cost of campaigning. If our political system has become so financially oriented that minority parties can no longer obtain sufficient funds to actively compete, then some serious re-evaluation is required. However, the problem is not by any means limited to the broadcast media and it does not seem fair to single them out as a primary cause.

Has the recent amendment to Section 315 corrected the problems which have existed in political broadcast regulation?
--It is too soon to tell whether the recent amendment to Section 315 will alleviate the suppressive effect it has had on political broadcasting. Certainly it is a constructive step forward. However, the FCC is still charged with interpreting the regulation, and, as noted, the Commission has experienced some difficulty in handling the assignment. The exempted programs in the new amendment are classified into general types. The job of determining whether a specific program fits into an exempted category falls upon the Commission. This could be a difficult job. Also, the Commission might be called upon to determine if certain program appearances by candidates are "incidental to the presentation." This could seemingly be a highly controversial area--one which the Commission might have some difficulty in interpreting.

Finally, the so-called "Proxmire provision" in the amendment, requiring that a "reasonable amount of time" be afforded for all views on a question, still gives minority candidates and parties an opportunity to harass broadcasters and initiate a long series of complaints to the Commission.

It is the view of this writer that Section 315 should be repealed because: (1) there has been no substantial evidence that broadcasters have tended to discriminate among candidates in political broadcasts; (2) Section 315 has had a restrictive effect on political broadcasting; (3) the FCC has
found increasing difficulty in adequately implementing and interpreting Section 315, thereby making it a "flexible" regulation; and (4) broadcasters have promised extended political coverage if the regulation is lifted. Congress has the prerogative of reinitiating political broadcast regulation if broadcasters engage in discriminatory practice. Even if Section 315 is only suspended on a trial basis, broadcasters should be given the opportunity to exercise the same editorial freedom as do other communications media.
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APPENDIX A

FCC Rules Regarding Section 315

(Code of Federal Regulations, Title 47, Revised January 1, 1960)

Section 3.120

(A) 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 by the electorate directly or by means of delegates or electors, and who

a) has qualified for a place on the ballot or

b) 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) 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 opportunity to all other such candidates for that office to use such facilities: Provided, that such licensee shall have no power of censorship over the material broadcast by any such candidate.

(C) 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 a 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.

In making time available to candidates for public office no licensee shall make any discrimination between candidates in charges, practices, regulation, 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 agreement which shall have the effect of permitting any legally qualified candidates for any public office
to broadcast to the exclusion of other legally qualified candidates for the same public office.

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

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

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

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON 25, D. C.

USE OF BROADCAST FACILITIES BY CANDIDATES FOR PUBLIC OFFICE

In accordance with the mandate of section 315 of the Communications Act of 1934, as amended, the Commission on September 2, 1954, revised its rules relating to rates charged for political broadcasts coming within the provisions of section 315 (Docket No. 11052). We believe it is appropriate, at this time, as an aid to licensees in handling various questions which may arise under section 315 of the act, to recapitulate in this document the provisions of the act and the Commission's rules adopted in implementation thereof, together with a brief summary of some of the more important questions which have been raised by interested parties in recent years with respect to the obligations of licensees under this section and the Commission's determinations thereon.

The information contained herein does not purport to be a discussion of every problem that may arise in the political broadcast field. It is rather a codification of the determinations of the Commission with respect to the problems which have been presented to it and which appear likely to be involved in future campaigns. The purpose of this report is the clarification of licensee responsibility and course of action when situations discussed herein are encountered. In this way, resort to the Commission decisions or rulings are avoidable in many instances, and time—which is of such vital importance in political campaigns—will be conserved. We do not mean to preclude inquiries to the Commission when there is a bona fide doubt as to a licensee's obligations under section 315. But it is believed that the following discussion will, in many instances, remove the need for such inquiries and that licensees will be able to take the necessary prompt action in these cases involving election campaigns in accordance with the interpretations and positions set forth below.

It is to be emphasized that this discussion relates solely to obligations of broadcast licensees under section 315 of the Communications Act and is not intended to treat with the wholly separate question of the treatment by broadcast licensees in the public interest of political or other controversial programs or discussions not falling within the specific provisions of that section. With respect to the responsibilities of broadcast stations for insuring fair and balanced presentation of programs not coming within section 315, but relating to important public issues of a controversial nature including political broadcasts, licensees are referred to the Commission's Report, "Editorializing by Broadcast Licensees" (Release No. 215, June 2, 1949) and the cases cited therein. In this respect it is particularly important that licensees recognize that the special obligations imposed upon them by the provisions of section 315 of the Communications Act with respect to certain types of political broadcasts do not in any way limit the applicability of general public interest concepts to political broadcasts not falling within the provisions of section 315 of the Communications Act. On the contrary, in view of the obvious importance of such programming to our system of representative government it is clear that these provisions, as set forth in the cases referred to above are of particular applicability to such programming.

We have adopted a question-and-answer format as an appropriate means of delineating the section 315 problems. Wherever possible, references to Commission decisions or rulings are made so that the researcher may, if he desires, profit by the more thorough or expansive statement of the Commission's position found in such decisions. Copies of rulings not otherwise available may be found in a "Political Broadcasts" folder kept in the Commission's Public Reference Room.

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 Report because of the likelihood of their recurrence and the fact that no extended Commission discussion is necessary to dispose of them; the answer in each case is clear from the language of section 315.

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 station: Provided, That such license 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.

(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 §§ 3.180 (AM), 3.290 (FM), 3.590 (Non-Commercial Educational FM), and 3.657 (TV), respectively. These provisions are identical (except for elimination of any discussion of charges in § 3.590 relating to non-commercial 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 described in §§ 3.180 (AM), 3.290 (FM), 3.590 (Non-Commercial Educational FM), and 3.657 (TV), respectively.

(b) Rights of candidates. (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

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(II) Makes a substantial showing that he is bona fide candidate for nomination of the political party...

(G) General requirements. No station licenc

OMAN

330. Section 841 requires a personal effort on the part of candidates only and is not concerned with parties, as such. Item.

A. Yes. Where the successful candidate for nomination becomes legally qualified as a candidate for election as a result of the nomination. (Progressive Party, T. R. 1130.)

IV. Who is a legally qualified candidate?

Q. Who can a station know which candidates are "legally qualified"?

A. Section 315 requires that "equal opportunities" be afforded candidates whether or not they have gone through the procedures required for nomination under the Federal Communications Act or the Rules of the Commission. Under section 315, a station may refuse time to a candidate who is not legally qualified as provided in section 315.

5. Must a broadcaster give equal time to a candidate whose names appear on the printed ballot but who is not legally qualified as such on the ballot?

A. Section 315 requires that "equal opportunities" be afforded candidates whether or not they have gone through the procedures required for nomination under the Federal Communications Act or the Rules of the Commission. Under section 315, a station may refuse time to a candidate who is not legally qualified as provided in section 315.

9. Are there any circumstances in which a candidate must be considered as having been denied equal opportunities mentioned in section 315?

A. Equal opportunities to broadcast general election forum programs. are opposing candidates

10. A station's obligation under section 315 is limited to making equal time available to candidates who have announced their willingness to be candidates for office and who are members of the same political party as the candidate for whom the equal time was requested. (Letter to Congressman Thomas W. Wilson, dated October 31, 1952.)

Q. When are candidates eligible to be afforded equal opportunities?

A. Section 315 requires that "equal opportunities" be afforded candidates whether or not they have gone through the procedures required for nomination under the Federal Communications Act or the Rules of the Commission. Under section 315, a station may refuse time to a candidate who is not legally qualified as provided in section 315.

Q. How can a candidate give equal time to a station which is not receiving an application by the deadline?

A. A station is required under section 315 to afford equal opportunities to all candidates for public office on a non-commercial basis.

Q. Can a station refuse time to a candidate who is not legally qualified as provided in section 315?

A. A station is required under section 315 to afford equal opportunities to all candidates for public office on a non-commercial basis.

Q. What constitutes equal opportunities for candidates?

A. Equal opportunities to broadcast general election forum programs. are opposing candidates

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Q. What constitutes equal opportunities?
VII. What limitations can be put on the use of facilities by a candidate?

31. 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 Bctg. Co., 4 R. R. 1; WDNU Bctg. Co., 7 R. R. 786.)

32. Q. If a legally qualified candidate does make libelous or slanderous remarks is the station liable therefor? A. The Commission has expressed its opinion in Port Huron Bctg. Co., 4 R. R. 1, that licensees not directly participating in the libel might be absolved from any liability they might otherwise have under state law, because of the operation of Section 315 which precludes them from preventing its utterance. But this is a matter which in the absence of any amendment to the law will have to be definitively decided by the courts.

So far there have been no clear judicial holdings on this matter, but only dicta or lower court opinions supporting both positions. It should be noted, however, that many states have passed laws which wholly or partially exempt licensees from liability under these circumstances.

33. 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 for other purposes is the ground that he deems best in their own interest. (Letter to Congressman Allen Oakley Hunter, May 28, 1932.)

34. Q. May a station charge premium rates for political broadcasts? A. Yes. Provided 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.

35. Q. May a station require an advance script of a candidate's speech? A. Yes, provided that the practice is uniformly applied to all candidates for the same office using the station's facilities, and the station does not undertake to censor the candidate's talk. (Letter of July 3, 1932, to H. A. Rosenberg, Louisville, Ky.)

36. Q. May a station have a practice of requiring a candidate to record his proposed broadcast at his own expense? A. Yes. Provided again that the procedures adopted are applied without discrimination as between candidates for the same office and no censorship is attempted. (Letter of July 9, 1932, to H. A. Rosenberg, Louisville, Ky.)

VIII. What rates can be charged candidates for programs under section 315?

37. 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.

38. Q. May a station with both "national" and "local" candidates for local office charge a candidate for local office its "national" rate? A. No. Under §§ 3.190, 3.290 and 3.657 of the Commission's Rules a station may not charge a candidate more than the rate the station would charge if the candidate were a commercial advertiser whose advertising was directed to promoting its business within the same area as that within which persons may vote for the particular office for which such person is a candidate.

39. Q. Is a political candidate entitled to receive discounts? A. Yes. Under §§ 3.190, 3.290 and 3.657 of the Commission's Rules political candidates are entitled to the same discounts that would be accorded persons other than candidates for public office under the conditions specified, as well as to such special discounts for programs coming within section 315 as the station may choose to give on a non-discriminatory basis.

40. Q. If a station has a "spot" rate of two dollars per "spot" announcement, with a rate reduction to one dollar if 100 or more such "spots" are purchased on a bulk time sales contract, and if one candidate arranges with an advertiser having such a bulk time contract to utilize five of these spots at the one dollar rate, is the station obligated to sell the candidates of other parties for the same office time at the same one dollar rate? A. Yes. Other legally qualified candidates are entitled to take advantage of the same reduced rate. (Letter to Senator Monroney, dated October 16, 1952.)

41. 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.)
POLITICAL BROADCAST CATECHISM

(Fourth Edition—Revised)

National Association of Broadcasters
1771 N Street, N. W.
Washington 6, D. C.
Political Broadcast Catechism

(Fourth Edition—Revised)

June 1960

Prepared for the Members of the
National Association of Broadcasters
by its
Legal Department

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Introduction

Government regulation of political broadcasts is an area of the law which is fraught with numerous difficulties for many broadcasters—difficulties which cannot be sidestepped. By their very nature, political broadcasts are subject to much governmental scrutiny. Therefore, both from a legal and practical standpoint, it is imperative that broadcast station licensees know how to cope with political broadcast problems so as to be able to resolve them properly with the greatest expediency possible.

In order to assist the radio and television broadcaster in achieving a judicious solution to problems which may arise, the Legal Department of NAB has prepared this fourth edition of "A Political Broadcast Catechism." While this pamphlet cannot hope to supply all the answers to issues regarding political broadcasts, it may serve as a guide covering the major recurring problems of industry wide significance.

Where possible, actual Federal Communications Commission and Court answers to specific questions are presented. In this regard, it should be noted that while some of the decisions may seem to be contrary to a broadcaster's interests, these decisions are nonetheless official pronouncements by which the situations covered must be governed. Additionally, note should be made of the fact that while specific questions are answered herein, as many other questions can arise as there are fact situations.

By way of example, one of the items which necessitated this fourth edition of "A Political Broadcast Catechism" was the fact that in September 1959, Congress amended Section 315 (the political broadcast section) of the Communications Act so as to exempt appearances of legally qualified candidates on various news programs from the applicability of the "equal opportunities" mandate of the law. This subject will be considered hereafter, but is mentioned now to illustrate that this amendment in itself gives rise to new issues which have not as yet been resolved. Conceivably, it may take several years to arrive at the point where the terms of the amendment are well settled.

In using this "Catechism" as a guide, it should be remembered that the contents relate primarily to the obligations of broadcast licensees for radio and television appearances of political candidates under Section 315 of the Communications Act. However, since the 1959 amendment to Section 315 also includes a statement of the FCC's so-called "controversial issues" doctrine, attention will also be directed to that doctrine in order to clarify that the obligation imposed thereunder is separate and distinct from the obligation to generally afford "equal opportunities" to political candidates.

Also, before turning to the actual law and regulations, it should be noted that the FCC is generally cognizant of the difficult decisions broadcasters frequently must make pertaining to political broadcasts. In view of this awareness of the Commission, it would thus appear that the FCC would be sympathetic to any broadcast licensee who, after the exercise of reasonable care, errs while acting in good faith.

The Communications Act and FCC Political Broadcast Rules and Regulations

I. Q. What does the Communications Act say about political broadcasts?
   A. Section 315 of the Communications Act of 1934, as amended, is the only provision in that Act specifically referring to political broadcasts. It reads as follows:

   "(a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: provided, that such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is hereby imposed upon any licensee to allow the
use of its station by any such candidate, Ap­
pearance by a legally qualified candidate on any—
(1) bona fide newscast,
(2) bona fide news interview, or
(3) newscast of a bona fide news documentary (if the appearance of the candidate is inci­
dental to the presentation of the subject or events covered by the news docu­mentary), or
(4) on-the-spot coverage of bona fide news events, excluding but not limited to political conventions and activities in­
cidental thereto),
shall not be deemed to be use of a broadcast­ing station within the meaning of this sub­
section. Nothing in the foregoing sentence shall deprive the commanding 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 charge made for the use of any broadcasting station for any of the purposes set forth in this section shall not exceed the charges 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 subsection.

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

(b) To assist the Congress in making its re­examinations of such amendments, the Federal Communications Commission shall include in each annual report of the Commission an expression of the views of the Commission, its staff, and such other interested persons as the Commission may deem necessary, whether such views are favorable or adverse, and the basis for such views.

In addition, Section 217 of the Act, while not specifically referring to political broadcasts, is applicable thereto. This section reads as follows:

"Sec. 217 All matter broadcast by any radio station for which service, money, or any other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall at the time the same is broadcast, be announced as paid for or furnished, as the case may be, by such person."
free recordings or kinescopes of legitimate news events for use in a newscast, the station must so disclose the name of such corporation, committee, association or other unincorporated group, which will aid the Commission in reporting to the Congress as to whether or not the FCC has found the amendment to Section 315 to be effective and practicable.

The amended Section 315 now requires that the FCC, in its annual report to Congress, make a statement setting forth (1) "the information and data used by it in determining questions arising from or connected with such amendment, and (2) such recommendations as it deems necessary in the public interest." This last requirement of the FCC has prompted one Commissioner to express the unofficial opinion that the FCC may now require consideration from broadcasters to assist the FCC in fulfilling its reporting obligations.

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

III

The "Legally Qualified" Candidate

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

A. The determination as to who is a legally qualified candidate is not restricted to persons whose names appear on the printed ballot; the term may embrace not only those persons listed on the ballot but any person making a bona fide race for the office involved and the names of such persons, or their representatives, may be shown on the cover of the electors’ folder, if desired. In such case, the electors may, under applicable state laws, issue free recordings or kinescopes of legitimate news events for use in a newscast, the station must so disclose the name of such corporation, committee, association or other unincorporated group, which will aid the Commission in reporting to the Congress as to whether or not the FCC has found the amendment to Section 315 to be effective and practicable.

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The amended Section 315 now requires that the FCC, in its annual report to Congress, make a statement setting forth (1) "the information and data used by it in determining questions arising from or connected with such amendment, and (2) such recommendations as it deems necessary in the public interest." This last requirement of the FCC has prompted one Commissioner to express the unofficial opinion that the FCC may now require consideration from broadcasters to assist the FCC in fulfilling its reporting obligations.

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A. None, insofar as a candidate may desire retrospective "equal opportunities." But this is not to suggest that a station can avoid its statutory obligation under Section 315 by waiting until an election has been held and only then disposing of demands for "equal opportunities."  

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

16. Q. When a state Attorney General or other 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 legally qualified licensees be required to afford such person "equal opportunities" under Section 315? 

A. In such instances, the ruling of the state Attorney General or other official will prevail, absent a judicial determination. (Telegraph to Ralph Muncy, November 5, 1954, letter to Social-Workers' Party, dated November 25, 1956.)

IV

When Are Candidates Opposing Candidates? 

17. Q. What public offices are included within the meaning of Section 315? 

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

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

A. Yes. The "equal opportunity" requirement of Section 315 is limited to all legally qualified candidates for a given office.

19. Q. If the station makes time available to candidates seeking the nomination of one party for a particular office, does Section 315 require that time be made equally available to 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 considered 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 provided to legally qualified candidates for nomination for the same office at the same party's primary or nominating convention.

20. 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.

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

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

22. Q. Have either the FCC or the courts interpreted and defined the provisions of the exemption from the general rule of Section 315? 

A. Since the enactment of the 1959 amendment to Section 315, the FCC has had occasion to issue two interpretive rulings in which the amendment was involved, one of which has been reviewed and affirmed by the courts. However, interpretive processes are slow and members of the FCC have individually indicated that it may take considerable time to define the full scope of new provisions of Section 315.

23. Q. What aspects of the 1959 amendment have been ruled upon and applied in specific cases? 

A. (a) In its first ruling under the 1959 amendment, the FCC held that appearances by a regular radio and television weather announcer, who was also a legally qualified candidate, in presenting regularly scheduled weather news reports, were not such a use of a broadcaster's facilities as to require equal opportunities. A regular weather announcer-candidate be afforded "equal opportunity." Regularly scheduled weather news reports by a station employee whose sole station responsibility is the preparation and presentation of the weather, without any other commentary, and who is identified as the "weatherman"—not by his actual name—are bona fide news programs. In light of these facts, and in view of the 1959 amendment to Section 315, the Communications Act which specifically exempts bona fide newscasts, the equal time provisions are not applicable. Consequently, it was held that a station shall not afford equal opportunities to all such candidates.

(b) The second FCC ruling under the 1959 amendment is that appearances by a sheriff, who is a legally qualified candidate in a Congressional primary election, on a regularly scheduled non-sponsored program entitled "Sheriffs Office Callings," are a use of broadcaster's facilities which requires that the opportunity be afforded equal opportunities. The sheriff's program cannot be considered as a bona fide news program under the fact that the format and content of the program are determined by the sheriff, and not by the station; material used on the program is those facts which are peculiarly within the sheriff's knowledge, and no script is used for the program. Additionally, the program is presented for the "Day" at the conclusion which appears to be an editorial statement. In view of these facts, the sheriff's qualified election opponents are entitled to "equal opportunities" within the meaning of Section 315. (Letter to W. S. Freed, WTLG, April 27, 1960.)

25. Q. In the absence of more definitive FCC rulings as to what constitutes a bona fide newscast, news interview, news documentary and on-the-spot coverage of bona fide news events, or when the appearance of a candidate is incidental to a news cast, how can a station licensee know how to dispose of requests for equal opportunities based on a legally qualified candidate's appearance on a news program? 

A. Station licensees can look to the legislative history of the 1959 amendment to Section 315. The Congress felt that the amendment was necessary to help develop definitive answers to what programs are included in the enumerated types of newscasts, the "bona fide news" or "political judgment" of the station licensee would be relied upon in disposing of requests for "equal opportunities" based on a political candidate's appeal 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, if the station's obligation under Section 315 is concerned, "equal opportunities" need only be provided to legally qualified candidates for nomination for the same office at the same party's primary or nominating convention.

In providing for this exemption from the general rule, though, Congress specifically provided in Section 315 that nothing in the exemption would relieve the station of the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from their obligation to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

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24. Q. To what extent, if any, are these rulings applicable by analogy to other fact situations? 

A. In both cases the rulings must be strictly limited to the specific facts of the slight of the facts involved. However, as for the ruling on the weather announcer-candidate, it is the opinion of the NAB Legal Department that similar considerations would apply if the announcer involved were a regular newscaster or sportscaster appearing on a regularly scheduled weather program.

The second case indicates that the FCC intends to place a strict limitation upon the applicability of the "weather man" ruling. Furthermore, it appears clear that for a broadcast to be a bona fide news program, the station involved must specifically determine the content and format of the program. If content and format decisions are left to the discretion of an outside party over whom the station does not exercise editorial or budgetary supervision, and editorial content, in addition to factual reporting is permitted, then the program will not be considered a bona fide news program under Section 315. 

25. Q. In the absence of more definitive FCC rulings as to what constitutes a bona fide newscast, news interview, news documentary and on-the-spot coverage of bona fide news events, or when the appearance of a candidate is incidental to a news cast, how can a station licensee know how to dispose of requests for equal opportunities based on a legally qualified candidate's appearance on a news program? 

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pears on a newcast. The exercise of that judgment would, of course, be subject to FCC review.

Aside from this general reliance on "bona fide news judgment," though, the Congress indicated that for a program to be a "bona fide news interview," it must be a regularly scheduled program. Also, the content, format and the participants must be determined if a news interview originates with the station licensee. If a news interview originates with a network, then the network must determine the content, format and participants. The determination must have been made by the station or network, as the case may be, "in the exercise of its bona fide news judgment" and not for the political advantage of the candidate for public office. (Conference Report, H. Rep. 2009, 1959.)

In the gray areas such as determining when the appearance of a candidate is incidental to a news program, the exercise of a bona fide news judgment would require that a licensee consider who initiated inclusion of the candidate in the "news" program. Was it the broadcaster, the candidate, or an agent of the candidate? Was the "news" event staged? Also to be considered, would be the degree to which the candidate is properly associated in fact with the subject involved and whether or not the newspapers gave the event weight or space. Generally, the frequency of a legally qualified candidate's appearances on bona fide news programs might be a factor in determining whether the appearance of the candidate is exempt from Section 315.

As for the appearance of a political candidate because the information is perfectly documentary, the legislative history of the 1959 amendment to Section 315 shows that Congress intended that a debate on a candidate's qualifications with a candidate would not be a news documentary exempted under Section 315. (Conference Report, H. Rep. 2009, 1959.)

In view of the fact that the FCC has not yet extensively interpreted the language in Section 315, as amended in 1959, the discussion in this section must necessarily be of a general nature. The comments merely represent our best judgment as to the issues involved. Also, it is noted that the FCC realizes that at the moment there are few guidelines for determining what is a "bona fide news program" under the 1959 amendment to Section 315. Therefore, it would appear that the Commission probably would be sympathetic to any licensee who adheres to the good faith news judgment error in determining what is a bona fide news program.

28. Q. Does Section 315 confer rights on a political party as well as a candidate? A. No. It applies only to legally qualified candidates for public office, and is not concerned with the rights of political parties, as such. (Letter to National Association of Broadcasters, May 6, 1957.)

29. Q. May the licensees censor the speeches of the supporters of a political candidate? A. Yes. The no censorship provision of Section 315 applies only to the speeches made by candidates and not to the speeches on their behalf. (Felix v. Westarging Radio Stations, Inc., supra.)

30. 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. As a general rule, yes. Section 315 contains no exception with respect to broadcasts by legally qualified candidates carried "in the public interest" or as a "public service." However, under the 1959 amendment it may be possible that an appearance by a legally qualified candidate in connection with another public service, such as a political convention, the candidate's opponent would not be entitled to equal opportunities based on broadcast of the acceptance speech. However, should a candidate buy broadcast time for his acceptance speech, then it would appear that the speech would not be exempt from Section 315, and equal opportunities would have to be afforded to his opponents.

31. Q. If a candidate is accorded station time for a speech in connection with a ceremonial activity or other public service, are his opponents entitled to equal opportunities? A. No. Section 315 applies only to stations licensed by the FCC. (Letter to Gregory Pihon, dated July 19, 1956.)

32. Q. If a station owner, or a station advertiser, or a person to whom a speech is given and who is an announcer were to make any appearance other than a bona fide news program over a station after having been paid by a candidate for public office, would Section 315 apply? A. Yes. Such appearances of a candidate are a "use" under Section 315. (Letter to KUDG, dated April 9, 1958; to KTTV, 14 R.R. 1227; and to Kenneth Spengler, 14 R.R. 1226b, respectively.)

33. Q. When a station, as part of a bona fide news program, use film clips or excerpts from a legally qualified candidate participating as an honored guest in official ceremonies and the newscaster, in commenting on the ceremonies, mentions the candidate and others by name and describes their participation, has there been a "use" under Section 315? A. No. While we believe that this type of appearance on a program by a political candidate has always been exempt from the provision of Section 315, there is no question but that such appearances would not be exempt under the 1959 amendment to Section 315.
42. Q. If a station offers free time to opposing candidates and one candidate declines to use the time, is he then other candidates for that office foreclosed from availing themselves of the offer?
A. No. The refusal of one candidate does not foreclose other candidates. A station is required to offer time only to candidates of a political party for which it has nominations. However, whether the candidate initially declining the offer later avail himself of "equal opportunities" would depend on all the facts and circumstances. (Letter to Leonard Marks, 14 R.R. 65.)

43. Q. If one political candidate buys station facilities more than once, is it later required to call a halt to such sales because of the resulting unbalance?
A. No. Section 315 requires only that all candidates be afforded an equal opportunity to use the facilities of the station. (FCC Letter to Mrs. M. R. Olive, dated October 22, 1952.)

44. Q. If the candidate has received free time for a period of time and subsequently a second candidate announces his candidacy, is the second candidate entitled to equal facilities retroactive to the date when the first candidate announced his candidacy?
A. It would appear not. A recent addition to the Commission's Rules and Regulations provides that a request for equal opportunities must be submitted to the licensee within one week of the day on which prior use occurred. (See, 3.120(e), 3.290(e), FM, 3.590(e). Non-Commercial Educational FM, and 3.657(e), TV.)

45. Q. If a station has a policy of confining political broadcasts to sustaining time, but has so many requests for political time that it cannot handle them all within its sustaining schedule, may it refuse time to a candidate whose opponent has already been granted time, on the basis of its established policy of not cancelling commercial programs in favor of political broadcasts?
A. No. The station cannot rely upon its policy if the latter conflicts with the "equal opportunity" requirement of Section 315. (Stephens Broadcast- ing Co., 3 R.R. 1, 31, 1952.)

46. 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, 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 by the provisions of Section 315 it requires that equal opportunity be afforded each person who is a candidate for the same office, without regard to the number of nominations that any particular candidate may have. (FCC Letter to Thomas W. Wilson, dated October 31, 1946.)

48. Q. Where a candidate for office in a state or local election appears on a national network non-news program, is an opposing candidate for the same office entitled to equal facilities over stations which carried the original program and serving the area in which the election campaign is conducted?
A. Yes. Under such circumstances an opposing candidate would be entitled to time on such stations. (FCC Letter to Senator Monroney, dated October 9, 1952.)

49. Q. Where a candidate appears on a particular program—such as a regular series of forum programs which are not bona fide news programs—are opposition candidates entitled to demand on appeal 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 secured by opposing parties time on the same program. (FCC Letter to Harold Olive, dated October 31, 1952; FCC Letter to Justin Schwartz, dated October 31, 1952.)

51. Q. In affording "equal opportunities," may a station limit the use of its facilities solely to the use of minor or second candidates?
A. A station must treat opposing candidates the same with respect to the use of its facilities and if it permits one candidate to use facilities over and beyond the microphone, it must permit a similar usage by other qualified candidates. (Letter to D. L. Grace, dated July 3, 1958.)

52. 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 licensor 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 was to disable a licensee from meeting its "equal opportunities" obligations under Section 315. (Letter to Congressman Karsten, dated November 25, 1955.)

53. Q. May a station "editorialize" in behalf of its favorite candidate or party?
A. Yes. A station may lend its prestige to any public interest. However, it never shall permit the station to seek out and present proponents of the other side of the issue.

54. Q. May a licensee request that a candidate for office be denied or restricted in using the station's facilities?
A. The Commission has stated that it is "extremely doubtful whether it would be lawful under Section 315(b) of the Communications Act for a station to request or demand of the parties such an obligation to provide bonds or insurance unless they also require other users of their stations to post similar indemnity bonds or insurance." (11 R.R. 1001.) In view of the United States Supreme Court decision in the WDAY case (See Answer 49) it would appear needless to request indemnity bonds from candidates since broadcast licensees are not liable for libelous statements broadcast by a candidate.
What Limitations Can Be Put On The Use of Facilities By A Candidate?

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

A. No. Such an arrangement would be in violation of the Communications Act. (Farnes Educational and Cooperative Union of America v. WDAY, Inc., 360 U.S. 525, 8 L Ed. 2d 1407, June 29, 1969.)

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

57. Q. May a station delete material in a broadcast by a legally qualified candidate under Section 315 because it believes the material contained therein is or may be libelous?

A. No. Any such action would entail censorship which is expressly prohibited by Section 315 of the Communications Act. (Farnes Educational and Cooperative Union of America v. WDAY, Inc., 360 U.S. 525, 8 L Ed. 2d 1407, June 29, 1969.)

58. Q. What can a station do if a candidate for political office, including one who is a legally qualified candidate, makes slanderous or libelous statements?

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

59. 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 the time on the ground that he was not using it in furtherance of his candidacy would be an exercise of censorship prohibited by Section 315. (WMCA, Inc., 7 R.R. 1132.)

60. Q. If a station makes time available to an office holder who is also a legally qualified candidate for re-election 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 broadcasting?

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

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

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

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

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

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

A. No. Section 315, as amended, provides that the charges made for the use of a station by a candidate "shall not exceed the charges made for comparable use of such station for other purposes." (22 U.S.C. 553.)

64. 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 political 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 obligations to operate in the public interest. (Letter to Congressmen Digsy, Jr., dated March 16, 1955.)

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

A. No. Under Sections 3.120, 3.290 and 3.657 of the Commission's rules, a station may not charge a candidate more than the rate the station would charge if the candidate were a commercial advertiser. (FCC Letter to Senator Monroney, dated February 27, 1957.)

66. Q. Considering the limited geographical area within 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 the Commission's view, the Commission does not prescribe rates but merely requires equality of treatment as between 315 broadcasts and commercial advertising. (Letter to Congressmen Simpson, dated February 27, 1957.)

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

A. Yes. Under Sections 3.120, 3.290 and 3.657 of the Commission's Rules, political candidates are entitled to the same discounts that would be accorded persons other than candidates for public office under the conditions specified, as well as to such special discounts for programs coming within Section 316 as the station may choose to give on a non-discriminatory basis.

68. Q. Can a station refuse to sell time at discount rates to a group of candidates for different offices who pool their resources to purchase a block of time at a discount, even though as a matter of commercial practice, the station permits commercial advertisers to buy a block of time at discount rates for use by various businesses owned by a single advertiser?

A. Yes. Section 315 specifically provides that a station need not permit the use of its facilities by candidates, and neither that section nor the Commission's rules require a station to sell time to a group of candidates on a pooled basis, even though such may be the practice with respect to commercial advertisers. (Letter to WEDT-WKTH, dated October 14, 1964.)

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

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

70. Q. If a station has a "spot" rate of two dollars per "spot" announcement, with a rate reduction of ten per cent for commercial advertisers who purchase on a bulk time sales contract, and if one candidate arranges with an advertiser having such a bulk contract to utilize five of these spots at the one dollar rate, is the station obligated to sell the candidates of other parties for the same office time at the same one dollar rate?

A. Yes. Other legally qualified candidates are entitled to take advantage of the same reduced rate. (FCC Letter to Senator Monroney, dated October 18, 1952.)

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

A. He is entitled to be charged the same rate as his opponent, since the provisions of Section 315 run to candidates themselves and they are entitled to be treated equally with their individual
is interpreted to mean that a political candidate has the right to use a radio station's facilities to speak personally to those who purchase the time. This includes those who purchase the time in order to make a contribution to a candidate. In the 1959 amendment to Section 315, the Commission has interpreted the word "person" in Section 315 to mean "licensee." This means that a station is not obligated to provide equal time to a candidate unless the station is owned by a political candidate. In the case of a corporate licensee, the station is not obligated to provide equal time unless the candidate owns all the stock in the corporation. The obligation of a licensee to provide equal time is not limited to the candidate himself, but includes all members of his immediate family. The obligation of a licensee to provide equal time is not limited to the candidate himself, but includes all members of his immediate family. The obligation of a licensee to provide equal time is not limited to the candidate himself, but includes all members of his immediate family. The obligation of a licensee to provide equal time is not limited to the candidate himself, but includes all members of his immediate family.
"controversial issues" doctrine as now codified in Section 315. Therefore, the interpretation of the applicability of the doctrine which has been presented herein should not be taken as legally authoritative. It merely represents what we believe, in our best judgment, based on our intimate contact with political broadcast problems. Thus, until legally authoritative answers are forthcoming as to the effect of inclusion of the "controversial issues" doctrine in Section 315, it would seem advisable for licensees, as a safety measure, to be flexible in processing requests for air time based on the "controversial issues" doctrine and go beyond what may appear to be their legal obligation.

Station licensees should note, though, that in handling "controversial issues" problems, the requirement of fairness in the discussion or presentation of issues does not necessarily mean an approximation of time as is generally required by the "equal opportunities" requirement of Section 315. A licensee additionally has freedom to designate which spokesmen may present the conflicting viewpoints. In designating a spokesman, the licensee is only required to be fair. Licensees should also note that the no censorship provision of Section 315 does not apply in the case of controversial issues. The no censorship provision applies only to speeches by legally qualified candidates. Licensees who fail to censor defamatory, libelous or obscene material in a broadcast contemplated under the "controversial issues" doctrine, cannot escape liability for such material if it is presented on the air. Therefore, licensees should supervise "controversial issue" broadcasts so as to assure that improper material is not broadcast.

It is realized that the discussion in this section is general in nature. But in the absence of legally authoritative answers to the problems involved, we can do no more than state how we believe the FCC and Courts should and will rule on the "controversial issues" doctrine in Section 315. There is now no indication as to when official pronouncements may be forthcoming, but as soon as they are issued, a supplement to this "Catechism" will be sent to you.

It is my understanding that: The above is the same uniform rate for comparable station time charged all such other candidates for the same public office described above; the charges above do not exceed the charges made for comparable use of said station for other purposes; and the same is agreeable to me. In the event that the facilities of the station are utilized for the above-stated purpose, I agree to abide by all provisions of the Communications Act of 1934, as amended, and rules and regulations of the Federal Communications Commission governing such broadcasts, in particular those provisions reprinted on the back hereof, which I have read and understand. I further agree to indemnify and hold harmless the station for any damages or liability that may ensue from the performance of the said broadcasts. For the above broadcast, I agree to prepare a script or transcription, which will be delivered to the station at least before the time of the scheduled broadcast.

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NAB FORM PB-4

AGREEMENT FORM FOR POLITICAL BROADCASTS

STATION and LOCATION ____________________________

I, (being) ________________________________ (supporting) ________________________________

a legally qualified candidate for the office of ________________________________ in the

______________________ election, do hereby request station time as follows:

LENGTH OF BROADCAST — HOURS — DAYS — TIMES PER WEEK — TOTAL NO. WEEKS — RATE —

DATE OF FIRST BROADCAST ________________________________ DATE OF LAST BROADCAST ________________________________

The broadcast time will be used by ________________________________

I represent that the advance payment for the above-described broadcast time has been furnished by ________________________________ and you are authorized to so describe the sponsor in your

log, or otherwise, and to announce the program as paid for by such person(s).

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

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

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

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

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

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

(Candidate, Supporter or Agent) ________________________________ Accepted) by ________________________________

Rejected) by ________________________________ Title ________________________________

If rejected, the reasons therefor are as follows:

This application, whether accepted or rejected, will be available for public inspection for a period of two years, in accordance with FCC Regulations (AM, Section 3.120; FM, Section 3.299; TV, Section 3.657).
Section 3.100. Sponsored programs; announcement of. (a) In the case of any program advertising commercial products or services, which is sponsored, paid for or furnished, either in whole or in part, by any manufacturer, producer, seller, dealer, or other such person or persons, the station shall have the right, in its discretion, to require that such program be broadcast subject to the following conditions:

1. The station shall have the right, in its discretion, to require that such program be broadcast subject to the following conditions:

(b) In the case of any program advertising any other products or services, which is sponsored, paid for or furnished, either in whole or in part, by any manufacturer, producer, seller, dealer, or other such person or persons, the station shall have the right, in its discretion, to require that such program be broadcast subject to the following conditions:

(c) In the case of any program advertising any other products or services, which is sponsored, paid for or furnished, either in whole or in part, by any manufacturer, producer, seller, dealer, or other such person or persons, the station shall have the right, in its discretion, to require that such program be broadcast subject to the following conditions:

(d) In the case of any program advertising any other products or services, which is sponsored, paid for or furnished, either in whole or in part, by any manufacturer, producer, seller, dealer, or other such person or persons, the station shall have the right, in its discretion, to require that such program be broadcast subject to the following conditions:

(e) In the case of any program advertising any other products or services, which is sponsored, paid for or furnished, either in whole or in part, by any manufacturer, producer, seller, dealer, or other such person or persons, the station shall have the right, in its discretion, to require that such program be broadcast subject to the following conditions:

(f) In the case of any program advertising any other products or services, which is sponsored, paid for or furnished, either in whole or in part, by any manufacturer, producer, seller, dealer, or other such person or persons, the station shall have the right, in its discretion, to require that such program be broadcast subject to the following conditions:

(g) In the case of any program advertising any other products or services, which is sponsored, paid for or furnished, either in whole or in part, by any manufacturer, producer, seller, dealer, or other such person or persons, the station shall have the right, in its discretion, to require that such program be broadcast subject to the following conditions:

(h) In the case of any program advertising any other products or services, which is sponsored, paid for or furnished, either in whole or in part, by any manufacturer, producer, seller, dealer, or other such person or persons, the station shall have the right, in its discretion, to require that such program be broadcast subject to the following conditions:

(i) In the case of any program advertising any other products or services, which is sponsored, paid for or furnished, either in whole or in part, by any manufacturer, producer, seller, dealer, or other such person or persons, the station shall have the right, in its discretion, to require that such program be broadcast subject to the following conditions:

(j) In the case of any program advertising any other products or services, which is sponsored, paid for or furnished, either in whole or in part, by any manufacturer, producer, seller, dealer, or other such person or persons, the station shall have the right, in its discretion, to require that such program be broadcast subject to the following conditions:

(k) In the case of any program advertising any other products or services, which is sponsored, paid for or furnished, either in whole or in part, by any manufacturer, producer, seller, dealer, or other such person or persons, the station shall have the right, in its discretion, to require that such program be broadcast subject to the following conditions:

(l) In the case of any program advertising any other products or services, which is sponsored, paid for or furnished, either in whole or in part, by any manufacturer, producer, seller, dealer, or other such person or persons, the station shall have the right, in its discretion, to require that such program be broadcast subject to the following conditions:

(m) In the case of any program advertising any other products or services, which is sponsored, paid for or furnished, either in whole or in part, by any manufacturer, producer, seller, dealer, or other such person or persons, the station shall have the right, in its discretion, to require that such program be broadcast subject to the following conditions:

(n) In the case of any program advertising any other products or services, which is sponsored, paid for or furnished, either in whole or in part, by any manufacturer, producer, seller, dealer, or other such person or persons, the station shall have the right, in its discretion, to require that such program be broadcast subject to the following conditions:

(o) In the case of any program advertising any other products or services, which is sponsored, paid for or furnished, either in whole or in part, by any manufacturer, producer, seller, dealer, or other such person or persons, the station shall have the right, in its discretion, to require that such program be broadcast subject to the following conditions:

(p) In the case of any program advertising any other products or services, which is sponsored, paid for or furnished, either in whole or in part, by any manufacturer, producer, seller, dealer, or other such person or persons, the station shall have the right, in its discretion, to require that such program be broadcast subject to the following conditions:

(q) In the case of any program advertising any other products or services, which is sponsored, paid for or furnished, either in whole or in part, by any manufacturer, producer, seller, dealer, or other such person or persons, the station shall have the right, in its discretion, to require that such program be broadcast subject to the following conditions:

(r) In the case of any program advertising any other products or services, which is sponsored, paid for or furnished, either in whole or in part, by any manufacturer, producer, seller, dealer, or other such person or persons, the station shall have the right, in its discretion, to require that such program be broadcast subject to the following conditions:

(s) In the case of any program advertising any other products or services, which is sponsored, paid for or furnished, either in whole or in part, by any manufacturer, producer, seller, dealer, or other such person or persons, the station shall have the right, in its discretion, to require that such program be broadcast subject to the following conditions:

(t) In the case of any program advertising any other products or services, which is sponsored, paid for or furnished, either in whole or in part, by any manufacturer, producer, seller, dealer, or other such person or persons, the station shall have the right, in its discretion, to require that such program be broadcast subject to the following conditions:

(u) In the case of any program advertising any other products or services, which is sponsored, paid for or furnished, either in whole or in part, by any manufacturer, producer, seller, dealer, or other such person or persons, the station shall have the right, in its discretion, to require that such program be broadcast subject to the following conditions:

(v) In the case of any program advertising any other products or services, which is sponsored, paid for or furnished, either in whole or in part, by any manufacturer, producer, seller, dealer, or other such person or persons, the station shall have the right, in its discretion, to require that such program be broadcast subject to the following conditions:

(w) In the case of any program advertising any other products or services, which is sponsored, paid for or furnished, either in whole or in part, by any manufacturer, producer, seller, dealer, or other such person or persons, the station shall have the right, in its discretion, to require that such program be broadcast subject to the following conditions:

(x) In the case of any program advertising any other products or services, which is sponsored, paid for or furnished, either in whole or in part, by any manufacturer, producer, seller, dealer, or other such person or persons, the station shall have the right, in its discretion, to require that such program be broadcast subject to the following conditions:

(y) In the case of any program advertising any other products or services, which is sponsored, paid for or furnished, either in whole or in part, by any manufacturer, producer, seller, dealer, or other such person or persons, the station shall have the right, in its discretion, to require that such program be broadcast subject to the following conditions:

(z) In the case of any program advertising any other products or services, which is sponsored, paid for or furnished, either in whole or in part, by any manufacturer, producer, seller, dealer, or other such person or persons, the station shall have the right, in its discretion, to require that such program be broadcast subject to the following conditions:

{For further details see NAB'S "A Political Broadcast Checklist" (4th Ed.). Available on request.}
Candidates, for a party's nomination
Candidates, having financial interest in station
Candidates, opposing
Censorship, by station
Ceremonies, appearances at
Charges, need to keep records of
Commercial programs, appearance of candidates
Commercial programs, cancellation of
Commission's Rules and Regulations, text of.
Communications Act and political broadcasts
Communist Party, candidates of
Controversial issues
Controversial issues, in general
Debates
Defamatory material, deletion of
Discounts
Discrimination, prohibited between candidates
Discrimination, rates
Editorializing on behalf of candidates by stations
Equal opportunity, in general.
Equal opportunity, is it retroactive?
Equal opportunity, limited to candidates for same office
Equal opportunity, what constitutes?
Equipment, limitations on usage
FCC acceptance of political broadcast cases
FCC interpretation of 1959 amendment to Section 315
FCC Rules and Regulations, text of.
Foreign broadcasts, applicability of Section 315
Forums

General elections, application of Section 315 to
Indemnification, can station require?
Insurance, can station require?
Legally qualified candidate, failure to prove
Legally qualified candidate, in general.
Legally qualified candidate, requiring proof of
Legally qualified candidate, who is?
Liability of candidate for cancelled time
Libelous material, deletion of
Libelous material of non-candidate.
Limitations on equipment usage
Limitations on use of facilities in general.
Local rates
Logging requirements
Material, deletion of by station
National rates
Network programs, appearance of candidates
Newscaster as candidate
Newscasts
Nominations, candidates for a party's
Non-candidates, political speeches by
Non-candidates, rates for
Non-political speeches by candidates currently in office
Obscenity, deletion of
Offices, public, included within Section 315
Opposing candidates
Political Broadcast Agreement, suggested form.
Political broadcast cases, FCC acceptance.
Political parties.
Pooling of resources by candidates to obtain

time.
Premium rates.
Presidency, candidates for.
Press conferences.
Primary election, applicability of Section 315.
Primary election of one party separate from that of another.
Programs, must candidates appear on same?
Programs covered by Section 315.
Programs covered by Section 315 in general.
Public inspection of records.
Public office included within Section 315.
Public service programs, appearances on.
Rates, charges to candidates having financial interest in station.
Rates, commercial, as applied to candidates.
Rates, discounts.
Rates, discrimination.
Rates, in general.
Rates, local.
Rates, national.
Rates, non-candidates.
Rates, premium.
Rates, spot announcements.
Recordings, at candidate's expense.
Recordings, need to keep records of.
Records required.
Refusal to appear after request by licensee, candidate's future rights.
Request for time.
Requests for time, delayed.

Requests for time, need of licensee to advise other candidates.
Requests for time, need to keep records of.
Retroactive, is equal opportunity?
Rules and Regulations, text of FCC's.
Sales of time, unbalanced as between candidates.
Scripts, advance copies.
Scripts, retention and need to keep records of.
Section 315, applicable to candidates only.
Section 315, text of.
Section 317, text of.
Slanderous remarks, deletion of.
Speeches, acceptance.
Speeches, must candidacy be discussed?
Speeches, non-political, by candidates currently in office.
Speeches on behalf of candidates.
Sponsored programs.
Sportscaster candidate.
Spot announcements, rates.
State laws defining candidacy.
Station personnel as candidates.
Station support of candidate through editorializing.
Station support of candidate through editorializing.
Supporters, political speeches by.
Sustaining time.

Time, allocation required.
Time, block of.
Time, bulk.
Time, cancellation by candidate.
Time, free.
Time, is sale required by Section 315?
Time, liability of candidates for.
Time, pooling of resources by candidates to obtain.

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Time, requests for. Q. 14, page 5.

Time, requests for, delayed. Q. 44, page 10.

Time, requests for, need of licensee to advise other candidates. Q. 41, page 10

Time, requests for, need to keep records of. Q. 4, page 3; Q. 41, page 10.


Time, sales unbalanced as between candidates. Q. 43, page 10.

Time, sustaining. Q. 45, page 10.


Vice presidency, candidate for. Q. 13, page 5.

Weather reports, newscasts. Q. 23, 24, page 7.