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A HISTORY AND ANALYSIS

DISSERTATION

Presented in Partial Fulfillment of the Requirements for
the Degree Doctor of Philosophy in the Graduate
School of The Ohio State University

By

William Worth McDougald, B.A., M.A.

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The Ohio State University
1964

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In submitting this dissertation I am genuinely mindful of the contributions which have been made by so many toward its completion. Dr. Harrison B. Summers, who first suggested the possibility of such a study and who played a major part in the development of the final outline, and who, as a teacher and close personal friend has been primarily responsible for any academic growth I may have achieved, is due a large share of the credit. Likewise to Dr. Richard Mall, whose timely advice and counsel, whose gentle but firm prodding toward the goal, and whose strong personal interest has enabled me to complete this work, goes my sincere gratitude.

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To my wife, Charlotte, without whose energy and drive none of this would have been possible, I give grateful thanks. Without her patience and her understanding this study would never have taken form.

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FIELDS OF STUDY

Major Field: Speech

Studies in Broadcasting. Professors Harrison B. Summers,
Richard Mall, and Donald Riley.
Studies in Educational Television. Professor I. Keith Tyler.
Studies in Photography. Professor Robert Wagner
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CHAPTER I

THE NATURE OF THIS STUDY

General Regulatory Background

Invention and development in a technological field is almost always followed by related development of regulatory law. Broadcasting is no exception. A study of the origin of governmental regulation of broadcasting in the United States shows that regulatory provisions came into being only as the technology of the broadcast medium advanced and created a demand for the regulation.

The United States was represented at the Berlin Convention of 1906 at which the first effective international agreement in the wireless field was reached. While the United States was represented it was not a party to the agreement. 1

Six years later, the provisions of the agreement were implemented by the Congress of the United States in the Radio Act of 1912.

1 Head, Sidney, Broadcasting In America, (Boston: Houghton Mifflin Co., 1956), pg. 125.
As will be developed subsequently in this study, the Act of 1912 proved ineffective for the regulation of broadcasting since it was based on the premise that anyone might use the airwaves on a first-come, first-served basis. This premise served a useful purpose in the early days of wireless but with the development of a system of wireless wherein the purpose was dissemination of communications to be received by the public-at-large, the 1912 law became outmoded both by technology and social change.

As Senator Wallace H. White, who was largely responsible for the Radio Act of 1927, said:

We have reached the definite conclusion that the right of the people to enjoy this means of communication can be preserved only by the repudiation of the idea underlying the 1912 law that anyone who will may transmit and by the assertion in its stead of the doctrine that the right of the public to service is superior to the right of any individual to use the ether. ²

In 1927 with the passage of the Radio Act of 1927 a basic public regulatory policy toward broadcasting was established and has remained, with few exceptions, virtually unchanged to this day. Certain basic principles underlay the 1927 Act. These were:

1. The electromagnetic spectrum is a natural resource and misuse of it could destroy its value. Thus, the airwaves belong to the people and are to be used for the greatest benefit to the public.

2. Not everyone is eligible to use a channel and the government may establish criteria for a determination of who shall be eligible.

3. The government has discretionary regulatory powers but these powers are not absolute. Decisions must be made by due process of law, must not be arbitrary or capricious, and may be appealed to a court of law.\(^3\)

The underlying philosophy of the Act of 1927 was subsequently embodied in the Communications Act of 1934, which, as amended, remains the basis for the regulation of broadcasting in the United States.

Each of the principles enumerated above which were written into the regulatory acts has been tested in the courts of the United States and has been found to be constitutional.\(^4\)

Since the organic law of broadcasting is embodied in an act duly passed by the Congress and signed by the President, and since the

\(^3\) Head, op. cit., 131.

\(^4\) Ibid.
Congress itself operates within a framework of constitutional law, it follows that the Communications Act of 1934 is derived from organic law of the United States.

Congress asserts its authority to regulate broadcasting on the basis of Section 8, the "commerce clause," of the Constitution. Since the United States is also a party to numerous international agreements related to the regulation of electromagnetic energy it follows that the Congress would also be empowered to act to regulate broadcasting under its treaty-making powers, if it so desired.

The Communications Act of 1934 was written in rather general terms, with specific regulatory authority being invested in the seven-man Federal Communications Commission, which generally exercises its authority through its own rules and regulations. Every regulation must be justified in the Act itself and since the Congress empowered the Commission to establish such rules as were not inconsistent with the Act, the rules tend to have the full force of Federal law.

The power of the Commission and the effectiveness of the Communications Act itself revolve around the power to license or not to license applicants to operate broadcasting stations, and the power to continue those licenses in force or to revoke them.
Thus, the government of the United States acts as an agency of social control over broadcasting. The economics of the medium and public opinion also exert considerable force in controlling or regulating broadcasting since a station must be solvent if it is to continue operations and, acceptance by the public to some extent at least, is generally necessary if the station is to remain economically solvent.

The role of the government in this regulatory pattern is the one to which the attention of this dissertation is directed. While it is undeniable that the economics of broadcasting and the reactions of the public are important as regulators, it is not proposed to deal with them in this study.

The Role of Government In Broadcast Regulation

The role of government in the regulation of broadcasting in the United States is much like that of a referee. Its major function is to insure that all competing interests play fairly, according to the rules, and in accord with what the establishing law says is "the public interest, convenience, and necessity."^5

Any concept of the role of a government in the regulation of broadcasting reflects the particular political philosophy of the govern-

^5 48 Stat. 1064 (1934).
ment which is doing the controlling or regulating. As Siebert⁶ has pointed out there are four theories of the function of public media of communications. They are:

1. The authoritarian theory wherein criticism of government is not tolerated and where publication or broadcast may take place only under authority of the government.

2. The libertarian theory, wherein the assumption is that the people, properly granted access to the knowledge for making political judgments, are fit to govern themselves. Thus, according to this theory, the greatest freedom of expression will, in the long run, be most suitable for the individual and for society as a whole, for truth will ultimately prevail.

3. The Marxian theory, wherein government not only has the responsibility for suppressing unfavorable information but is responsible for undertaking a positive role in communications in order to promote the policies of the government in power.

4. The social-responsibility theory, which asserts that the mass media have become so powerful and so influential that they must ac-

cept a special responsibility for self-discipline. The Libertarian self-righting process is inadequate, under the social-responsibility concept, and the process must be aided either by the media themselves or by the government.

In the United States we have a broadcasting system which is unique among world systems. It is a system which, to a greater extent than with any other mass communication medium, represents the modification of the libertarian theory by the social-responsibility concept:

As Schramm says:

The best standard we in the United States have developed is that of 'public interest, convenience, and necessity,' a vague yardstick at best, and putting altogether more responsibility in the government's hands than Milton, or Erskine, or Jefferson might have approved. Actually, the American system of broadcasting, which is privately owned, comes closer to the principles of libertarianism than most other broadcasting systems throughout the world. 7

The American system may be characterized by saying that it is privately owned, privately operated, is commercial, and has limited governmental regulation, rather than government control.

The Congress established a regulatory pattern for broadcasting

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which permitted establishment of, and continues to protect and encourage private ownership and operation of the medium. It also established a system wherein the government, in its role as referee, has a limited regulatory role.

It has been the determination of the boundaries of the regulatory role, rather than the propriety of the regulatory role itself, that has caused the most conflict in the area of broadcast regulation in the United States.

Regulation of Political Broadcasting

First in the 1927 Act and subsequently in the Act of 1934, the Congress spelled out the regulatory authority of the United States in the realm of political broadcasting. The term "political broadcasting" is used to mean the use of broadcast stations by and on behalf of candidates for public office.

Essentially the regulation of political broadcasting is carried out on the basis that all candidates for the same public office are entitled to equal access to facilities of broadcasting stations. Certain types of news programs are exempt from provisions of this requirement and stations are under no obligation to carry broadcasts by any particular group of candidates, unless one candidate in the group has
been permitted to use the station's facilities. Failure to broadcast any political broadcasting, however, has been held to not be operation in the public interest. Under a related segment of the Act of 1934, but not included in the political broadcast section, is a requirement that licensees must be fair in their allocation of facilities for the discussion of controversial public issues. In 1960 the equal time provisions of the law were suspended in the case of candidates for the presidency and the vice-presidency. A bill permitting a similar suspension is presently before the Congress for the 1964 elections.

The interpretations of the political broadcasting section of the Act of 1934 have resulted in the publication of a number of interpretive "primers" by the Commission.

The Impact of Broadcasting On Politics

It is undeniable that broadcasting has had an impact on the political activities of the country, but to what extent this impact has affected politics in the United States is subject to conjecture. Some writers, in a rather general way, feel that the impact has been rather extensive.

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8 Summation based on the provisions of Section 315 of the Communications Act of 1934, as amended.
Slate and Cook, in their book dealing with the history of broadcasting, wrote:

For better or worse, radio has brought drastic changes in the American scene in four decades. Most observers believe that its impact has been the sharpest, the most decisive in the field of national politics. 9

The late President John F. Kennedy, in addressing the Radio and Television Executives Society of New York on March 9, 1961 said:

Broadcasting's performance in the critical election year of 1960 was a great step forward in the democratic process. It showed how vital a role television and radio can play in the business of creating an informed public. 10

An analysis published by the U.S. News and World Report in 1955 said:

Television is having a steadily increasing influence on the average adult's political thinking. Nearly all of the experts agree on that. 11


Researchers interested in more specific conclusions report mixed results. Charles A. H. Thompson says that of all the media of political communications television is regarded by most observers as the single most potent means through which one may influence the voting public. 12

The overall effectiveness of broadcasting in shaping public opinion, stimulating voter participation, and affecting elections is still somewhat clouded. In 1952, shortly after the advent of television, Lane found that more people considered television to be their "most important source of news." 13 Yet, in a study of the "Effect of Television Upon Voting Behavior In Iowa In The 1952 Presidential Election" Simon and Stern reported that the density of television sets did not significantly affect the turnout of voters in the area under study. 14


Clapper, in his study of "The Comparative Effects of The
Various Media" says television is more effective in increasing the
level of public information on political issues than any other
medium.  

Clear evidence that political candidates and their advisors feel
that broadcasting has become a significant factor in political cam-
paigns may be seen in the increasing expenditures made in political
campaigns for the use of broadcasting facilities.  

Steiner, in his 1963 study, showed that more people continue
to rely on television for information, political and otherwise, than
any other medium.  

Thus it would seem clear that while broadcasting has had an im-
pact of some magnitude on the political processes of the nation the

15 Clapper, Joseph T., "The Comparative Effects of the Various
Media," in Wilbur Schramm, ed. The Process and Effects of Mass
Communications (Urbana: University of Illinois Press, 1954),
pg. 91 - 105.

16 See Broadcasting, June 17, 1963 for a breakdown of expendi-
tures.

17 Steiner, Gary, The People Look At Television (New York: A.
Knopf, Inc. 1963), pg. 30.
nature and depth of that impact will require additional study. Available studies do not suffice to give a clear picture of the impact of broadcasting on politics in the United States.

The Purpose of This Study

As an academic discipline broadcasting is relatively new. As with any new academic discipline there has not been built up substantial sources of documented information relating to important aspects of the field. Such a shortage is readily apparent when one considers the area of political broadcasting and its regulation by the Federal government. Most textbooks dealing with the broad area of broadcasting treat political broadcasting in a limited way, generally as a part of a somewhat broader treatment of overall regulatory patterns. No source is available which brings together the historical background of the regulation of political broadcasting in the United States, together with the interpretive perspective supplied by a study of Commission decisions and decisions of the several courts.

The purpose of this study will be to help fill the existing gap in this area and to fulfill the need for a single source in which is documented the legislative history, the interpretive and enforcement history, and some of the practicalities of the application of political broadcast regulation in the United States.
This study will: (1) establish the historical basis for regulation of political broadcasting in the United States, will detail the legislative history as it has developed in the Congress and will set forth modification of the regulatory pattern, as well as modification attempts which did not succeed; (2) it will review the history of the Federal Communications Commission as it has interpreted the political broadcasting provisions of the Communications Act; (3) examine the rulings of federal and state courts which have served to limit or delimit regulation of political broadcasting; (4) compare the provisions of the Act of 1934 which specifically regulate political broadcasting with those provisions which require fairness on the part of broadcasters when dealing with controversial public issues; (5) will examine the results of the suspension of certain provisions of the regulations governing political broadcasting during the Presidential campaign of 1960; and (6) will examine other related areas of research which might justifiably grow out of the instant study.

This study is not designed to assess the role of political broadcasting in the electoral activity of the United States. It is not designed to measure either the effectiveness or lack of effectiveness
of political broadcasting in the United States since the relative effectiveness is not directly related to the regulatory effort.

This study is not designed to set forth any predictions of future courses of action on the part of the Congress insofar as regulation of political broadcasting is concerned. Such would be simple conjecture since no one, however gifted, can predict the course of action of deliberative law-making bodies.

The major justification of the present study lies in bringing together a documented reference work in the area of the regulation of political broadcasting in the United States. It is not intended that it be a study of political broadcasting as such, but only the regulation thereof.

Summary

Regulation of broadcasting in the United States has generally followed technological development. A change in the approach and attitude of the Congress toward regulation occurred in 1927 when the government established the concept of broadcasting serving the public, as opposed to serving strictly private ends. The concept was carried forward into the present act, the Communications Act of 1934, which essentially views broadcasting under a libertarian
theory of regulation as modified by a social-responsibility theory. Regulation of political broadcasting had its inception in the 1927 Act.

The purpose of the present study is to bring together in one source, as a contribution to the general fund of knowledge, the legislative history of political broadcasting regulation in the United States; the interpretive history of such regulation as seen in decisions of the Federal Communications Commission and the courts; to examine the fairness doctrine and its relationship to political broadcast regulation; to assess the 1960 suspension of equal time provisions; and to set forth other studies which might logically grow out of the present one.
CHAPTER II

THE LEGISLATIVE HISTORY OF SECTION 315

FROM 1912 TO 1939

The Radio Act of 1912

Congress, in its first law relating to radio communication, did not, in reality, regulate radio. The Wireless Ship Act of 1912\(^1\) required only the ships at sea should be equipped with "an efficient apparatus for radio-communication, in good working order, in charge of a person skilled in such apparatus" if they carried fifty or more passengers. The law further required that the radio apparatus should be capable of transmitting and receiving messages over a distance of one hundred miles, that the Secretary of Commerce and Labor should administer the law, and that any vessel attempting to leave any port of the United States might be libeled in the appropriate District Court having jurisdiction.\(^2\)

\(^1\)36 Stat. 629

\(^2\)Ibid.
In 1912 Congress amended the law. The amendment made three changes: (1) Ships plying the Great Lakes came under its provisions; (2) emergency power sources were required; and (3) every vessel was required to have two or more persons on board capable of operating the equipment.

During the time Congress had been considering legislation for shipboard radio it had also been considering legislation for the general regulation of radio. General use of wireless, particularly in the area of maritime use, had increased and the need for regulation was becoming apparent. Radio telephony, of course, had not been developed and broadcasting was still an undisclosed art, but radio interference, particularly that which affected wireless transmission of the Army, Navy and Coast Guard engaged the interest of Congress. Within three weeks after the passage of the amendment to the first radio law, cited above, Congress approved the Radio Act of 1912.

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3 37 Stat. 199

4 Ibid.

5 37 Stat. 302
The first important requirement of the law was that a license was necessary for the operation of a radio transmitter. Other provisions provided that licenses should be issued only to citizens of the United States, that the President might seize stations in time of war (with just compensation to the owners), that penalties would be imposed for interfering with radio communications, and that operators' licenses might be suspended if an unlicensed person were permitted to break the law under the supervision of the licensee.

The Secretary of Commerce was given the right to waive provisions of regulations established by the Act. This subsequently led to the declaration by a Federal court that if the law were construed to give the Secretary the powers he claimed, it would be unconstitutional as a delegation of administrative power without setting up any standard for administration of the law. The Supreme Court of the United States had no occasion to consider the validity of the Radio Act of 1912.

It is clear that Congress could not foresee the use to which the law would eventually be put (i.e., attempted regulation of commercial broadcasting during the period 1921 - 1926). When a large number of

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6 Ibid.
7 Ibid.
8 U. S. vs Zenith Radio Corporation, 12 Fed. (2d) 614.
applications for licenses developed in the early 1920's the Secretary of Commerce found himself faced with a difficult task, for the law made no provision for the duration of a license. It said only that the license was revokable for cause. By limiting broadcast-type licenses to 90 days the Secretary attempted to cope with the myriad problems which developed.

In 1921 the Secretary of Commerce refused to issue a license on the grounds that such issuance would cause interference with existing stations. A mandamus proceeding was brought and the court held that the Secretary had no discretion in the matter and was obligated under the law to issue a license. The Court of Appeals held for the plaintiff and the case went to the Supreme Court on a writ of error but the station ceased operations before the case came up for a hearing and the proceedings were dropped.

By 1922 there were so many broadcasting stations that a national conference was called in the hope that difficulties could be worked out by mutual agreement. The conference accomplished little or nothing. A second conference was called in 1923. By this time there were

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9 Hoover vs Intercity Radio, 266 U. S. 636.
more than 500 stations on the air. It was rapidly becoming clear that the only solution was a Congressional one.

An additional court test of the powers of the Secretary of Commerce as regards licensing power further confused the situation. Zenith Radio Corporation had been assigned a specified frequency and specified hours of operation. Zenith operated on a frequency not assigned and at hours not authorized. Upon such admission the government brought criminal proceedings under the Radio Act of 1912.

The Court found for the defendant, holding that the Secretary was precluded from prescribing regulations additional to or beyond those found in the Act itself; that the act was ambiguous; and that there was a lack of any legislative standard which might control the Secretary's discretion. 11

The Zenith decision prompted the Secretary to ask the Attorney General for a definition of the Secretary's powers and duties under the Act of 1912. In his opinion the Attorney General concluded that the Secretary had no discretion to refuse to issue a license, that no au-


11 U. S. vs Zenith Radio Corp., op. cit.
authority existed to specify the frequency at which the station might operate, and that new legislation was obviously needed. 12

As a result of this opinion, and the subsequent actions of the Secretary in ceasing to assign frequencies, what had been a bad matter at once became worse. Clearly, the Congress had to act.

The Radio Act of 1927

The legislative committee of the First Radio Conference had drafted a bill which was introduced into the House of Representatives in 1923. 13 The House approved the measure, which provided for grants of licenses when the public interest would thereby be served, authorized revocations for cause, denied permits to aliens, and created an advisory committee to which the Secretary of Commerce could refer matters relating to the issuance of licenses.

The Senate, however, referred the measure to the Committee of Interstate Commerce and there it died.


13 HR 13773 (67th Congress, 4th Sess.)

Again in 1924 an attempt was made to get Congressional action on a new radio regulatory bill. HR 7357 was introduced and was substantially the same bill as had been introduced in 1923. Neither this bill, nor any other radio legislation previously introduced contained provisions relating to political broadcasting.

During the discussion on HR 7357, however, an interesting possibility was brought out -- that of Congress requiring the presentation of political candidates on both sides at the same time, more in the nature of a debate rather than an individual presentation.

Congressman Ewin Lamar Davis of Tennessee, who was to play an important part in the eventual inclusion of political broadcasting provisions in communication law, was arguing some of the provisions of the bill with Mr. Harkness, a spokesman for the American Telephone and Telegraph Company. Mr. Harkness suggested that with regard to candidates for public office or 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 one side and then the other."

At the Fourth National Radio Conference in 1925, Secretary Hoover made an urgent plea for additional legislation, and, subse-

15Hearings on HR 7357 (68th Congress, 1st Sess. 1924), 83.
quently, the Committee on Legislation of the Conference recommended specific legislation. Provisions of the recommended legislation included power to the Secretary to classify stations; specify technical provisions of licenses such as power, frequency, hours of operation and similar conditions; establish as a test of eligibility for the issuance of licenses the benefit to the listening public, necessity in the public interest, or development of the art of radio; establish the inviolability of freedom of speech over radio; authorize suspension or revocation for cause; and other provisions. In December of 1925, Congressman White of Maine introduced a bill which contained most of the recommendations of the Fourth National Conference Committee on Legislation detailed above. There was no mention in this bill of political broadcasting.

The bill did make provision that if the Interstate Commerce Commission or any other Federal agency certified that a broadcasting station charged unreasonable rates, made unreasonable regulations, carried out unreasonable practices which tended to be discriminatory or failed to provide reasonable facilities for the transmission of in-}

16Fourth National Radio Conference (G.P.O., 1926), 34-35.

17HR 5589 (69th Congress, 1st Sess. 1926).
formation, the Secretary of Commerce was empowered to revoke the license of that station.

Following committee hearings on HR 5589, Mr. White introduced a new bill, HR 9108, which proposed a radio commission of five members, one each from five geographical zones, to which appeals from decisions of the Secretary of Commerce might be taken. Congressman Davis, of Tennessee, in a minority report on this bill (HR 9108) which contained essentially the same provisions as HR 5589, previously cited, had this to say:

There is nothing to prevent a broadcasting station from permitting one citizen to broadcast for hire and refusing to permit another citizen to broadcast at all, or to prevent the charge of a reasonable rate to one citizen and a prohibitive rate to another. The broadcast field holds untold potentialities in a political and propaganda way; its future use in this respect will undoubtedly be extensive and effective. There is nothing in this bill to prevent a broadcasting station from permitting one party or one 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 agreement that the opposing side should not be accorded a like privilege. As Mr. Sarnoff, the vice-president and general manager of the Radio Corporation, well said, "So powerful an instrument for good should be kept free from partisan manipulations." 18

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HR 9108 contained provisions similar to HR 5589, cited previously, which empowered the Secretary to revoke licenses when an authorized Federal body certified that the licensee had failed to furnish reasonable facilities or made unjust or unreasonable charges. This bill passed the House of Representatives but not the Senate. 19

Subsequently, HR 9971, a more inclusive bill, was introduced in the House, and together with Senate amendments, became the basis for the Radio Act of 1927. As shown by the Senate debates on HR 9971, Section 18, which dealt with political broadcasting had its inception in an amendment proposed by Senator Clarence C. Dill of Washington on the floor of the Senate after the bill had been reported out of committee. 20 Senator Dill's amendment sharply changed the original provision relating to political broadcasting.

The original wording of the section of HR 9971 dealing with regulation of political broadcasting was:

SECTION 4 ... If any licensee shall permit a broadcasting station to be used as aforesaid, or by a candidate or candidates for public office, or for the discussion of any

19 Ibid.

20 Congressional Record (Vol. 67, June 30, 1926), 12358.
question affecting the public, he shall make no discrimi-
nation as to the use of such broadcasting station, and
with respect to said matters the licensee shall be
deemed a common carrier in interstate commerce; pro-
vided that such licensee shall have no power to censor
the material broadcast.

It shall be the duty of the Commission to adopt and
promulgate rules and regulations that will carry the
above provision into effect.

The above provision specifically declared that the broadcasting
licensee was to be regarded as a common carrier in interstate com-
merce. This provision, according to Senator Dill, was the one on
"which the committee spent more time than probably any other." 22

The Senator said "it caused more objection to the bill than probably
all of the other provisions combined." 23

An amendment by Senator Dill struck the common carrier pro-
vision and substituted the following wording:

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 candi-
dates for such public office in the use of such broad-
casting station: Provided, That such licensee shall have
no power to censor the material broadcast under the

21 HR 9971 (69th Congress, 1st Sess. 1926).

22 Congressional Record, op. cit.

23 Ibid.
provisions of this paragraph and shall not be liable to
criminal or civil action by reason of any uncensored
utterances thus broadcast. 24

Deletion of the common carrier provision prompted substantial
discussion, principally among Senator Dill, Senator Watson of
Indiana, and Senator Cummins of Iowa, and, for the most part, con-
cerning the effects of the deletion. A study of the transcript of the
debate leads one to conclude that Senator Dill believed his amend-
ment would make broadcast licensees common carriers only after
they had afforded time to one candidate for public office.

Senator Dill and Senator Fess of Ohio thereafter debated the issue
of whether non-political appearances by a candidate were to be included
in the meaning of Section 18, and whether it would not be wise to include
provisions for equal treatment of all controversial public issues.

Senator Dill's amendment had no provision relating to controversial
issues.

Senator Howell of Nebraska, after discussing the great publicity
power of radio, turned to the controversial issue argument:

Mr. President, to perpetuate in the hands of a com-
paratively few interests the opportunity of reaching the
public by radio and allowing them alone to determine
what the public shall and shall not hear is a tremen-
dously dangerous course for Congress to pursue.

24 Ibid., 12501.
If any public question is to be discussed over the radio, if the affirmative is to be offered, the negative should be allowed upon request also, or neither the affirmative nor the negative should be presented.\(^{25}\)

But no controversial issues amendment was added by the Senate. The Conference Committee, of which Senator Dill was a member, did add:

No obligation is hereby imposed upon any licensee to allow the use of its station by any such candidate.\(^{26}\)

Even though most of the problems were ironed out prior to adjournment, the First Session was adjourned without any substantial radio regulatory legislation being passed. A joint resolution was passed which simply specified that broadcasting licenses would be issued for only 90 days and that applicants for licenses must sign waivers of any right to ownership of a frequency.

Prior to adjournment President Coolidge, in a message to the Congress dated December 7, 1926, urged immediate enactment of the radio legislation, pointing to the chaotic conditions then existing.\(^{27}\)

Upon reconvening, the House passed the conference report on January 29, 1927 and the Senate passed it on February 18. The bill

\(^{25}\) Ibid., 12503.

\(^{26}\) Senate Document 200 (69th Congress, 2nd Sess., 1926).

\(^{27}\) Warner, op. cit., 776.
became law on February 23, 1927 and was known as the Radio Act of 1927. The Act contained the first legislative provision for regulation of political broadcasting.

It was anticipated by Congress in passing the Act that the Federal Radio Commission, which was created under the Act, should exercise power for a period of only a year and that subsequently these powers should devolve upon the Secretary of Commerce and the Commission would become appellate in nature. Congress felt the matter, apparently, was one of clearing up the confusion that existed and then proceeding on a more orderly basis. At the end of the first year, however, Congress voted to continue the Commission for two additional years, and finally, on December 18, 1929 made the Commission a permanent organization in charge of regulating radio.

In order to grasp the scope and the real intent of the Congress in developing and passing the Radio Act of 1927, which, in essence is the Communications Act of 1934 without amendments, one must consider the acts which preceded the 1927 Act.

It is clear that the Congress did not create the Federal Radio Commission under the 1927 Law merely to act as a kind of traffic

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officer which would police the wave lengths and prevent stations from interfering with each other. Congress had already created that under the Radio Act of 1912. The Department of Commerce had exercised such "traffic control" powers in the years intervening and yet had not been able to avoid the natural crisis which developed when it became apparent that there was not enough spectrum space for all who would like to utilize it.

Thus, Congress looked to a new Act, a new type of legislation in 1927. Such legislation had to be broadened in scope when compared with the Act of 1912 for that Act was premised on the theory that he who first asked for a frequency received it. Under the 1927 Act a new principle, that of distribution based on "service to listeners" and on "assurance of public interest to be served" was written into law.

Only by a comparison of the provisions of the two acts can one grasp the great regulatory stride and the complete re-heading, as it were, of the regulatory process which was brought about in 1927.

Certain amendments to the Radio Act of 1927 were approved by Congress in 1929 and in 1930 but these dealt with appellate provisions primarily and are not germane to the discussion at hand.
The provision of the Act to which we now direct our attention was Section 18, and this is the wording, as finally adopted by Congress:

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. 30

Even though the "common-carrier" provision was deleted from the political broadcasting section, the Act did provide for license revocation if a Federal agency certified that a station charged unreasonable rates, or carried out unreasonable practices which tended to be discriminatory, or failed to provide reasonable facilities. No record of any enforcement of this provision could be found. Subsequently, the Interstate Commerce Commission (in Sta-Shine Products Co. vs Station WGBB) held that this section (14) was applicable only to common carriers and that broadcasting was not a common carrier and that the Commission had no jurisdiction over rates, rules, regu-

lations, charges, or practices. When Congress considered revision of the Act of 1927 the clause under discussion was deleted and specific notation was made that radio broadcasting was not a common carrier.

The Communications Act of 1934

After the passage of the 1927 Act some members of Congress still felt that Section 18 needed attention. Such feeling ultimately resulted, in 1933, in the passage of a bill to broaden the provisions covering political broadcasting but a pocket veto by the President prevented the measure from becoming law. Had this bill been approved it would have amended Section 18 so that it would have read as follows:

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 broadcasting station in support of or in opposition to any candidate for public office, or in the presentation of views on a public question to be voted upon at any election, or by a governmental agency, he shall afford equal opportunity to an equal number of other

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31 188 I. C. C. 271 (1932).

32 48 Stat. 1065.
persons to use such station in support of an opposing candidate for such public office, or to reply to a person who has used such broadcasting station in support of or in opposition to such a candidate, or for the presentation of such views on public questions.

(b) The Commission shall make rules and regulations to carry this provision into effect. No such licensee shall exercise censorship over any 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, or in 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 use of said station to advertisers furnishing regular programs, and shall not be discriminatory as between persons using the station for such purposes.

An examination of the above shows three major changes to Section 18 which would have been effected had the President not exercised the pocket veto.

First, stations would have been required to afford equal opportunity for use of facilities to equal numbers of persons if such station permitted use of its facilities by persons supporting or opposing candidates or public questions. It, in effect, extended the requirement of equality of treatment of political candidates to their supporters and opponents, as well as to the discussion of public questions.

^HR 7716 (72nd Congress, 2nd Sess., 1933), Section 14.
Secondly, the broadcaster was specifically relieved of an obligation for the presentation of views on any side of any public issue.

Thirdly, rates charged could not have exceeded those charged regular advertisers, thus prohibiting increased charges to candidates, a practice common at the time.

None of the changes to the political section of the Act of 1927 originated in the House of Representatives. The amendment was first presented in the Senate but at the time the bill came up for discussion the Senate made no reference to the political section changes from the floor. Earlier, Senator Dill had indicated his feeling that the Commission possessed the authority to require such "equal opportunities" with regard to public questions under the provisions of the 1927 Act.

There was considerable discussion, however, at the Senate hearings on HR 7716, most of it centering around the prohibition

36 Congressional Record (72nd Congress, 2nd Sess., 1933), 3763 - 3770.
37 Hearings Before the Senate Committee on Interstate Commerce (71st Congress, 2nd Sess., 1930), 1616.
of censorship of candidates' scripts. The Chairman of the Legislative Committee of the National Association of Broadcasters, Mr. Bellows, told the committee he felt broadcasters were ready to "accept the responsibility for libel and slander." Referring to the decision of the Supreme Court of Nebraska which held licensees jointly responsible with speakers for defamatory statements, he said broadcasters "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 Couzens, chairman of the hearing committee, agreed, saying that he was of the opinion that a station should have the right to protect itself in the same way as newspapers and examine the materials beforehand.

Although HR 7716 was pocket vetoed by the President many of its provisions were included in a later Senate bill, S. 2190. The later bill restated most of the provisions of HR 7716 but eliminated

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38 Sorenson vs. Wood, 123 Neb. 348 (1932).


40 Ibid.

41 S. 2190 (73rd Congress, 2nd Sess., 1934).
the specific lack of obligation to permit discussion of public issues. In its stead the following provision was added:

Furthermore it shall be considered in the public interest for a licensee, so far as it is possible, to permit equal opportunity for the presentation of both sides of public questions. 42

Some observers, seeing the complexities involved, felt that inclusion of an equal opportunity provision for public issues would virtually rule out any such discussion and that this would more than offset any usefulness which might be gained by the provision. 43

The Senate Committee on Interstate Commerce reported out S. 2190. The House had previously passed a bill which simply transferred the duties under the Radio Act of 1927 to the Federal Communications Commission. A Conference Committee adopted the House bill, 44 reporting that the section in the new bill dealing with facilities for candidates for public office was the same as Section 18 of the Radio Act of 1927. There was no discussion of the political section either on the floor of the House or the Senate.

42Ibid.

43Hearings on S. 2190 (73rd Congress, 2nd Sess., 1934), 63-64.

44Conference Report 1850 (73rd Congress, 2nd Sess., 1934), 49.
Thus, Section 18 of the Radio Act of 1927 became Section 315 in Title III of the Communications Act of 1934, without change.

Both the Radio Act of 1927 and the Communications Act of 1934 provided that the appropriate commission was empowered to, and in fact, should, formulate rules and regulations to carry provisions of the act itself into effect. Prior to passage of the 1927 Act Senator Dill had indicated he felt such a practice was wise, rather than the act itself attempting to spell out precise details.

In a discussion between Senators Dill and Fess in which Senator Fess raised the question of how one would determine what constituted a "political speech" Senator Dill said:

... 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 better to allow the Commission to make rules and regulations governing such questions than attempt to go into the matter in the bill. 45

On July 1, 1938, the Federal Communications Commission adopted new rules covering political broadcasting in substitution for then existing Rule 178. Even though the rules of the Commissions

45 Congressional Record (Vol. 67). op. cit., 10503.
will be dealt with in subsequent chapters a brief summation appears in order at this point.

The new rules were designed to assure fair treatment to all legally qualified candidates and they made the following provisions:

1. They specifically provided that stations should have no power of censorship over the material broadcast by any candidate for public office.

2. They required that the rates charged for facilities offered to such candidates should be uniform and should not be rebated by any means, directly or indirectly.

3. They specified that no preference, prejudice or disadvantage should accrue to candidates in connection with use of station facilities, and that the station should make no discrimination in charges, practices, regulations, facilities or services rendered to candidates for political office who make use of broadcast campaign programs.

4. They prohibited the making of any agreement which would have the effect of permitting any candidate to broadcast to the exclusion of other legally qualified candidates for the same public office.

5. They further required the keeping of adequate records of requests for use of facilities by candidates and the disposition there-
of and the making of these records available for public inspection. 46

From the time the Communications Act of 1934 became law there have been many attempts to amend or change it. Efforts to change the provisions dealing with political broadcasting were made as early as two years after passage of the 1934 Act.

In 1936 an effort was made to extend the equal time provisions to social, political and economic issues and to require licensees to maintain detailed records concerning the use of such facilities. 47 Concurrently an effort was made to absolve stations from civil and criminal liability in connection with political broadcasts. 48

The bills which would have brought these changes about were introduced by Representative Scott of California and were sponsored


48 HR 9230, op. cit. Essentially same provisions contained in HR 3030 and S. 2757 (75th Congress, 1st Sess., 1937) and in S. 637 and HR 2981 (76th Congress, 1st Sess., 1939).
by the American Civil Liberties Union. They had as their objective
the elimination of private censorship of broadcast programs, par-
ticularly programs dealing with political and other controversial
issues.

HR 3030 would have amended Section 315 so as to require every
licensee to set aside regular periods at desirable times of day and
night for the uncensored discussion of social, political and economic
problems. Sponsorship of these discussions would have been pro-
hibited. The station would have had almost absolute protection under
the provisions of this bill for it (the station) would not have been
subject to any liability, civil or criminal, in any state or federal
court for any material broadcast under these provisions. The Com-
mission would have been specifically prohibited from revoking or
failing to renew any license because of material so broadcast.

In commenting upon such legislation Socolow said:

The principle of requiring broadcast stations to pro-
vide forum periods for unrestricted discussion of both
sides of controversial issues is an admirable one.
However, many questions arise as to the practicality
of the instant proposal.
The uncensored administration of a broadcast forum
has potentialities which are inherently more objectionable
than the present system of self-censorship. Because the
speakers would be responsible to no one, listeners
criticisms would be unavailing. The inevitable "cranks"
would also seriously impair the value of such programs by insisting upon addressing the vast audience which would otherwise be unavailable to them. Unless some system of selection of participants is employed such open forums have little public value. When selection takes place, the human element necessarily appears and the good taste of the forum chairman is substituted for that of the station operator. Little seems to be gained....

Moreover, such a statute appears to be unconstitutional because Congress does not have the power to grant immunity from liability for the commission of crimes or private wrongs which are governed by state laws. Although Congress may declare the same acts to be free of liability for violation of Federal laws, it cannot foist its policy on the states without similar action by each state. 49

49 Socolow, op. cit., 1032.
CHAPTER III

THE LEGISLATIVE HISTORY OF SECTION 315
FROM 1939 TO 1964

No major legislation affecting the political broadcasting provisions of the Communications Act of 1934 was offered during the period from 1939 to 1943. A House Resolution passed January 19, 1943 established a "Select Committee" to conduct a full scale investigation of the organization, personnel and activities of the Commission and to inquire as to whether the Commission had been acting in accord with the law and in the public interest. Complaints against certain of the Commission's war activities primarily prompted the investigation.

This investigation, coupled with President Roosevelt's dissatisfaction with the organizational structure of the Commission (as reflected in a letter to Senator Wheeler, Chairman of the Senate Interstate Commerce Commission) brought about proposal of legislation to make changes in the Communications Act of 1934. One such

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50HR 21 (78th Congress, 1st Sess., 1943).
piece of legislation was known as the White-Wheeler bill.

Sections 7, 9, 10, and 11 of this bill were designed to amend Section 315 of the Communications Act of 1934. One amendment would have added a requirement for fair treatment of all sides of controversial questions.

While the White-Wheeler bill was never adopted by the Congress some of its provisions were later incorporated into other proposals presented to that legislative body. The National Association of Broadcasters, feeling that testimony given during the hearings on this bill might well serve as source material for future study of statutes affecting broadcasting, published the statements of witnesses in full under the title Broadcasting and the Bill of Rights.

In the opinion of one witness at the hearing the net effect of the bill would have been "to turn American radio into a virtual Utopia for the crackpots and to do away with any pretense at real fairness." 52

51 S. 814 (78th Congress, 1st Sess., 1943).

52 Hearings on S. 814, A Bill to Amend the Communications Act of 1934, Before the Senate Commerce Committee (78th Congress, 1st Sess., 1943).
Section 7 of S. 814 would have deleted the provision in Section 315 which forbade licensees to censor political broadcasts.

Section 9 would have added the following new provision:

Section 330. No licensee of any radio-broadcast station shall permit use of such station for the discussion of any public or political question, whether local, state or National in its scope and application, unless the person or persons using such station shall, prior to such use, disclose in writing and deliver to the licensee the name or names of the person or persons or organization upon whose instance or behalf such broadcast is to be made or conducted.

Section 10 would have further provided:

Section 331. 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 by the accredited representatives of the opposition political party or parties.

Some of the above concepts eventually found their way into S. 1333, known as the White-Wolverton bill, introduced into the Congress in 1947. As in 1943, extensive hearings were held on this new pro-

53 Ibid., 945.
54 Ibid., 4.
55 S. 1333 (80th Congress, 1st. Sess., 1947). The companion bill in the House was HR 3595. The House held no hearings on this bill.
posal to change the Communications Act of 1934 and since sub-
stantial changes were proposed affecting Section 315 those changes
will be discussed here.

The White-Wolverton bill provided for virtually a complete
re-writing of the Act of 1934. Section 15 of the bill would have re-
worded the law as it applied to broadcasts of a political nature. It
is quoted in its entirety herewith:

Section 15. Section 315 of such Act is amended to
read as follows:

Section 315. Nothing in this act shall be understood
as imposing or as authorizing or permitting the Com-
mission to impose any obligation upon the licensee of
any radio broadcast station to allow the use of such
station in any political campaign. In the event that the
licensee of any such station shall permit such use, it
shall be in accordance with the following conditions and
obligations:

(a) When any licensee permits any person who is a
legally qualified candidate for any public office in a pri-
mary, general, or other election 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 or candidates, he shall afford equal op-
portunities to the candidate or candidates so opposed, or
to a person designated by any such candidate, in the use
of such broadcast station.

(b) 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.
(c) 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.'

(d) When any licensee permits any person to use a broadcast station in support of or in opposition to any public measure to be voted upon 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.

(e) 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.

(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 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.

(g) The duty of the licensee to observe the conditions herein stated shall apply to all political activities, whether local, State or National in their scope and application. The term "equal opportunities" as used in this section and in Section 330 of this Act 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, an equal amount of time, the use of the station in combination with other
stations, if any, used by the original user, and in case of network organizations, an equivalent grouping of stations connected for simultaneous broadcast or for any recorded broadcasts. 56

A number of substantial changes in the handling of political broadcasts by licensees would have been brought about had the White-Wolverton bill become law.

These would have included:

(a) Section 315 would have afforded equal opportunity to candidates to specify persons to speak in their behalf, as opposed to the candidate himself only being permitted use of the facilities.

(b) Equal time provisions would have extended to officials of "regularly organized political parties" or to persons designated by such officials if a corresponding official in another party was permitted use of broadcast facilities.

(c) Persons other than candidates, persons designated in writing by candidates, and persons designated in writing by duly chosen responsible officers of regularly organized political parties whose candidate's or candidates' names appear on the ballot would have been denied air time during a campaign.

56 S. 1333, op. cit.
(d) Equal time provisions would have been extended to all different views on public measures to be voted on in referendums, initiatives, recall procedures, or other forms of election.

(e) No political broadcasting would have been permitted for 24 hours prior to and on election day.

(f) Licensees would have had Congressional exemption from any suits devolving out of presentation of material under the requirements laid down for political broadcasting. This would have included libel, slander, invasion of right of privacy, or any similar liability imposed by any law, unless the statements were made by the licensee or his representative.

(g) The term "equal opportunities" as used in this bill in connection with political broadcasting was defined.

Such sweeping changes in Section 315 brought opposition both from the Commission and from the industry. Chairman Charles R. Denny of the Commission indicated he felt most of the provisions of S. 1333 would serve to improve political broadcasting, but he took exception to two provisions, because of what he said he felt represented "a serious limitation on free speech."

57Hearings, op. cit., 52-53.
He spoke particularly against subsection (c) which would have forbidden political appearances except by candidates or their representatives and subsection (e) which sought to devise a mathematical formula for insuring equality of treatment of candidates.

The revision of Section 315 which was proposed in the White-Wolverton bill did not affect the basic philosophy incorporated into the original act insofar as precluding the commission from requiring a licensee to furnish broadcast time either without charge or on a commercial basis. It is interesting to note that just prior to the introduction of the bill the Commission had, by administrative interpretation, suggested that a licensee has a mandatory duty to offer broadcast time to political candidates. Some years later the Supreme Court was to clearly indicate its belief that Congress never intended that its legislation be the means by which stations could refuse to carry any political broadcasts. The instant bill continued leaving determination of which candidates a station would carry to the licensee's discretion.

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58 Re Rainey, 3 RR 737, January 16, 1947.

59 Farmers Educational and Cooperative Union of America vs. WDAY, Inc., 360 U. S. 525.
Section 315 makes no specific reference to primaries, as opposed to elections. Administrative rules and regulations of the Commission, have, however, since their inception, embraced primary elections insofar as Section 315 is concerned. The wording of subsection (a) of S. 1333 prompted some observers to conclude that discussion by a news commentator of a candidate would require equal time for the candidate or a representative.

The limitation of subsection (c) in precluding stations from making facilities available to persons other than candidates or their representatives was attacked by Chairman Denny, as previously noted, and came in for harsh criticism by industry, spokesmen. Testimony revealed the fear that this provision, if adopted, would bar minority groups from getting on the ballot and would bar non-political organizations such as the League of Women Voters, bar associations and others from expressing their opposition to or support of candidates on the air. These possibilities led Chairman Denny to conclude that this subsection, in particular, would severely limit freedom of speech.

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60 Hearings, op. cit., 241.
Subsection (d) which extended equality of opportunity to "each different view" on public measures to be voted on brought objection that there would be many different points of view and that if a licensee faithfully discharged his responsibility under this provision his program schedule, in all probability, would have been dislocated. (It is interesting to note that in 1963 the Commission proposed, as will be later noted in detail, to implement virtually this same provision through administrative regulation.) A further difficulty, noted by hearing witnesses, was the proper definition of "a different point of view."

Subsection (e) provided for a 24-hour non-broadcast period immediately preceding election day, and on election day as well. This was opposed both by the Commission and by industry spokesmen. In his introductory statement on the bill, Senator White pointed out that this provision conformed to the rule which governed general political advertising in newspapers. Opposing witnesses pointed to the inability of the provision to solve the basic problem -- that of

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61 Ibid., 268, 270, 292.

62 Ibid., 7.
preventing the making of sensational or uncorroborated charges on
the day of the election, charges which the opponent would find himself
unable to answer. They indicated that the same thing could be done
at the last minute on the day before the election cut-off time and the
opponent would likewise be prevented from making a reply. Addition­
ally, some uses of broadcasting by candidates immediately before
an election might well be legitimate. 63

Subsection (f) not only provided the existing prohibition against
censorship but also exempted licensees from liability in libel,
slander, invasion of right of privacy and certain related instances.
The Commission, by a previous memorandum to the Senate committee
at the time of hearings on the White-Wheeler act (S. 814) in 1943, had
advised Congress that such a provision absolving stations from liability
would be constitutional. 64 (The Supreme Court, as will be noted
later, sustained this view.) Some witnesses, however, considered
it open to question whether Congress could abrogate civil or criminal
liabilities in states where broadcast defamation was covered by state
statutes.

63 Ibid. 557.
64 Hearings on S. 814, op. cit., 950-951
65 360 U. S. 525, op. cit., 271.
The industry generally opposed the provisions of subsection (g) which defined the term "equal opportunities." Witnesses were of the opinion that the provision was too detailed, would bring about injustices and uncertainties, particularly between networks and their affiliates.

Sections 330 and 331 of the White-Wolverton bill were so closely related to Section 315 that they merit consideration and analysis. Section 330 was headed "DISCUSSION OF PUBLIC OR POLITICAL QUESTIONS" and read as follows:

Section 330. When and if a radio broadcast station is used for presentation of political or public questions otherwise than as provided for in Section 315 hereof, it shall be the duty of the licensee of any such station to afford equal opportunities for the presentation of different views on such questions: Provided, That the time, in the aggregate, devoted to different views on any such question shall not be required to exceed twice that which was made available to the original user or users. Neither the licensee of any station so used nor the Commission shall have the power to censor, alter, or in any manner affect or control the substance of any program material so used; Provided, however, That no licensee shall be required to permit the broadcasting of any material which advocates the overthrow of the Government of the United States by force or violence; And provided further, That no licensee shall be required to broadcast any material which might subject the licensee

Hearings on S. 1333, op. cit. 271.
to liability for damages or to penalty or forfeiture under any local, State or Federal law or regulation. In all cases arising under this section, 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 an examination thereof and the deletion therefrom of any material necessary to conform the same to the requirements of this section. 67

It has been earlier noted in this study that a similar proposal to extend the provisions and requirements of the political section of the Act of 1927 to public questions was defeated by the Congress, both as it considered the Act and in the 74th, 75th and 76th Congresses. 69 Administratively, the Commission had been requiring licensees to air public and political controversial discussion of both national and local interest. Indeed, the applicant both for an original license and a renewal thereof was required to indicate on his application what his policy would be toward providing time for discussion of controversial public issues. 70 The proposal under discussion, S. 1333, would spell out in the act itself the details of this

67 S. 1333, op. cit.

68 HR 7357 (68th Congress, 1st Sess.), op. cit.

69 See footnote 63, Chapter II.

70 F.C.C. Form 303, Section IV, Page 3, Item 7.
requirement and would incorporate this administrative policy in the statute. (In 1949 in its Report on Editorializing by Broadcast Licensees the Commission took the position that "licensees are required to devote a reasonable percentage of their broadcasting time to the discussion of public issues of interest in the community served by their station" and further to prepare such programs that "the public has a reasonable opportunity to hear opposing positions on the public issues of interest and importance in the community.")

The Commission favored Section 330, except that Chairman Denny questioned whether the licensee should be permitted to examine the script in advance. He felt that such action would enable the licensee to delete material which he (the licensee) regarded as libelous and Denny indicated the Commission had its greatest number of complaints concerning charges of unfair censorship when a licensee had exercised just such a right as was here proposed.

He suggested, instead, that the licensee be forbidden to censor the material but be absolved of responsibility for defamation. Industry representatives opposed the section, calling it vague and contradictory, and citing the absence of a definition of what constituted a political

71 Report on Editorializing By Broadcast Licensees (13 FCC 1246).

72 Hearings on S. 1333, op. cit., 58.
or public question. Another fault, according to industry testimony, was the possibility of permitting a discussion, with new issues being injected into the reply, and in accord with the formula requiring double the amount of time for opposing views, a geometric progression being instituted which would eventually exhaust the entire schedule of the station.

The idea that such a provision might actually defeat its very purpose was also advanced. Stations seeking to avoid the complexities involved might well schedule fewer programs raising controversial public issues. This argument has subsequently been used in commenting on proposals to modify or change Section 315.

Section 331 would have required that stations permitting use of broadcast time for political purposes be advised in writing by such users, prior to broadcast, (a) the name of the speaker or speakers; (b) the subject of discussion; (c) the capacity in which the speaker or speakers appear (whether on their own account as an individual candidate or as a public officer, or as a representative of another); (d) how the time for the broadcast was made available, and if paid for, by whom. The licensee, thereupon, would be required to make an

73 Ibid., 323.
announcement at beginning and end of the program, citing the above information. Public officials using station facilities would only have been required to specify the subject of the discussion, the office held by them, whether such office were elective or appointive and by what political unit or political officer the power of election or appointment was exercised.

Industry spokesmen contended that the detailed information which would have been called for by this section was impracticable and undesirable. The Commission favored the section. 74

Thus, the White-Wolverton bill, had it been passed by the Congress, would have made substantial and far-reaching changes in many areas of the Communications Act, not the least of which was that portion dealing with use of facilities by candidates for public office. No major revamp of the Act has been considered by the Congress since the conclusion of the 1943 and the 1947 hearings.

The 1952 Amendment To Section 315

In 1952 the Congress did amend Section 315, establishing a provision that had been considered by it as far back as 1932. 75 Even

74 Ibid., 263, 367.
75 HR 7716 (72nd Congress, 1st Sess.), op. cit.
earlier, in the original debates in the Senate on HR 9971 in 1926 the question arose as to how to insure that equitable rates would be charged candidates who used radio.

In 1952 amendment, codified as subsection (b) of Section 315 read as follows:

The charges made for 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. 77

The amendment met with little or no opposition and elicited little or no industry comment. Broadcasters, however, continued pressures in the Congress to secure modification or, preferably, outright repeal of Section 315. Certain broadcast experiences served to bring the efforts into focus.

In 1952 one William G. Schneider, a member of the Republican party from St. Louis, Missouri and a "candidate" for the Republican nomination for President, demanded equal time from the Columbia Broadcasting System to reply to speeches made by Senator Taft and General Eisenhower. Both had previously appeared on C.B.S. The

76 HR 9971 (69th Congress, 1st Sess.), op. cit.

77 66 Stat. 717.
network, indicating it did not consider Mr. Schneider to be a bona
fide candidate, refused to give him time. Subsequently, the Com-
mission, noting that Schneider had filed in two primaries, declared
him to be a bona fide candidate for the presidential nomination of the
Republican party, whereupon C.B.S. granted him time both on its
radio and television networks. Schneider was not only not admitted
to the Republican National Convention but polled a total of only 580
votes in the two primaries. 78

The Schneider experience, coupled with the appearance of
some 18 "candidates" for Presidency in the 1952 campaign, gave
added impetus to proposals to examine again the political broadcasting
provisions of the Communications Act. Another important impetus
was the rapidly growing television industry, coupled with the expand-
ing use of television by political campaigners. 79

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78 Testimony of Richard S. Salant, Vice-President, C.B.S., in
Communications Acts Amendments, Hearings Before a Subcommittee
of the Committee on Interstate and Foreign Commerce (84th Con-
gress, 2nd Sess., 1956), 174 - 175.

79 Report on the 1956 General Election Campaigns, Hearings Be-
fore a Subcommittee on Privileges and Elections of the Committee on
One proposal, HR 3789 of the 84th Congress, 1st session (1956) would have amended Section 315 so as to withdraw from individuals convicted of subversive activities and members of certain subversive organizations the right of equal opportunity for use of broadcasting facilities in political campaigns. Had this proposal been enacted into law the Commission had requested the Congress to give jurisdiction to federal district courts in determining the rights of candidates who had been denied equal time under the provisions of the amendment.

The suggestion was made in F.C.C. comments on the bill. Chairman George C. McConnaughey told the House Commerce Committee's Transportation and Communications Subcommittee that the Commission "does not wish to express an opinion on the advisability or necessity of such legislation." He said the Commission believed such a bill would be constitutional but that determination of whether a person belongs to a subversive group would be difficult and complicated for the F.C.C. and delay would be inevitable. In deciding these matters when an election is taking place, time is of essence, he said.

80Broadcasting-Telecasting, February 6, 1956, 56.
The Commissioner said the Commission believed that all determinations made under Section 315 should be made by a Federal court, which he said was the most appropriate forum for securing the necessary prompt and effective review of these questions. 81

Another bill considered by the 84th Congress would have amended the Communications Act so as to prohibit liability from being imposed upon a licensee because of defamatory statements made by a political candidate unless such licensee had participated in the broadcast with an intent to defame. 82 The Commission, through Chairman McConnaughey, gave its endorsement to this proposed legislation, with the Chairman noting that the Commission adhered to its previously expressed view that because of the prohibition against censorship, licensees were immune from liability. Commissioner Doerfer indicated he would like to see the Congress require stations to warn candidates in advance concerning consequences of uttering statements which were clearly libelous or slanderous. 83

81 Ibid.
82 HR 4814 (84th Congress, 1st Sess., 1956).
83 Broadcasting-Telecasting, op. cit., 56.
A third bill introduced in the 84th Congress would have allowed radio or television broadcasters to present political candidates on news, interview, forum, panel or debate programs without having to make equal time available to all other such candidates. A Senate bill contained virtually identical provisions. These bills were actually forerunners of what three years later became the second amendment to Section 315.

In commenting upon the proposal to exempt certain types of appearances from the equal time provisions Richard Salant, vice-president of the Columbia Broadcasting System said: "Put bluntly, Section 315 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." He said the instant bill, HR 6810, was designed to reach these defects by providing an effective remedy and at the same time preserving the basic principles which Congress sought to achieve when it enacted the political broadcasting section.

Salant said that HR 6810 would not permit favoritism among candidates but would only permit broadcasters to exercise their news

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84 HR 6810 (84th Congress, 1st Sess., 1956).

85 S 2306 (84th Congress, 1st Sess., 1956).
and journalistic functions by informing the public. He said that the assumption that a broadcaster cannot be trusted to exercise fairness is a dangerous premise on which to exercise legislation. Salant indicated he felt there were other and far more powerful safeguards against the dangers than a rule of forced mathematical equality in political broadcasts. He said public reaction was the surest safeguard and the basic ground rules of the Commission which require broadcasters to operate in the public interest constituted another.

The National Broadcasting Company endorsed the bill, saying that its passage would remove, to a degree, an existing discrimination. The N.B.C. statement said, in part:

In no other field of programming is the broadcaster so mistrusted that there is statutory imposition of equal time for all contenders. We believe that the handling of controversial issues by the broadcasting industry has shown that on the whole broadcasters are a responsible group capable of performing their function fairly.\footnote{Testimony of Richard S. Salant, \textit{op. cit.}}

In opposing HR 6810 Chairman McConnaughey indicated that in his opinion any limited benefits from the proposed legislation would "more than be outweighed by the dangers of discrimination to candidates and the administrative difficulties of enforcement." If the bill were

\footnote{Hearings on the 1956 \textit{General Election Campaign}, \textit{op. cit.}}
enacted, the Chairman said, broadcasters would then have to meet only "a vague standard of overall fairness in handling of the exempt type of programs -- a fairness imposed by the F.C.C. in the public interest."

"But the question inevitably arises: What sort of treatment short of equal treatment is nevertheless 'fair'?" He said the Commission would receive what he called "an avalanche" of such questions, with many difficult or impossible to decide. 88

Still another bill was introduced into the 84th Congress which would have affected Section 315. This bill, S. 3308, would have left the section unchanged as it regards all candidates except those for the presidency and the vice-presidency. For the latter, broadcasters would have had to furnish equal time only for the candidates of the two major political parties. The bill did provide that candidates of parties other than the two major ones could qualify for equal time if their party polled 4 percent of the votes in the last presidential election or presented a petition with names totaling 1 percent of the vote in the last presidential election.

This bill, introduced by then Senator Lyndon B. Johnson of Texas, was designed to relieve broadcasters of the requirement that

88 Broadcasting-Telecasting, op. cit., 54.
they furnish equal time to candidates of small minority parties or splinter groups. It would also have revised upward the legal amount a national political party could have spent in the 1956 presidential election and elections for members of the Senate and the House of Representatives. Spending in the presidential race would have been legalized upward from $3 million to $12.3 million. The bill also would have authorized income tax deductions for political campaign contributions only up to $100.

Senator Richard L. Neuberger (D., Oregon) introduced S. 3242 which would have provided for government financing of federal election campaigns and would have limited individual campaign contributions to $100. The bill was introduced, according to its sponsor, to help offset the "tremendous cost of reaching people through the modern media of communications, particularly through radio and television." A similar bill, HR 9488, was introduced in the House.

The 84th Congress saw other bills introduced which would have affected political broadcasting, including one which would have compelled each television network and each television station to make available without charge as much as 8 1/2 hours of time during the

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89 S. 3242 (84th Congress, 1st Session, 1956).
months of September, October, and November upon request from the major political parties. 90

Three other bills were introduced into the Congress at this session but all either duplicated or contained provisions similar to those detailed above. 91

The next major effort to amend Section 315 was to succeed.

The 1959 Amendment To Section 315

On September 14, 1959 Congress made into law certain exceptions to the equal time rule. 92 Section 315, as amended, read:

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

(1) bona fide newscast,
(2) bona fide 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

90 S. 3962 (84th Congress, 1st Session, 1956).
92 Public Law No. 86-274 (73 Stat. 557).
(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 chapter to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

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.

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

The above cited amendment was quite likely hastened by a Commission ruling in June of 1959. This ruling, termed by Dr. Frank Stanton, President of C. B. S., as "perhaps the most severely crippling decision ever to be handed down with regard to broadcast journalism," resulted from a demand by Lar Daly, a perennial and unsuccessful candidate for mayor of Chicago and other offices, for equal time on a Chicago station (WBBM-TV) after the station had shown other candidates in news films. In a 4 - 3 decision the Commission ruled that the equal time requirement applied also to purely "news coverage"
of events. This decision ran counter to an earlier ruling and was highly unpopular with broadcasters. 93

There was some feeling in Congress that Section 315 should be modified so as to define "legally qualified candidate" in order to preclude future "Lar Daly type" problems and should limit the equal time provision to that period 45 days preceding a primary election and 90 days preceding a general election.

The action of Congress in modifying Section 315 following the "Lar Daly ruling" actually represented a bringing together of some of the basic principles contained in the Report of Editorializing By Broadcast Licensees issued by the Commission on June 1, 1949, some ten years earlier. 95

The report said, in part:

It is apparent that our system of broadcasting under which private persons and organizations are licensed to

93 26 F.C.C. 715. See also 18 RR 238. Since the decision involved Commission interpretation on a more complete discussion will follow in Chapter IV.


95 Editorializing By Broadcast Licensees, op. cit., 2.
provide broadcasting service to various communities and regions, imposes responsibility in the selection and presentation of radio program material upon such licenses. Congress has recognized that the requests for time may far exceed the amount of time reasonably available for distribution by broadcasters. It provided, therefore, that a person engaged in radio broadcasting shall not be deemed a common carrier. It is the licensee, therefore, who must determine what percentage of the limited broadcast day should appropriately be devoted to news and discussion or consideration of public issues, rather than to the other legitimate services of radio broadcasting, and who must select or be responsible for the selection of the particular news items to be reported or the particular local, state, or national, or international issues of questions of public interest to be considered, as well as the person or persons to comment or analyze the news or discuss or debate the issues chosen as topics for radio consideration....But the inevitability that there must be some choosing between various claimants for access to a licensee's microphone, does not mean that the licensee is free to utilize his facilities as he sees fit or in his own particular interests as contrasted with the interests of the general public. 96

While the 1959 amendment did serve to give the licensee greater freedom in the political realm than he had heretofore had, it fell far short of the outright repeal of Section 315 for which so many broadcasters had called.

It appeared to some that such outright repeal might be further away than ever. One Congressional committee studying the matter

96 Ibid.
said bluntly that outright repeal "would not be in the public interest."³⁷

On September 12, 1959 the Subcommittee on Freedom of Communications of the Senate Commerce Committee was appointed as an oversight committee to follow the operations of broadcasting stations under the 1959 amendment referred to above. This subcommittee was charged with the duty of receiving information and complaints concerning the treatment of news by media operating under government license, in order to insure freedom, fairness, and impartiality in such news presentations.³⁸

On February 24, 1960 the subcommittee was reappointed as a subcommittee of the Subcommittee on Communications. On June 14, 1960 the Senate adopted Senate Resolution 305, authorizing the subcommittee "to examine, investigate, and make a complete study of any and all matters pertaining to (1) Federal policy on use of Government licensed media for the dissemination of political opinions, news and advertising and the presentation of political candidates; and (2) a review

³⁷Amending Section 315 of the Communications Act, House Report 802, op. cit.

³⁸Senate Report 994, Pt. 6 (87th Congress, 2nd Session), VII.
and examination of information and complaints concerning the dis-
semination of news by such media."\textsuperscript{99}

Beginning in August 1960 the subcommittee sent letters to all
congressional candidates and all candidates for statewide offices
throughout the country advising of the existence and function of the sub-
committee (see Appendix "A"). Subsequently, the subcommittee ad-
dressed a letter to all broadcasting stations in the United States, re-
questing reports to the subcommittee within 24 hours of political com-
plaints received by the licensees during the last three weeks of the
campaign (see Appendix "B"). They additionally secured copies of all
network radio and television news scripts for the period September 26,
1959 through November 7, 1960. Subsequently, the subcommittee held
extensive hearings to determine the net effects of both the 1959 amend-
ment exempting certain types of newscasts and the 1960 temporary
suspension of Section 315 in the case of presidential and vice presidential
candidates.

The 1960 temporary suspension resolution actually grew out of
hearings on S. 3171, a bill which would have required broadcasting

\textsuperscript{99}Ibid.
stations to make free prime time available to candidates for the presidency and the vice presidency.

Senate Joint Resolution 207, which contained the suspension provision, read:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That that part of Section 315 (a) of the Communications Act of 1934, as amended, which requires any licensee of a broadcast station who permits any person who is a legally qualified candidate for any public office to use a broadcasting station to afford equal opportunities to all other such candidates for that office in the use of such broadcasting station, is suspended for the period of the 1960 presidential and vice presidential campaign with respect to nominees for the offices of President and Vice President of the United States. Nothing in the foregoing shall be construed as relieving broadcasters from the obligation imposed upon them under this Act to operate in the public interest.

(2) The Federal Communications Commission shall make a report to the Congress, not later than March 1, 1961, with respect to the effect of the provisions of this joint resolution and any recommendations the Commission may have for amendments to the Communications Act of 1934. 101

The resolution, which passed the Senate without dissent, was authorized by Senator Pastore of Rhode Island, who told the Senate:

In suspending Section 315 (a) full discretion is being given the broadcaster. He is being afforded full op-


portunity to demonstrate by fact and act what he has contended he was unable to do because of the restrictions contained in Section 315.102

The Senate passed the suspension before the 1960 political conventions but due to a variety of factors the House did not consider it prior to recess for the conventions. Upon reconvening the House leadership felt that too little time was available to conduct hearings and the measure was called up under suspension of the rules procedure and was passed by the House with the necessary two-thirds vote.

It would seem clear from the language of S. 207 that Congress reaffirmed the so-called "fairness doctrine" which the F.C.C. has embodied in its rules and regulations over a long period of time. Many of the requests made to the Commission by candidates during the 1960 campaign regarding broadcast time made reference to the "fairness doctrine" as opposed to Section 315.103 Even though the "fairness doctrine" deals with issues rather than individuals, as does the "equal opportunities" provision of Section 315, candidates nonetheless who had points of contention with broadcast stations often based their arguments on the responsibility of the broadcaster to present op-


posing points of view on controversial issues, rather than on specific "equal time" provisions.

Out of the 1960 campaigns arose more than 40 cases which the Subcommittee of the Subcommittee on Communications reviewed rather extensively through detailed hearings. With the opening of the 87th Congress, the Freedom of Communications Subcommittee, headed by Senator Ralph Yarborough of Texas, and consisting of Senator Gale W. McGee, Wyoming, and Senator Hugh Scott of Pennsylvania, was reappointed by Senator Magnuson and continued operation under the same jurisdiction granted by Senate Resolution 305, under the broader grant of authority to the Committee on Interstate and Foreign Commerce by Senate Resolution 74, of February 13, 1961. ...

The Federal Communications Commission supplied additional materials to the subcommittee in the form of its "Survey of Political Broadcasting"\(^{104}\) which presented statistical data from all networks and from every broadcasting station in the country covering the period from September 1 to November 8, 1960. While the statistical data obtained is not germane to the discussion at hand, a copy of the questionnaire which elicited the information is contained in Appendix "C."

As a result of its oversight and inquiry the subcommittee published one of the most extensive reports in the history of the Congress regarding broadcasting:


**PART II.** The Speeches, Remarks, Press References, and Study Papers of Vice-President Richard M. Nixon, August 17 - November 7, 1960.


**PART V.** Hearings Before the Subcommittee.

**PART VI.** Recommendations.

Senator Yarborough, in his opening statement as the hearings began, pointed to the subcommittee's publications as a "major historical contribution," pointing out that "...this is the first time in American political history that everything the two major opposing candidates for the Presidency have said or written for publication during a campaign to further their candidacy has been printed in book form in a contemporary historical period." 105

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Prior to the adoption of the 1959 amendment the Senate Commerce Committee had said:

This committee desires to make it crystal clear that the discretion provided by this legislation shall not exempt licensees who broadcast such news, news interviews, news documentaries, on-the-spot coverage of news, or panel discussions programs from objective presentation thereof in the public interest... This standard of fairness applies to political broadcasts not coming within the coverage of Section 315, such as speeches by spokesmen for candidates, as distinguished from candidates themselves. 106

Subsequent to the 1960 elections, the subcommittee in reporting its observations and recommendations echoed virtually the same message to the broadcasters of the nation:

In dealing with that part of the public domain known as the broadcast spectrum the Congress has been confronted with unique and varied problems. The impact of this technological revolution in communications upon traditional concepts and institutions has been felt in almost every phase of the American way of life.... From the inception of commercial radio broadcasting Congress has been concerned with the use of the airwaves as a vital means of communications, capable of making a major contribution toward an informed public, which is indispensable to the proper functioning of our democratic system. 107

The subcommittee indicated it felt that consideration of permanent repeal of Section 315, or substantial modification thereof, should

await the time when Congress and the people had had ample time to judge the performance of broadcasters under the partial relief granted by the 1959 amendment. Pointing to what they called some "curious overtones" in the campaign for permanent suspension of Section 315 the subcommittee said:

The interposition of the licensee between the candidate and the public does not mean that the licensee is to act as a filter, substituting his judgment for that of the candidate as to what the American people want to know. 108

Following issuance of the subcommittee's final report, any major "campaign," for outright appeal, if such existed, appeared to wane and to the present writing no sustained renewal of the effort has been apparent on the part of the broadcasters or their national trade association. To be sure an occasional call is heard but 1959 marked the last great concerted effort.

Since the 1960 suspension there has been no legislative change in Section 315. A number of bills have been introduced which, if passed, would change it. House Joint Resolution 247 was introduced to suspend the equal opportunity requirement of Section 315 as it applies to presidential and vice presidential candidates in the 1964 campaign. 109

108 Ibid.

Introduced by Representative Oren Harris at the request of President Kennedy it contains identical provisions to the resolution which made the Kennedy-Nixon debates possible during the 1960 campaign (S. J. 207). At the 1963 hearings testimony by broadcasting industry representatives reiterated most of the arguments previously made and pointed to the results of the 1960 campaign for the presidency as ample indication that broadcasters could be entrusted to administer political broadcasting activities with fairness. Opponents of any lessening of the requirements of Section 315 point particularly to their fear of suppressing the views of minority parties and minority candidates.

Eric Hass, candidate for President nominated by the Socialist Labor Party, in testimony before the committee, said:

The record, in short, proves beyond a doubt that while broadcasters, and particularly the networks, freely gave millions of dollars of free time to the candidates of the major parties and were willing to give millions more, they practically suppressed all minority views during the 1960 campaign. 110

House Joint Resolution 247, previously mentioned, which would permit "Great Debates" during the 1964 campaign, was approved by the

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House on June 19, 1963, apparently at this early date in an effort to avoid the situation which arose in 1960 when there was no time to hold hearings. The Committee on Interstate and Foreign Commerce, to whom the joint resolution was referred, held three days of hearings and subsequently endorsed the resolution, recommending two amendments:

1. For the phrase "period of the 1964 presidential and vice presidential campaigns" substitute the words: "the 75 day period immediately preceding November 3, 1964." The effect of this change would be to give specific dates for the suspension; namely, from August 20 through November 2, 1964.

2. The word "nominees" would be struck and the words "legally qualified candidates" inserted. This change came as a result of a letter from the Deputy Attorney General, Mr. Katzenbach, who pointed to a recommendation of the FCC in their report of March 1, 1961 to Congress. (The Commission indicated that, technically, it could be argued that the appearance of an independent candidate or one who is not nominated at a convention or by other means would not come within the scope of the resolution.)

The Democratic and Republican parties endorsed the resolution, as did the National Association of Broadcasters, and the three television networks. Witnesses representing the Socialist Labor Party of America, The International Brotherhood of Teamsters, and the

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American Civil Liberties Union testified in opposition to the resolution. Four senators filed minority views, saying, in part:

The suggestions for repeal of Section 315 and even its suspension on a limited basis tend to simplify the purposes and the coverage of that section. It does not merely require that all bona fide candidates have an equal opportunity to use the medium to promote their candidacy. Equally important are those provisions which restrict broadcasters from imposing special, inflated charges for political broadcasts and which prohibit censorship of political material by stations or networks. The latter point was well stated by Mr. Kornegay in the record of hearing: 'It boils down to the question of who is going to determine what the issues in a campaign are. Are the candidates going to do it or the television and radio stations going to do it?'

As noted earlier, the House, on June 19, under HR 402, resolved itself into the Committee of the Whole House on the State of the Union and approved the measure. The debate on the suspension, although limited to a single hour, was intense, varied and interesting. It raised such points as why, following suspension in 1960 there was little, if any, additional time for major candidates on the networks; what would be the effect of the suspension if a major

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112 ibid., 6. Mr. Kornegay, on the floor of the House, subsequently indicated he was quoted correctly, but out of context, which affected the implication of his remarks.

113 Congressional Record (88th Congress, 1st Sess.), June 19, 1963, 10568.
"third-party" candidate should arise because of a split within one of the major parties; the threat of networks becoming an "over-powering influence" in electing the president and vice president; the problems raised when an incumbent president uses broadcast stations and networks in his role as president rather than as a candidate immediately prior to an election; the lack of definition of a "legally qualified candidate"; and other points. 114

Mr. Ryan, of New York, offered an amendment on the floor, which would have made the suspension effective only in the case of programs "in which the presidential candidates of the Democratic and Republican parties, or any other legally qualified candidates for president, are presented together." The amendment failed to pass.

The Senate has approved a similar bill, S. 251, introduced by Senator Pastore, which would suspend Section 315 in much the same manner but would include other candidates as well. The two versions, according to Representative Younger, of California, are "reconcil-

114 Ibid., 10558 - 10573.

114A Ibid., 10568.
able" but he feels the resolution is in "the last painful throes of death."

Representative Younger attributes the lack of interest in suspension to the reluctance of President Johnson to engage in debate with a possible opponent.

What the effect of Johnson's views will be is an unknown factor at this time. It has been previously noted that, as a senator, he introduced legislation into the Eighty-fourth Congress which would have removed candidates for the presidency and vice presidency from coverage by Section 315.

Broadcasting, the authoritative "voice" of the industry, used the term "stalled" in referring to the present lack of Congressional action of Section 315, noting that "no current political pressure from any political quarter" was the reason for lack of rapid action.

Taking exception to this was W. B. Sprague, Jr., Director of Public Relations for the Republican National Committee, who said, in part:

There has, in fact, been considerable pressure from the Republican party for the legislation which would permit

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115 Broadcasting, February 10, 1964, 48

116 S 3308 (Eighty-fourth Congress, 1st Sess.) op. cit.

TV debate between the presidential candidates next fall. At its most recent meeting the Republican National Committee unanimously passed a resolution to this effect, and Chairman Miller has urged TV debates . . . pointing out that President Johnson was a prime mover in launching the Kennedy-Nixon debates. It really does not require pressure to get the legislation in question enacted. All the president has to do is raise his little finger.118

The Senate has had additional legislation which would affect Section 315 introduced at this session. S. 252 would bring about permanent suspension in the case of candidates for the presidency, the vice-presidency, the senate, the house of representatives, and state governorships. It also has before it S. 1696 which would repeal Section 315 in its entirety.

The Subcommittee of the Senate Subcommittee on Communications in its final report recommended certain other legislation dealing with political broadcasting, but as of this writing no legislation has been proposed in accord with the recommendations.

The subcommittee recommended amending Section 326 of the Act to provide:

Nothing in this Act or the foregoing sentence shall prevent the Federal Communications Commission, acting upon a complaint in an 'editorial fairness' case,

to direct a licensee to make time available and present the opposing position or a particular person in order that the paramount right of the public to be informed on all sides of public issues be preserved. 119

As noted earlier, the subcommittee exhibited substantial doubt as to whether a permanent revision of Section 315 was in order.

(And) we would be well advised to consider, then, whether or not a case has been made for any exceptions to the coverage of Section 315, and whether or not such exceptions are in fact class legislation at variance with the fundamental objectives which the Congress seeks to protect. 120

**Future Legislative Possibilities**

Will Section 315 be repealed in its entirety?

No definitive prediction, of course, can be made on a question involving as many diverse elements and possibilities as this. A study of the legislative history of Section 315, has, of course, led to some generalized conclusions.

1. Legislation which tends to be "restrictive" without being "oppressive" rarely lends itself to sustained efforts at repeal. This, in general, describes the situation insofar as Section 315 is concerned.


120 Ibid.
Broadcasters tend to brand it "oppressive" but there is no real feeling on the part of members of Congress and the public in general that broadcasters are being "oppressed" by a requirement, which, on the surface only requires "equality" and "fairness."

2. Opposition to repeal, while diverse, is substantial and represents a wide range of interests. The liberal American Civil Liberties Union has taken a strong stand, not only against repeal, but against temporary suspension. Likewise an ultra-conservation element, composed generally of northern Republicans and deep-South Democrats who would, generally be opposed to any ACLU proposal, are aligned against any repeal or similar action.

3. There is no "economic" factor in Section 315 which would tend to create support for a proposal to repeal. In general, where there is considerable economic interest there is the likelihood of generating political interest or action, or at least to create strong support. Section 315 really affects few "in the pocketbook" and this tends to mitigate against enrolling any large numbers of persons in league against it.

4. A better case can be made for the "evils" of repeal than for the "evils" of continuance. Those who oppose repeal show striking arguments for the status-quo: "Let the public, not broadcasters, decide
who gets time during a political campaign." "Don't put the election of the president of the United States into the hands of the networks."
"Don't put a filter between the public and those who would be public officials." Those who propose, on the other hand, find little in such phrases as "Broadcasters deserve to be treated as first class citizens."

5. Each political campaign generates enough in the way of "complaints" from candidates, whether disgruntled or sincere, that elected representatives, remembering their own campaigns of the past and looking to campaigns of the future, find it difficult to conclude that passing power from their hands to the hands of broadcasters is "in the public interest." This becomes particularly true when there is no real political pressure applied to make a change. Broadcasters, in general, have applied logical and moral arguments toward the issue of repeal. If repeal is ever to come broadcasters must apply "practical politics" at the national level in the form of sustained political pressure.

6. The administration in power currently seems to have little interest in temporary suspension, much less in outright repeal. Without the support of the administration in power on a national scale, whether it be Democratic or Republican, it is doubtful that repeal
legislation could get to the floor of the Congress, much less muster strength for outright repeal.

Thus, it would appear that repeal in the foreseeable future is unlikely.

One possibility does appear on the horizon which might affect Section 315. This is the growing possibility that a complete revision of the Communications Act of 1934 might be a possibility during the four years of the next administration. Pressure is beginning to mount for such a revision and the fact that the basic legislation is, in reality, in its 36th year, makes sense. It would seem likely that in any rewriting of the entire Act, Section 315 would receive some revision and treatment. It would, however, also appear likely that the same factors which have tended to make revision of Section 315 alone unlikely would continue at work and any new Communications Act would be restrictive, to some extent at least, in the realm of political broadcasting. This particular feature of any bill is not likely to escape the attention of any group whose continuation in office may depend, to a large extent, upon use of political broadcasting to bring about this continuation.
CHAPTER IV

ADMINISTRATION AND INTERPRETATION OF

THE COMMUNICATIONS ACT OF 1934

BY THE F.C.C.

To the Federal Communications Commission falls the task of administering and interpreting the Communications Act of 1934. Created by the Congress and responsible to it, the Commission is an independent Federal agency headed by seven Commissioners, each appointed by the President and confirmed by the Senate. Each Commissioner is named for a seven-year term. The chairman is designated by the President. 1

The Commissioners establish broad policy determinations which follow the provisions laid down in the Act itself. Section (4) (i) of the Act empowers the Commission to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with the Act, as may be necessary in the execution of its function." 2


Subsection (o) of Section 315 of the Act gives to the Commission the following authority:

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

Rules and regulations of the Commission which deal with political broadcasts are set forth in Sections 3.120 (covering AM broadcasting stations); 3.290 (covering FM stations); and 3.657 (television stations). These provisions are identical in their wording and read as follows:

(a) Definitions: A 'legally qualified candidate' means any person who has publicly announced that he is a candidate for nomination by a convention of a political party or for nomination or election in a primary, special, or general election, municipal, county, state or national, and who meets the qualifications prescribed by the applicable laws to hold the office for which he is a candidate, so that he may be voted for by the electorate directly or by means of delegates or electors, and who:
(1) has qualified for a place on the ballot or (2) is eligible under the applicable law to be voted for by sticker, by writing in his name on the ballot, or other method, and
(i) has been duly nominated by a political party which is commonly known and regarded as such, or (ii) makes a substantial showing that he is a bona fide candidate for nomination or office as the case may be.

(b) General Requirements: No station licensee is required to permit the use of its facilities by any legally

qualified candidate for public office, but if any licensee shall permit any such candidate to use its facilities, it shall afford equal opportunities to all other such candidates for that office to use such facilities: Provided, That such licensee shall have no power of censorship over the material broadcast by any such candidate.

(c) Rates and Practices: (1) The rates, if any, charged all such candidates for the same office shall be uniform and shall not be rebated by any means direct or indirect. A candidate shall, in each case, be charged no more than the rate the station would charge if the candidate were a commercial advertiser whose advertising was directed to promoting its business within the same area as that encompassed by the particular office for which such person is a candidate. All discount privileges otherwise offered by a station to commercial advertisers shall be available upon equal terms to all candidates for public office. (2) In making time available to candidates for public office no licensee shall make any discrimination between candidates in charges, practices, regulations, facilities or services for or in connection with the services rendered pursuant to this part, or make or give any preference to any candidate for public office or subject any such candidate to any prejudice or disadvantage; nor shall any licensee make any contract or other agreement which shall have the effect of permitting any legally qualified candidate for any public office to broadcast to the exclusion of other legally qualified candidates for the same office.

(d) Inspection of Records: 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 licensees of such requests, and the charges made, if any, if the request is granted. Such records shall be retained for a period of two years.

(e) Time of Request: A request for equal opportunities must be submitted to the licensee within one week of the day on which the prior use occurred.
(f) Burden of Proof: A candidate requesting such equal opportunities of the licensee, or complaining of 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. 4

The Commission has not yet published amendments to its rules dealing with the exempt provisions for certain types of news programs as provided by the 1959 amendment to the Act. 5

Certain provisions of the Commission's rules and regulations are, for the most part, self-evident, and require little interpretation by the Commission. Certain other provisions, of necessity broad and general in their scope, require interpretations as conditions of their application change or vary. It, of course, becomes necessary at times for major points to be clarified and interpreted by the appropriate Federal court.

Licensees, for the most part, seek initial clarification and interpretation through their attorneys. Undoubtedly many of these attorneys themselves seek clarification and interpretation by means of informal personal or telephone conferences with appropriate members of the Commission staff.

4Ibid.

Many licensees choose to deal with the Commission directly and make inquiry by letter or telegram and, in return, receive informal views prepared by members of the Commission's staff and, generally, signed by the Secretary.

In more complex determinations, however, the inquiry is passed up by the staff to the Commission level and a determination is made on the basis of a vote by the full Commission. This is generally the case when the matter under consideration involves substantial political races or raises questions, a determination of which may likely become Commission policy or dicta.

In order to obviate the need for repetitious replies to somewhat common questions the Commission has, at various intervals, published compilations of pertinent rulings and interpretations of Section 315. The first such compilation was published in 1954. This was revised in 1958; a supplement to the 1958 report was issued in 1960.

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to cover the 1959 statutory changes, and in 1962 a complete revision was published.

In the 1958 publication the Commission set forth in rather succint form the purpose of the endeavor:

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 may be obviated in many instances and time -- which is of 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 the 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 should be emphasized that this discussion relates solely to obligations of broadcast licensees under Section 315 of the Communications Act and is not intended to

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treat 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" (Vol. 1, Part 3, R. R. 91 - 201) and the cases cited therein. 10

Prefacing the 1962 report with virtually the same statement the Commission added:

We are of the view that the 1959 amendments to the act constituted an affirmation and codification by the Congress of the Commission's "fairness" doctrine. 11


11 F.C.C. 62-1019, op. cit. The 1959 amendment, as earlier noted, exempted appearances by legally qualified candidates on certain news-type programs from the "equal opportunities" provisions, and the statute (73 Stat. 557) said, in part, that such action should not be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance." See also testimony of Commissioner Ford before the Senate Subcommittee on Freedom of Communications, Senate Report 994, Part 5, 87th Congress, 1st Session, page 33.
As the number of stations has grown and the complexities of political broadcasting increased through amendment to and suspension of certain provisions of Section 315, the Commission's interpretative documents have grown. The 1954 document contained forty-two questions with appropriate answers. The 1958 publication dealt with sixty-one questions of interpretation, the forty-two original questions and nineteen new ones. The 1960 supplement presented seven additional rulings, all dealing with what constitutes a bona fide news program. The 1962 edition contained 87 rulings, with many previous rulings expanded in the light of changes in Commission thinking.

The publication of these public notices over the last ten-year period has served to limit, to an appreciable degree at least, the number of requests for interpretations submitted to the Commission. The fairly technical and precise wording of the material, presented in

12 F.C.C. 54 - 1155, op. cit.
13 F.C.C. 58 - 936, op. cit.
14 F.C.C. 60 - 1050, op. cit.
15 F.C.C. 62 - 1019, op. cit.
question and answer format, has, of course, in itself created additional questions, confusion, and discussion, particularly in areas where the problem facing the broadcaster or the candidate is not precisely as stated in the published question. At least one Commissioner, however, has indicated that he feels any additional confusion which may have resulted has not lessened the value of the publication.

Commissioner Kenneth Cox, speaking at the First National Editorial Conference indicated that broadcasters and candidates were better off being confused to some extent by the Commission than they would be if the Congress undertook to codify all of the nuances of Section 315 into law.

A court interpretation of a provision of the law, according to Commissioner Cox, would likely be far less flexible than a ruling or interpretation of the Commission.

Not everyone in the broadcasting industry, however, agrees with Commissioner Cox. Shortly after issuance of the Commission's 1962 edition of "Use of Broadcast Facilities By Candidates For Public Office" Broadcasting, in an analytical report dealing with the Com-

mission's method of handling informal requests for rulings and interpretations had this to say:

A welter of Section 315 (equal time and fairness) complaints, inquiries, counter-charges and decisions have poured in and out of the FCC in the past two weeks.

In the resultant turmoil, broadcasters and their Washington counsel have become more confused than ever on what they can and cannot program politically; on what is and is not exempt from Sec. 315; on who is and who isn't a legally qualified candidate.

The FCC's political broadcasting statement of three weeks ago, citing 87 Sec. 315 rulings and interpretations, has been of little or no value to stations and to attorneys in advising clients.

Citing FCC equal time decisions over the past 10 days, a veteran communications attorney said last Thursday that he no longer knows how to advise stations on Sec. 315 matters. Before these decisions, which he charged gave no clear guidelines for the FCC rulings, the attorney said he had no hesitation on advising a client that such-and-such an appearance was exempt.

Continuing, the article said:

The complaints handled by the FCC this year have been heavier than for any election in the past.

The Commission staff refused to estimate the number, saying that so many have been handled that there is no way to keep count.

Another source reported, however, that 15 - 20 equal time or fairness inquiries have been received daily during the past few weeks. A major portion of these was settled "out of court" between the station and the complaining candidate. Others were decided in staff actions while a few went to the full commission. The FCC, in fact, has had at least three special meetings on 315 matters over the past 10 days. 18

Inquiries relating to Section 315, as well as complaints about licensee's handling of situations arising under the section continue to be made to the Commission. The number of inquiries and complaints, as might be expected, rises sharply during the months immediately preceding primaries and political campaigns. During 1961 the Commission received some forty-five queries related to political broadcasting, thirty of which came during the last six months of the year. Most of these dealt with state elections. During the first half of 1962 there were 113 requests for interpretation or statements of complaint received and acted on by the Commission.

The Commission is not required, under applicable Federal statutes, to issue declaratory orders, interpretive rulings or advisory opinions. The Commission does, however, as a matter

\[\text{Source: F.C.C. Annual Report (1962), page 51.}\]

\[\text{Sec. 5(d) of the Administrative Procedure Act, Title 5, U.S.C.A provides that "The agency is authorized in its sound discretion, with like effect as in the case of other orders, to issue a declaratory order to terminate a controversy or remove uncertainty." Agencies are not, however, required to issue such orders merely because such has been requested. According to a letter from the Commission to Pierson, Ball and Dowd, as reported in FCC 62-1019, op. cit., the Commission, in general, "limits its interpretive rulings or advisory opinions to situations where the critical facts are stated without the possibility that subsequent events will alter them. It prefers to issue such rulings or opinions where the specific facts of a particular case in controversy are before it for a decision."}
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of policy, attempt to make such rulings wherever practicable and has, in fact, established a method of priority consideration for questions arising under Section 315.

Immediately upon receipt of a complaint or request for an interpretation relating to Section 315 the Commission acknowledges receipt of the communication. In the case of a complaint the complainant is informed that the licensee is being asked for his comments. Simultaneously, the licensee is advised of the complaint and is directed to reply within a specified time, the length of which generally depends upon the proximity of the election date.

Upon receipt of the reply from the licensee the Commission makes a determination and both parties are advised of this determination, by letter, telegram or telephone as the urgency of the situation may deem necessary.

Such a system of action obviously has shortcomings, not the least of which is that in situations in which some urgency seems to prevail the Commission may act without complete facts at hand. Proposals have been made from time to time regarding a more acceptable solution to the problem. One such proposal would put determinations

of this sort, where immediacy was paramount, in the hands of the
Federal Court having immediate jurisdiction in the geographical
area in which the complaint or question arose.  

Congress has, within recent years, exhibited considerable
interest in complaints and requests for interpretations of Section
315. The Freedom of Communications Subcommittee of the Sub-
committee on Communications of the Committee on Commerce of the
United States Senate held extensive hearings in March of 1961
dealing with this topic.  

Beginning in August 1960 the subcommittee sent to all con-
gressional candidates and all candidates for statewide offices through-
out the country a letter advising of the existence and function of the
subcommittee asking that the subcommittee be notified of any "un-
remedied complaints" which might arise. Concurrently, the sub-
committee established a working relationship with the Commission
and made arrangements to receive copies of all inquiries and com-
plaints relating to politics made to the Commission during 1960.

22 Friedenthal, J. H. and Richard J. Medalie, "The Impact of
Federal Regulation on Political Broadcasting: Section 315 of the Com-

23 Final Report of the Committee on Commerce, S. R. 994, Pt. 5,
87th Congress, 1st Session, Jan. 9, 1962.

24 Ibid., 81. For a copy of this letter see Appendix a.
Subsequently, on October 14, 1960 the subcommittee requested reports from all radio and television licensees of complaints received during the final three weeks of the campaign. Stations were asked to forward these within 24 hours of the occurrence.

As a result of these requests for information the subcommittee made a study of more than 40 cases which arose during the 1960 campaign. These cases are detailed in the report of the subcommittee. No legislative action arising out of this study has reached the floor of Congress. As a result of its inquiry into broadcasting and the handling of political broadcasts by licensees the subcommittee, however, did make a number of recommendations. Under nine broad headings the subcommittee recommended:

I. Political editorializing. The subcommittee recommended that the commission make prompt investigations, upon complaint, to determine whether there had been "partisan, one-sided presentation of issues and candidates by a licensee to the point of excluding contrary views and personalities." In such cases, the subcommittee said the Commission "should be able to act promptly for an immediate review

25Ibid., 4. For a copy of this letter see Appendix b.

26Ibid., 227 - 623.
of the performance of a licensee upon complaint of abuse in this area rather than wait on a renewal proceeding."

II. Establishment of rules covering licensee editorializing on behalf of a political candidate or a political party. The subcommittee recommended the following rules to apply in such cases:

1. Licensees should be required to keep a script, film, or tape of any political editorial on file and available for inspection for not less than a week.

2. Advance notice that an editorial to be broadcast should be given to the candidate or candidates or political party against whom it is directed in order that it might be observed and monitored.

3. Equal opportunity to reply should accrue to those against whom the editorial is directed.

4. Candidates and parties editorialized against should have the right to designate persons to appear and present the opposing points of view.

5. A reasonable cut-off time on such editorials, prior to an election should be set -- at least 48 hours prior to the opening of the polls.

6. Licensees should be required to promote the reply or opposing viewpoint in much the same manner as they promote the editorial itself.
7. Where a licensee editorializes on behalf of a slate of candidates in one time segment and the time spent on each candidate is minimal the opposing candidate should, in fairness, be given the time for him or his representative to reply.

III. Advance copies of scripts. The Commission should, in the opinion of the subcommittee, modify its rule under which licensees may require advance copies of the script of political broadcasts. Candidates should not be required to file scripts in advance. In lieu of this, the subcommittee said, candidates should be able to pay for having a tape made of the talk and keep the tape on file and available to interested parties.

IV. Rules covering the use of facilities by candidates. The subcommittee recommended that the Commission should prescribe rules covering use of facilities by candidates as follows:

1. That licensees who determine in advance that time will not be made available to any candidate in a particular race cannot change that decision unless all candidates in that race agree.

2. That licensees may not arbitrarily set a cut-off date for the sale of political time prior to an election.

V. Authority to direct licensees to make time available for presentation of opposing points of view. The subcommittee proposed an amendment to Section 326 of the Act to provide that:
Nothing in this Act or the foregoing sentence shall prevent the Federal Communications Commission, acting upon a complaint in an "editorial fairness" case, to direct a licensee to make time available and present the opposing position or a particular person in order that the paramount right of the public to be informed on all sides of public issues be preserved.

VI. Establishment of guidelines for discussion of controversial issues. The subcommittee recommended that the Commission establish guidelines for the licensee to follow in presenting both sides of controversial issues, such guidelines to be substantially as follows:

1. The licensee should attempt to schedule the opposing point of view before presenting the original editorial discussion, thus permitting the public to be informed at the time of the original editorial that the reply would be aired at a given time.

2. That the Commission determine whether a licensee can require an advertiser, who buys time for the advertising and promotion of his product but utilizes a portion of that time to editorialize on one side of a controversial issue, to make available equitable time for the opposing viewpoint to be heard on the commercial advertiser's program.

VII. Refusal of licensee to sell time to groups whose viewpoint he opposes. The subcommittee indicated it felt that licensees who refused to sell time "for the presentation of news, discussion, or entertain-
ment programs sponsored by organizations such as political parties, labor unions, citizen committees, or business groups espousing a viewpoint with which the licensee is not in sympathy" should have to make an immediate report of such action to the Commission. The subcommittee said that such a refusal to sell time "may be denial to the public of its right to hear those contrary viewpoints which are so necessary for the formation of intelligent opinion and sound judgment." They indicated further their belief that the Commission should view a continuing accumulation of refusal notices to sell such time as a failure on the part of the licensee to act in the public interest.

VIII. Modification of section 315. Any modifications of section 315 would be premature, the subcommittee said, until the performance of stations and networks in the 1962 campaign could be studied. In general, the subcommittee indicated it felt that any legislative modification of Section 315 which would exempt coverage, would be "at variance with the fundamental objectives which the Congress seeks to protect."

IX. Internal reorganization within the commission for handling complaints. The subcommittee indicated it felt the Commission should set up procedures for handling complaints more rapidly, including, if necessary, the establishment of a "hearing system under competent
examiners for the immediate taking of testimony when necessary to perpetuate a record concerning complaints under the 'fairness doctrine' and equal time."

The report called on the Commission to consider its experience in the field of political broadcasting and advise Congress "exactly what is needed in the way of legislative authority and personnel." 27

In July of 1963 the Commission issued additional "guidelines" dealing with the "fairness doctrine" and licensee handling of controversial public issues, including political broadcasts. Some of the thinking which was reflected in these "guidelines" (which immediately became highly controversial) obviously reflected Commission attention to the recommendations of the subcommittee enumerated above. Subsequently the Commission issued a "question and answer" type public notice dealing with the elements of fairness in handling of controversial issues, much like the notices issued dealing with Section 315.

The "fairness doctrine" and its application to political broadcasting will be considered further in Chapter V of this study.

Again, in 1962, the Congress took an active interest in broadcasting and political campaigning. Broadcasting magazine said, in

its issue of November 5, 1962, just prior to the general elections:

Actively watching this year's coverage of the political races is the Senate Watchdog Subcommittee. The subcommittee has established monitors and tape recorders in Washington to check the networks' every offering and plans to question all stations on their news coverage and time sold after election....

Subcommittee counsel Creekmore Fath said last week that complaints received on 315 this year by the Senate group are higher than the number received during the 1960 campaign. 28

Whether the majority of complaints stem from the failure of Congress to spell out its intentions in precise, definitive terms, covering most possible situations, or from the Commission's failure to establish clear-cut guidelines is a formidable question and one to which there possibly is no real answer. Indeed, the argument over whether Congress should have spelled out its intentions more clearly and whether Section 315, in reality, has been misconstrued by the Commission in its interpretations is one that has continued over a long period of time.

In 1943, in hearings before the Senate, then Commissioner T. A. M. Craven had this to say:

I think the reason that 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 to settle, and we are getting in trouble. 29

Despite the continuing interest of the Congress in political broadcasting, it has remained for the Commission, in its interpretations, to create the real specifics which the licensee observes in his day-to-day operations. It is to these specifics that we now turn our attention.

Any attempt to classify Commission views and interpretations on the basic provisions of Section 315 must, of necessity, leads to an arbitrarily determined number of fairly broad, general categories. In this study the following categories have been selected as being most flexible and most representative of the broad provisions of the section:

1. **Definitions of a "candidate."** When does "candidacy" commence? What are the qualifications for a person to be considered a "candidate" under Commission interpretation of Section 315? What is meant by "bona fide"?

2. **What constitutes "use" of facilities and "equal opportunity**

29 *Hearings* on S. 814, a Bill to Amend the Communications Act of 1934, Before the Senate Commerce Committee, 78th Congress, 1st Session, 1943.
for use of facilities? Under what circumstances may opponents secure time?

3. Charges for use of facilities by candidates.

4. What constitutes identification of sponsorship of political broadcasts and what is the obligation and responsibility of the licensee to determine the true source of funds used for payment of such sponsorship?

5. Record-keeping on the part of the licensee.

6. The station's position as regards censorship of portions of a candidate's statement.

7. Obligations of the licensee to provide time for candidates and political parties, including the obligation to carry political broadcasting.

8. Exemption of news-type programs.

9. Other interpretations.
1. **CANDIDACY**

Just how does a licensee determine who is a candidate, that the candidate is a "legally-qualified" candidate, that he is entitled to "coverage" under Section 315 and that his "candidacy" has, in fact, commenced, particularly if he is an incumbent seeking re-election?

In its attempt to define a legally qualified candidate the Commission, in its rules, establishes certain requisites:

(a) A legally qualified candidate must have publicly announced that he is a candidate. He may be a candidate for nomination by a convention of a political party, a candidate for election in a primary sponsored by a political party or a political entity of the state, or he may be a candidate in a special or general election of any political subdivision - municipal, county, state, or of the nation at large.

(b) He must be qualified to hold the office for which he is a candidate, such qualification generally being prescribed in the applicable laws or in the Constitution of the United States in the case of candidates for the Senate, the House of Representatives, the Vice-Presidency, and the Presidency.

(c) He must have already qualified for a place on the ballot under existing laws, or where existing law permits, he may be what is commonly known as a "write-in" candidate! i.e., his name may be written
in or placed on the ballot by sticker by the voter at the time of
balloting.

(d) He must already have been nominated by a known political
party or he must have made what the Commission has called a
"substantial showing" that he is a bona fide candidate. 30

Some writers have felt that a definite standard as regards
determination of candidacy would be helpful. One writer, addressing
the problem, had this to say:

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 matter of election, so even with regard to Federal
elective offices the States may require legal qualifi-
cations in addition to those found in the constitution.

Each state has statutory prerequisites to printing
a candidate's name on the ballot. The prerequisites
differ widely among the states, and in several states
the conditions precedent to being placed on the pri-
mary ballot are distinct from those governing the
final election. In Maryland, for example, a person is
not a "legally qualified" candidate who is not on the
ballot, as writing in names or the use of pasters is
not authorized by law.

In several states, however, the voter may write on
the ballot of his choice for the office (or use a "paster"
or "sticker") and if a majority follow suit the candidate
so honored would be elected. Thus, although not a

30 Summation adapted from subsection (a), Section 3.120, F.C.C.
Rules and Regulations, op. cit.
legally qualified candidate in the sense of having met the ballot or filing fee requirements, he is a person eligible for office (unless not qualified in some other respect, such as residence, citizenship, etc.) and he probably could invoke the rights conferred by the Communications Act. But, as shown above, some states do not allow any amendments on the printed ballot, so in fact the provision of the Communications Act has limited application and in practice may result in unequal situations. In any event, 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 upon the myriad election laws.

While there have been a number of requests placed before the Commission seeking determinations related to legally qualified candidacy there is no evidence that the question has been raised in appeals from the Commission to the courts.

In 1951 the Commission ruled that for a person to be legally qualified it must be possible for him to be voted for by the electorate. Where a party does not qualify for listing on the ballot and the applicable law does not permit write-in voting the nominees of that party are not legally qualified candidates. The ruling came in answer to a complaint by the Socialist Labor Party of America, through its national secretary, one Arnold Peterson, who told the Commission

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that station WHBC, Canton, Ohio had refused to sell time to the Presidential candidate of the party. The Commission determined that the candidate of this party was not listed on the official ballot in the State of Ohio; that to have written in his name would have invalidated the ballot, since applicable state law did not permit write-in voting; and that the nominee of the party was thus not a legally qualified candidate in the State of Ohio. In this light, the Commission concluded, the station was within its rights in refusing to make time available.

At just what point does an incumbent, seeking re-election, become a "candidate"? This situation came before the Commission in 1952 in a case involving Senator William F. Knowland of California, seeking re-nomination as the candidate of the Republican party and Congressman Clinton D. McKinnon, himself seeking the same nomination.

Senator Knowland, on March 5, 1952 filed notice that he intended to seek the Republican nomination. At a time subsequent to this the Senator actually qualified for a place on the ballot. California per-

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32 Socialist Labor Party of America, 7 RR 766 (1951).
mitted write-in ballots. The Commission was asked by radio station KNGS of Hanford, California to make a determination as to which of the two times actually denoted the beginning of "official candidacy" of Senator Knowland. In its ruling the Commission indicated that the declaration of candidacy in a state which permitted write-in voting was the actual inception of candidacy, rather than the date of qualifying and actually being placed on the ballot. 33

The above case was also used by the Commission to affirm that any use of facilities by a candidate came under Section 315, the Act drawing no distinction between broadcasts which were "political" and those which were not. In the instant case Senator Knowland was making weekly transcribed reports of his activities in the Senate available to radio stations. KNGS was one of the stations carrying these programs. Congressman McKinnon asked the station for the same amount of time as had been utilized by Senator Knowland since his March 5 announcement. The Commission affirmed that KNGS

33Radio Station KNGS, 7RR 1130 (1952). See also 11 RR 234 (1952) which comments on a similar program series by a Congressman (Allen O. Hunter). The Commission pointed out that where a station has carried such congressional reports by an incumbent it must provide equal opportunities for his opponents and must not seek to limit opponents to a discussion of subjects which the incumbent congressman chose for his broadcasts.
was indeed liable to provide that amount of time in the aggregate to Mr. McKinnon since it had determined that the candidacy of Senator Knowland had commenced at the time of his declaration of candidacy and not at the time he actually qualified for a place on the ballot. Subsequently, in 1959, the Commission modified its rules to provide that a station need make available only that time utilized within the preceding week by a candidate when a second candidate requests equal opportunity to use the facilities. This change will be dealt with subsequently in this chapter.

The year 1952, being an election year, saw other questions dealing with determination of candidacy come before the Commission. One such ruling dealt with the extent to which a candidate had become involved in pursuing his candidacy and whether his chances of being nominated and elected affected station responsibility. The Commission held that the licensee could not make a determination regarding eligibility to utilize facilities merely on the basis of whether it felt the candidate had a chance of being elected.

In this case the Columbia Broadcasting System had refused time to one William R. Schneider, a St. Louis attorney, who maintained he

\[\text{34}^{\text{Ibid.}}\]

\[\text{35}\text{Columbia Broadcasting System Inc., 7 RR 1189 (1952).}\]
was a bona-fide candidate for the Republican nomination for the presidency. Schneider had entered only a single presidential preference primary, in New Hampshire, and had received less than one percent of the total Republican vote cast. According to CBS he had waged no active campaign. Thus, CBS contended that Schneider had no chance of winning the nomination and had refused to permit him to be seen and heard on a series of 30-minute television broadcasts under the title "Presidential Timber." Leading candidates for both the Republican and Democratic nominations had been permitted to appear on the program. Following the Commission ruling CBS made time available to Schneider. 36

Another question concerning the moment candidacy commences was raised in 1952 and it involved a determination of whether, in a licensee's coverage of a national political convention, the broadcasting of the winning nominee's acceptance speech invokes liability for providing equal opportunities to all other legally qualified candidates for the office to which the winning nominee aspires. It does, according to the Commission's decision in a complaint brought by the Progressive Party. 37

36Ibid.

37Progressive Party, 7 RR 1300 (1952).
The major networks had carried both the Republican and the Democratic National Conventions in their entirety, including the acceptance speeches of the nominees for the presidency. The Progressive Party complained to the Commission that the networks were not planning to cover the national convention of their party. In a letter to the party the Commission indicated that while Section 315 had no application to conventions of political parties, coverage of such being based on fairness and general interest, acceptance speeches were appearances of bona-fide candidates and as such did come within the provisions of Section 315.

In the Commission's 1954 publication of interpretations of Section 315 it offered additional comment on determination of candidacy. It indicated that a determination of whether a candidate is legally qualified should be made on the basis of applicable laws in the state in which the election is to be held. "In general," the Commission said, "a candidate is legally qualified if he can be voted for in the state or district in which the election is being held, and if elected, is eligible to serve in the office in question."

\[\text{Ibid.}\]
Continuing, the Commission said:

The term "legally qualified candidate" is not restricted to persons whose names appear on the printed ballot; the term may embrace persons not listed on the ballot if such persons are making a bona fide race for the office involved and the names of such persons or their electors can, under applicable laws, be written in by voters so as to result in their valid election. The Commission recognizes, however, that the mere fact that any name may be written in does not entitle all persons who may publicly announce themselves as candidates to demand time under Section 315; broadcast stations may make suitable and reasonable requirements with respect to proof of the bona fide nature of any candidacy on the part of applicants for the use of facilities under Section 315. 39

In commenting on a question as to whether qualification of candidacy commenced only after the prospective candidate had paid any required fees and completed filing any required forms, the Commission said that in states where the law permitted write-in balloting the announcement of candidacy, if bona fide, was sufficient. In other states candidates would not be legally qualified until they had met the requirements of the applicable state law. This was simply a restatement of previous Commission rulings. 40

39FCC 54-1155, op. cit.
40Ibid.
In 1956 the Commission indicated that the candidate has the responsibility to make what the Commission called "an equivocable showing" that he is a legally qualified candidate. In that year General Dwight Eisenhower made a broadcast on February 29 indicating that he would be available as a candidate for the 1956 Republican nomination for the Presidency. Shortly thereafter a Chicago furniture dealer, Earl Daly, wrote letters to the three major television networks and four major radio networks, represented himself as the "America First" candidate for the Presidency and demanded equal time. When the networks refused, Daly wrote the Commission, which affirmed the position of the networks in refusing time, saying that Daly had not made "an equivocable showing" that he was a legally qualified candidate.

In 1958, as noted earlier in this study, the Commission issued a revised public notice giving interpretations in the form of questions and answers regarding Section 315. Of the new and previously unpublished interpretations only one dealt with the determination of candidacy.

The Commission indicated that where an attorney general or

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other appropriate state official had ruled on the legality of a candidacy this ruling was decisive unless and until a competent court ruled otherwise.

On July 29, 1959 the Commission indicated its intent to modify its rules to provide that when a candidate makes a request under Section 315 for equal time the candidate, rather than the licensee, has the burden of proof to show that both he and any opponent who has used the facilities of the licensee are legally qualified candidates. The Commission published the new rule on July 31 and made it effective on August 10.

Two additional points concerning candidacy merit attention. One involves the status of members of the Communist Party in the United States and whether a member of such party can become a legally qualified candidate, under Section 315. In 1950 the Commission indicated that as long as communists were legally qualified candidates under applicable law they were entitled to equal opportunity.

The following year, in 1951, and prior to passage of the Communist Control Act of 1954, a Federal court affirmed the right of a

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42 FCC 58 - 936, op. cit.
43 FCC 62-1019, op. cit.
Communist to air time after a station had made time available to her opponents. In a decision which became rather involved due to the complexities of contract law, station policy, and the definition of the "use" of facilities, the Federal District Court for the Northern District of California, by mandatory injunction ordered Station KSFO to permit one Mrs. Oleta Yates, candidate for the San Francisco Board of Supervisors who was in jail following her arrest as a leader of the Communist Party, to present a dramatic program in behalf of her candidacy.

Mrs. Yates had previously contracted for the program, and in accord with station policy had submitted a script of a political dramatization which she had written, two days before the broadcast date. Upon learning of the nature of the program and determining that Mrs. Yates could not appear, then being in jail, the station refused the program on the grounds that its policy was to not carry political dramatization. Indicating that it would have gone through with the contract if Mrs. Yates had appeared in person the station argued that presentation of a script without her personal appearance was not a "use" of facilities. The court disagreed, saying that her part in the writing of the script constituted "use". The court further said that if the broadcast contained communist propaganda that this was not the re-
sponsibility of the station. It is interesting to note that other courts have held to the contrary in similar instances and that the Commission has consistently held that such non-appearance of the candidate did not constitute "use" under Section 315. 45

In 1954, in its political compilation, the Commission said, in answer to the question of whether time must be made available to a candidate of the Communist party if time was afforded to that candidate's opponent:

If the person involved is a legally qualified candidate for the office he is seeking Section 315 requires that "equal opportunities" be afforded him. It will be recognized that who is a legally qualified candidate is dependent upon federal, state and local law pertaining to the elective process and is not based upon provision of the Communications Act or Rules of the Commission. The question of the specific applicability of these principles, in the light of the Communist Control Act of 1954, to candidates of the Communist Party or who are members of the Communist Party has not yet been determined. 46

The identical statement was published in the 1958 compilation. 47 Just why the Commission permitted publication of the statement in its 1958 compilation is not clear, particularly in the light of comments which

45 Yates vs Associated Broadcasters Inc., 7 RR 2088, N. D. Calif. 1951.

46 FCC 54 - 1155, op. cit.

47 FCC 58 - 936, op. cit.
the Commission made on HR 3789, a 1956 bill to bar subversives from taking advantage of the equal time provisions of Section 315. Pointing out that the Communist Control Act of 1954 denied all "rights, privileges, or immunities attendant upon legal bodies created under existent laws of the United States..." the Commission said this presumably affects the legal capacity of the Communist Party or any of its representatives to enter into contracts for broadcast time. Thus a broadcaster would not have to make time available under Section 315 to a member of the Communist Party.  

The legal department of the National Association of Broadcasters concurs in this view.

(An interesting view regarding possible use of Section 315 to secure time was made by Commissioner Jones in his dissent in the Port Huron case in 1948.)

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48 *Hearings on HR 3789, 84th Cong., 1st Sess., (1956).*


50 *Hearing on The Application of the Port Huron Broadcasting Company, Port Huron, Michigan (WHLS) For License Renewal, Docket No. 6987, Jan. 30, 1948, FCC Reports, Vol. 12 (Washington, 1948). The dissenting opinion of Commissioner Jones read, in part, as follows:

Let us see how a subversive may take advantage of this concept of the majority. A legitimate candidate
The second point meriting attention involves a question which, following a ruling by the Commission, went before the Court of Appeals and for which a hearing before the Supreme Court of the United States was sought. This involves a candidate who fails to timely announces his candidacy for nomination for public office on the lawful party ballot of his true allegiance months in advance of the primary election and makes a broadcast concerning a public question which might become a leading issue in the campaign. A party which advocates the overthrow of the government by force and violence is denied a place on the ballot for its party column of candidates in certain states. A member of such illegal party could announce his candidacy at the same time for nomination to the same office on the ticket of a legally qualified party -- the chances of success are immaterial. Such a candidate may not have a chance to be nominated, but he can still be a bona fide candidate under the Commissions rules and regulations, and demand time to say anything and everything advocated by the party of his real affiliation. The latter candidate can demand and get equal time, even though such candidate may commit high treason by advocating the overthrow of our government by force and violence. Under this concept a candidate in his broadcast may violate state election laws and the Federal Corrupt Practices Act, utter words of obscenity, profanity and vulgarity in violation of Section 326 of the Communications Act, or divulge information concerning lotteries which are violations under Section 316 of the Communications Act. It is easy to see how the unscrupulous candidate could use the ruling of the majority to bail labor and capital, to foment race hatreds, and use other subversive devices to divide our people.

qualify and, in fact, qualifies only after the election or primary. Is such a "candidate", once qualified, thereupon entitled to such time as was afforded other candidates for the same office before the election or primary? No, according to the Commission and the courts. The Commission said:

Once the date for nomination or election for an office has passed, it cannot be said that one who failed timely to qualify therefore is still a "candidate." The holding of a primary or general election terminates the possibility of affording "equal opportunities", thus mooting the question of what rights the claimant might have been entitled to under Section 315 before the election. 52

The Commission has indicated that, insofar as it is concerned, there is no "post election" remedy available before the Commission to candidates who indicate they were denied proper treatment under Section 315 during the period prior to the election. The Commission warns station licensees, however, that they cannot avoid statutory obligations under Section 315 merely by postponing decisions until after the election. 53

52 FCC 62 - 1019, op. cit.

53 Ibid.
2. Equal Use of Facilities

What constitutes opportunity for equal use of facilities and what are the circumstances under which opponents may secure time?

A rather succinct summation of "equal opportunities" would be the absence of any discrimination between candidates. Under the provision of Section 315 the licensee is free to make a number of determinations:

(a) Whether he shall carry broadcasts by political candidates. (Despite the provision in Section 315 that "No obligation is hereby imposed upon any licensee to allow the use of its station by any such candidate," there is considerable doubt that a policy of carrying no political broadcasting during a particular period would be in the public interest. This matter will be explored subsequently. The point is, however, that the decision to carry or not to carry political broadcasting is, in the final analysis, one which the licensee is free to make.)

(b) Whether he shall sell time to all candidates or just to candidates for certain offices. (In 1947 the Commission affirmed the right of a station to limit the amount of time sold for political purposes.)

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54 Homer P. Rainey, 11 FCC 898, 3 RR, 1947. During the 1946
(c) Whether he shall give time to all candidates or just to candidates for certain offices.

Whatever policy the licensee adopts he must treat all candidates for the same office alike with respect to the time they may secure free and that for which they must pay.

Applicability of the "equal opportunity" clause is limited, as indicated in the act, to candidates for the same office, in the same election. An example of Commission determination in this field is in the case of a Texas station (KRLD, Dallas) which in 1948 sold time to candidates for the Democratic nomination for the U. S. Senate.

Democratic primary in the State of Texas some 14 candidates were competing for nomination for governor. In order that listeners not be subjected to so much political broadcasting, four stations, members of the Texas Quality Network, and acting as such in concert, applied a policy they had previously adopted six years earlier, limiting the amount of time which would be sold to any particular candidate. The amount was two 15-minute periods, the scheduling to be determined by lot. One Homer P. Rainey sought to buy a greater amount of time, was denied, and appealed to the FCC. In a hearing all candidates other than Rainey indicated they saw no discrimination or lack of equal opportunity to use facilities in the restricted sale of time. Subsequently the Commission ruled that a station was entirely within its rights in limiting the amount of time which would be made available to any one candidate, provided that all candidates so limited were equally treated.
Following the primary a candidate for the Senate on a Prohibitionist ticket, one Rev. Sam Morris, sought time for a campaign talk. His request was denied and the Commission upheld the station in the denial, pointing out that the time sold to the Democratic candidate was time sold in behalf of his candidacy for the nomination while Morris sought time as a candidate for the Senate and that the two were separate races.

The Commission went on to say, however, that without regard to Section 315 elementary principles of fairness may dictate that a station which has afforded considerable time during a primary to candidates for nomination as the candidate of a party to a particular office should make a reasonable amount of time available to candidates for that office in the general election. Discrimination and partisanship is to be avoided, the Commission said.

In 1952 the Commission again affirmed this interpretation, holding that the equal opportunity rule had to be applied separately to primary and general elections. Making time available to a candidate for nomination by one party does not entitle the candidate of another party to equal time.

55 Sam Morris, 4 RR 885 (1948).

56 Ibid.

57 11 RR 234 (1952).
(It should be noted at this point that in all applications of the "equal opportunities" rulings hereinafter reported, the provisions of Section 315 which exempt certain types of news programs must be taken into consideration. No requirement exists for "equal opportunity" when the appearance meets the requirements for exemption under the news exemption sub-section.)

The Commission has never held that opposing candidates should receive exactly the same time periods, nor even necessarily the time periods demanded by candidate B when candidate A has already made use of the facilities. The licensee, of course, must consider the desirability of the time segment allotted so that such time segments are comparable insofar as their desirability is concerned.

In order to maintain this ability to provide time segments that are equally desirable the licensee must be prepared to forego certain of its established policies if the maintenance of those policies precludes equal opportunity. The licensee must cancel other commercial broadcasts, despite any policy to the contrary, if such becomes necessary to maintain the equality of treatment. The Com-

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58 D. L. Grace, 17 RR 697.
mission indicated that a station policy, for instance, which pro-
hibited the cancelling of any regularly scheduled commercial pro-
gramming in order to clear time for political broadcasts (which the
station restricted to sustaining time) does not afford justification
for a licensee's failure to afford equal opportunity. 59

Such equality of treatment as called for in the case referenced
above applies only to the candidate himself, as opposed to anyone
speaking for him or in his behalf. Thus the licensee is free to ignore
any differences which might arise when a candidate has been nomi-
nated by more than one party, for such a candidate is not entitled to
additional time. Since the basis of equality is not the party but the
candidate himself, the number of nominations is of no concern. 60

The fact that a candidate may have appeared on a program, com-
mercially sponsored, as a guest or in some role other than as a can-
didate does not change the obligation to provide equal opportunity to
his opponent or opponents. The Commission, in a letter to WJBK-TV,
Detroit, during the 1954 political campaign, indicated it was the re-
ponsibility of the station to provide free time for appearances by

59 Stephens Broadcasting Co., 11 FCC 61, 3 RR 1, (1945).
60 11 RR 231 (1946).
Republican candidates wherein their Democratic opponents had appeared without charge as guests on a news commentary program sponsored by the UAW - CIO. Sponsors of the program had extended no invitation to the Republicans to appear.

In a somewhat similar circumstance the Commission, in a letter to Senator Mike Monroney, indicated that where local candidates were permitted to appear without cost to them on commerically sponsored programs in which time is evenly divided between Republicans and Democrats, other local candidates running against such speakers could demand and would be entitled to receive comparable time without cost from the stations which carried the programs and which served the areas in which the opposing candidates are running.

The Commission further indicated that if such appearances were on a national network program originating outside the area in which the candidates were running the stations covering the area of the election would be required to provide opportunity for the candidate's

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61 Broadcasting-Telecasting, February 13, 1956, p. 37. See also 13 RR 2131 and 19 RR 2018.

opponent or opponents, if, of course, they carried the original broadcast on which the candidate appeared.  

The requirement for equal opportunities does not, in the abstract, provide that opposing candidates must appear on the same program or even within the same program series. The Commission has indicated that other methods of providing equal opportunities might well exist and that any determination of the mechanics of the problem must be left to the resolution of the parties concerned.

In a letter to Congressman Wilson in 1958 the Commission said that where a station works out a reasonable format and places no restrictions on the matters or issues to be discussed but offers opposing candidates the opportunity to appear in "debate" type format the station has provided equal opportunity even though one of the parties declines to appear.

Some four years later, in 1962, the Commission indicated that where the licensee and the candidates agree to a broadcast featuring all candidates, as above, "equal opportunity" has existed. How-

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63 Ibid.

64 Letter to H. Oliver as reported in FCC 62-1019, op. cit.

65 Letter to Congressman Wilson, as reported in FCC 62-1019, op. cit.
ever, if one candidate has refused such appearance and subsequently seeks opportunities equal to those afforded to and accepted by his opponents the licensee is obligated to afford him such opportunities. "It would constitute censorship to set up a joint interview type program, to fix the length of the program, the time of taping and the time of broadcast and then to offer the candidates a package on a take-it-or-leave-it basis," the Commission said. "The Act bestows upon the candidate the right to choose the format and other aspects of the material broadcast, with no right of censorship in the licensee."66

A licensee may not, through advance commitments to one candidate, restrict its ability to provide equal time for opposing candidates, even though the first candidate was foresighted enough to "reserve" his time in advance. Rules of the Commission do provide, as earlier noted, that requests for time must be made within one week of the previous appearance which served as the basis of the equal time request.

This, of course, has not always been the case, the Commission


67 Section 3.120, Rules and Regulations, op. cit.
having adopted this provision in its rules in 1959. Prior to that time there was considerable confusion regarding the exact course to follow. In its 1958 compendium of questions and answers the Commission said that "once a station has made time available to one qualified candidate its obligation to provide equal facilities to future candidates begins." It continued however, with this warning: "A candidate cannot delay his request for time and expect to use the "equal opportunities" provision to force a station to turn over most of the last few pre-election days to him in order to 'saturate' pre-election broadcast time." 68

The complexity of the "equal opportunity" provision in the rules is illustrated by two examples, one prior to adoption of the "one week" rule previously referred to, and one subsequent to the adoption of the rule.

The first example occurred also prior to the Congressional exemption of news-type programs, also previously referred to in the preceding paragraphs. This involved J. E. Garner a staff newscaster at KFPW in Ft. Smith, Arkansas, who was a candidate to succeed himself in the state legislature. He continued his work as a newscaster

68 FCC 58 - 936, op. cit. See also 11 RR 245.
but did not utilize the facilities of KFPW in behalf of his candidacy. One D. L. Grace, who had announced as an opponent of Garner's waited a considerable length of time and then asked the Commission to determine whether he was entitled to all of the time which Garner had used on the air delivering news and in other station activities. He also asked if he could permit a spokesman to appear in his behalf while utilizing the time.

The Commission staff ruled, in July, that Grace was entitled to time equalling that used by Garner in his role as a station employee and that since he was entitled to the time he was under no obligation to use it personally in behalf of his candidacy.

The ruling was protested and subsequently, in October, the Commission unanimously reversed the staff ruling and held that a candidate may not "store up" time by withholding a request until his opponent has made substantial use and that a candidate requesting equal time must make personal use of the time. 69

The Commission, in its "Use of Broadcast Facilities By Candidates for Public Office" which was issued almost simultaneously with the above opinions added the statement to the effect that if a sta-

69 17 RR 697.
tion owner, employee, or advertiser used the facilities of a station after having qualified as a candidate the provisions of Section 315 applied. The exemption of news programs had not yet been approved by the Congress.

The second example illustrating the complexity of "equal opportunity" came after the adoption of subsection (e) of section 3.120 (AM), 3.290 (FM) and 3.657 (TV) of the Commission's rules. The subsection reads follows:

**Time of request.** A request for equal opportunities must be submitted to the licensee within one week of the day on which the prior use occurred. 70

It would appear from the wording that the purpose of this subsection is to prevent a candidate from "storing up" time and then demanding it near or at the end of the campaign, as was attempted in the case above. Such an action would possibly prohibit or at least seriously affect the abilities of an opponent to use the broadcast station shortly before an election.

While the wording of the amendment seems quite clear the Commission in April 1964 issued a ruling which appears to raise substantial question as to whether the subsection actually means in practice what it says.

70 FCC Notice 59-797, effective August 10, 1959.
During the months of February and March of 1964 Texas broadcaster Gordon McLendon, a candidate for the Democratic nomination for the U. S. Senate from Texas had been utilizing five of his stations for some eighteen minutes per day to further his campaign, all at no cost to himself. The stations were KLIF, and KLIF-FM, both Dallas; KILT, and KOST-FM, both Houston; and KTSA, San Antonio. The facts in the case are not a part of the dispute.

McLendon, on February 10, advised his opponent, incumbent Senator Ralph Yarborough, Chairman of the so-called Senate "watchdog" subcommittee which has been overseeing the way broadcasters cover political contests, of his intent to utilize his stations starting on that date. He offered Senator Yarborough equal time and equal use of the facilities of the stations.

On February 27 Senator Yarborough's campaign manager, Emerson Stone, Jr., acknowledged the offer, thanked Mr. McLendon for "advising us of the accumulation of the time at the rate of 18 minutes per day" and told McLendon that he would be notified "when we decide to start utilizing the accumulated time." In seven subsequent letters Mr. McLendon informed his opponent of the use he was
making of the stations and reminded Senator Yarborough of his rights to equal time.

On April 14 Stone advised McLendon that Senator Yarborough had decided to start using the free time and supplied the stations with tapes to be broadcast. The stations began using the tapes but told Stone that the seven-day rule precluded their giving time equal to that used by McLendon since February 10. Stone thereupon appealed to the Commission.

Following a 5 - 0 vote, the Commission announced its decision in a letter to Stone which it made public. The Commission ruled that Senator Yarborough was entitled to equal time, accumulated since February 10. In enunciating its ruling the Commission said that Stone's letter of February 27 "clearly informed Mr. McLendon that Senator Yarborough regarded the February 10 letter as bestowing upon him the right to use 18 minutes of station time for each day after February 10 and that Mr. McLendon would be told when -- not if -- the Senator decided to start using the accumulated time." If the stations had desired to rely on the seven-day rule,

71 Broadcasting, April 27, 1964, pp. 72 - 73.
the Commission said, they should have informed the Senator. The Commission said the purpose of the rule is to insure that licensees will be notified of demands for time promptly to make orderly scheduling plans and "... the letter of the 27th constituted the notification under the rule." 72

Following receipt of the letter from the Commission Stone requested 18 hours and 54 minutes of free time on each of the stations. McLendon rejected the demand but his attorney indicated he would attempt to seek a satisfactory solution with representatives of Senator Yarborough. A compromise was subsequently effected with Senator Yarborough receiving substantially the amount of time requested, although no public disclosure of the exact amount has been made. 73

From a study of both the subsection and the Commission's ruling in the instant case one would conclude that despite the apparently clear wording of the subsection the interpretation places the effect of the rule under a cloud. This particularly appears to be true since the Commission cites its 12-year-old ruling in the

72 Ibid.
73 Ibid.
KGNS - Senator Knowland case in which it said that a candidate cannot delay a request for time and expect the equal opportunities provisions of the Act to "give him the right to saturate pre-election broadcast time."

Two additional examples of "equal opportunity" rulings by the Commission bear noting. In 1956 the Commission indicated that the provisions of Section 315 applied where a radio station announcer was a candidate for public office even though his name was never mentioned on the air. A year later the Commission said the appearance of an automobile dealer who was a candidate on a program sponsored by his company constituted "use" of the facilities. The exact method of providing his opponent with "equal opportunity" for "use" of the station facilities was termed a "licensee responsibility" and the Commission did not comment on just how the station should go about providing the opponent with equal time.

74 7RR 1130 (1952), op. cit.
75 Ibid.
76 14 RR 1226 (1956).
77 14 RR 1227 (1957).
When a licensee offers time to opposing candidates and one of the candidates elects not to take advantage of the offer this serves as no bar to other candidates accepting the offer. Whether the candidate who originally turned down the offer could reclaim it would depend upon the circumstances.

There is nothing in the rules of the Commission nor in the Act itself which requires notification of one candidate by the licensee if his opponent purchases time. The requirements for recordkeeping must be met and access to such records must be accorded upon request.

Any specialized requirement placed upon one candidate, assuming that such requirement is not contrary to any provision of the law, is appropriate if such requirement is applied equally to all candidates. In this context the Commission has ruled it proper for a station to require submission of a script in advance and to prohibit extemporaneous political speaking by candidates, as well as to require recording of the talk at the expense of the candidate if these requirements are applied equally to all candidates for the same office in the same election.

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78 14 RR 65 (1956).

79 11 RR 236 (1952).
The Commission in its 1954 public notice calls attention to the fact that Section 315 requires only equal opportunity and not equal time, pointing out that if one candidate buys more time than his opponent can afford the second candidate should not seek relief under Section 315.

What is the "equal opportunity" requirement in the case of an incumbent who is a candidate for re-election to the presidency of the United States and who speaks, "non-politically" just prior to the election on an issue of "national importance?" The Commission was faced with a ruling on this situation when, on October 31, 1956, less than a week before the election, President Eisenhower used the facilities of all major radio and television networks to report on the crisis in the Near East. Following his 15 minute talk his opponents, including the Democratic nominee Adlai Stevenson, asked for equal time under Section 315. The networks appealed to the Commission and when a decision was not forthcoming immediately, elected to give Stevenson as well as the minor candidates equivalent time.

Subsequently the Commission ruled that they did not feel it to have been the intent of the Congress to include appearances by the

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80FCC 54 - 1155, op. cit. See also 11 RR 1507.
President when he was reporting to the people in time of national crisis. By the time of the ruling, however, the issue was moot since the time had already been granted by the networks.

81 14 RR 720 (1956).
3. Charges For Use Of Facilities

The provisions of the Act in regard to rates are contained in a single sentence: "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." 82

This provision, not a part of the original Section 315 of the Act, is apparently based on the theory that the ability of a station to set rates for political broadcasts which could be considerably higher than normal would constitute a form of censorship. No court challenge of this rate-setting provision has been made.

The Commission uses three sentences to explain the provision in its rules and regulations. Basically, the Commission says:

a. Rates shall be the same (uniform) to all candidates.

b. No rebates, direct or indirect, are permitted.

c. Candidates are to 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 in the same area encompassed

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82 Public Law No. 86-274 (73 Stat. 557), Sec. 315, sub-section 1b.
by the office for which the person is a candidate. 83

d. Candidates shall be entitled to and shall receive all
discounts that any other advertiser would receive. 84

While stations may not, of course, charge "premium" rates
to political candidates this requirement does not apply to charges
for political broadcasts by persons other than qualified candidates.
Thus, stations may adopt whatever rates they choose for broad-
casts by organizations or persons who are not candidates. 85

The rule is not intended to imply that all candidates must be
charged the same rate when they have made purchases falling into
different discount groupings but rather that the discount privileges,
if any, would apply equally to all candidates as well as to candi-
dates when compared with other advertisers.

If a candidate is himself a commercial advertiser or happens
to be supported by one and makes an arrangement so that he buys

83 11 RR 1501 (1954). In setting up its rules the Commission re-
jected as an "artificial test" a proposal to allow the national rate to
be charged candidates whose names appeared on ballots in more
than one county.

84 Adapted from rules promulgated in 11 RR 1501 (1954), op. cit.

85 FCC 62 - 1019, op. cit.
time in conjunction with an existing contract, thus securing a lower rate, the Commission has indicated that all candidates are entitled to take advantage of the reduced rate.

If a group of candidates pool their resources so as to purchase a block of time at discount any opponents of the candidates within the group are entitled to buy at the same rate since they are entitled to be treated equally with their individual opponents.

When a candidate is also a station owner he may purchase and pay for time under the same conditions and circumstances as if he had no financial interest in the station. The rate charged other candidates would be governed, of course, to some extent by the rate paid by the owner-candidate, if he paid a rate lower than that charged commercial advertisers. He could not charge higher rates. If the owner-candidate elected to utilize the time without paying then all other candidates for that office would be entitled to equal time without charge.

The presence or absence of an advertising agency in the candidate-station relationship does not affect charges. The fact

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86 11 RR 238, op. cit.
87 11 RR 1501 (1954), op. cit.
88 Letter to Charles W. Stratton as reported in FCC 58-936, op. cit.
that a station would receive 15 percent less, that being the normal agency fee, from time sales handled through the agency would not affect the charges made when no agency was used since those charges would normally result in a station receiving an additional 15 percent above the amount received when an agency handled the account.

A station may not require political candidates to provide bonds or insurance against possible legal action unless the station requires all other users of time to do the same. Stations may neither require nor permit candidates to waive their rights so as to permit censorship. 89

An interesting court decision involving payment for political broadcasts grew out of a Florida statute governing election to state offices which provided that no contribution or expenditure of money or other thing of value could be made in furtherance of a candidacy except through the campaign treasurer of the candidate and that no expenses might be incurred by a candidate or person acting in his behalf except upon written authorization of the campaign treasurer. The law was attacked in the state courts on grounds of its constitutionality. A state circuit court ruled the statute to be constitutional

89 11 RR 1501 (1954).
as applied to broadcasts of speeches or announcements advocating the candidacy of a particular individual. The court said that the right of freedom of speech and the press is limited as applied to radio when compared with newspapers but it said that the state legislature was justified in restricting the right of free speech to the extent that it did in order to preserve free elections.

The court pointed out that the law does not prevent anyone from making a speech advocating the candidacy of a candidate but it does require authorization and reporting as a contribution. Thus, it said, a radio broadcaster may not accept money in payment of political advertising unless authorized by the campaign treasurer and that an individual might not purchase time to broadcast views in furtherance of such a candidacy unless he had obtained the necessary authorization. A radio broadcaster, under the act, is not permitted to give time to a candidate unless such is given as a thing of value to the candidate and reported as such. 90

90 Smith vs. Ervin, 1 Fla. Supp. 202, 7 RR 2112.
4. Identification of Sponsorship

Section 315 of the Act makes no stipulation regarding disclosure of sponsorship. This is adequately covered by Section 317 which says:

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 and accepted by, the station so broadcasting, from any person at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person. 91

Commission rules covering interpretation of the above provision of the Act are more complex:

Sponsored programs, announcement. (a) In the case of each program for the broadcasting of which money, services, or other valuable consideration is either directly or indirectly paid or promised to, or charged or received by, any broadcast station, the station broadcasting such program shall make, or cause to be made, an appropriate announcement that the program is sponsored, paid for, or furnished, either in whole or in part. (b) In the case of any political program or program involving the discussion of public controversial issues for which any films, records, transcriptions, talent, scripts, or other material or services of any kind are furnished, either directly or indirectly, to a station as an inducement to the broadcasting of such program, an announcement shall be made both at the beginning and conclusion of such program on which such material or services are used that such films, records, transcriptions, talent services, scripts, or

91 48 Stat. 1064 (1934), op. cit.
other material or services have been furnished to such station in connection with the broadcasting of such program: Provided, however, That only one such announcement need be made in the case of any such program of 5 minutes duration or less, which announcement may be made either at the beginning or conclusion of the program. (c) The announcement required by this section shall fully and fairly disclose the true identity of the person or persons by whom or in whose behalf such payment is made or promised or from whom or in whose behalf such services or other valuable consideration is received, or by whom the material or services referred to in paragraph (b) of this section are furnished. Where an agent or other person contracts or otherwise makes arrangements with a station on behalf of another, and such fact is known to the station, the announcement shall disclose the identity of the person or persons in whose behalf such agent is acting instead of the name of such agent. (d) In the case of any program, other than a program advertising commercial products or services, which is sponsored, paid for or furnished, either in whole or in part, for which material or services referred to in paragraph (b) of this section are furnished by a corporation, committee, association or other unincorporated group, the announcement required by this section shall disclose the name of such corporation, committee, association or other unincorporated group. In each case the station shall require that a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association or other unincorporated group shall be made available for public inspection at one of the broadcast stations carrying the program. (e) In the case of programs advertising commercial products or services, an announcement stating the sponsor's corporate or trade name or the name of the sponsor's product, shall be deemed sufficient for the purposes of this section and only one announcement
need be made at any time during the course of the pro-

gram. Thus a need be made at any time during the course of the pro-

gram.

simply to announce that "This is a paid political broadcast." Rather
the announcement must state by whom the broadcast is sponsored.

The rule for such announcements extends to all programs broadcast,
including newscasts wherein a station may use free tapes or films
of legitimate news events.

The Commission's public notices dealing with political broad-
casting have not dealt with questions arising out of the requirement
for disclosure of true sponsorship. Such a question has arisen, how-
ever, and is of sufficient merit to be dealt with here.

In the case in question the Commission held that a licensee
must take all reasonable measures to ascertain the identity of per-
sons sponsoring paid broadcasts. This would include taking necessary
steps to determine the true identity of the persons directly or in-
directly supplying funds. According to the Commission what may be
a "reasonable" effort to determine the true source of funds will de-
pend upon the circumstances of each case. The fact that in particular

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(AM), 3.289 (FM), Section 3.654 (TV).

93 17 RR 556d (1958).
cases a station may be required to make a different type investigation to determine the facts relating to identity of sponsorship does not violate the "equal opportunities" provision of Section 315. The Commission also concluded that a station is not justified in adopting a general rule that it will not make any time available for political broadcasts because of the possible difficulties in determining sponsorship or because an independent investigation is necessary in a particular case.

In the case cited above a candidate for Congress in New Mexico, Larry Bynon, had delivered political speeches over radio station KOB in Albuquerque, and these had been the source of complaints to the Commission. Upon investigation the Commission ascertained that KOB had identified the speeches on the air as being sponsored by a newspaper which Bynon owned. It also determined that the newspaper did not have sufficient funds to make payment for the broadcasts and the station thereupon informed the Commission that Bynon had reported the funds had been donated to the newspaper by anonymous citizens. In a letter to KOB the Commission pointed out that if a candidate sought to purchase time at a cost which is not

94 3 RR 1820 (1946).
in proportion to his ability to pay the licensee should make an investigation to determine the true source of funds.

Upon receipt of the letter KOB informed the Commission that it would cease to carry all political broadcasts until clarification of the issue of true identity of sponsorship could be cleared up to its satisfaction, whereupon the Commission pointed out that such action would be inconsistent with the public interest.

The overall topic of the responsibility of licensees to carry political broadcasting will be dealt with presently in this study in greater detail.
5. **Record Keeping on the Part of the Licensee**

There is nothing in Section 315 of the Act nor in the rules and regulations of the Commission which would require the licensee to keep a script or a recording of a political speech. The fact is, however, that many licensees, as a matter of policy do require a script, in advance, of remarks to be made by candidates. As noted earlier the Commission has indicated that requirement of an advance script is permissible, provided, of course the practice is uniformly applied to all candidates for the same office. Many licensees also make tape recordings of remarks by candidates, primarily as a prudent precaution should the station subsequently be drawn into a discussion regarding what was actually broadcast.

As for the actual legal requirements for political broadcast records the licensee has two responsibilities: (a) maintenance of a record of requests for time by and on behalf of candidates and the disposition of such requests and (b) maintenance of the station operating log indicating sponsorship and that sponsorship was announced.

In maintaining records of requests for time the rules provide

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95 F.C.C. Rules and Regulations, op. cit., sections 3.120d, 3.111, 3.281 and 3.663.
for the keeping of the record, making such record available to
the public, and including in it the nature of the request, the dis-
position of the request, and the charges made if the request is
granted. Such a record must be retained for a period of two years.

Log entries must reflect the name and political affiliation
of the speaker and must show that announcement has been made re-
garding sponsorship. 96 97 Appearance by candidates on programs
exempt under the 1959 amendment would require no handling that
differed from any program presented by the station which was non-
political in nature. Ordinary log entries would suffice in this
latter instance.

None of the interpretive questions and answers dealing with
political broadcasting issued by the Commission have dealt with
the matter of record keeping. The attention of the licensees to the
basic requirements enumerated above is called in each of the three
notices but apparently this is one area wherein the Commission
has not been asked to make an interpretive ruling.

96 Ibid.
97 Ibid.
6. Censorship

Section 315 of the Act clearly provides that there shall be no censorship on the part of the licensee as regards appearances by candidates using the facilities of the station. It is abundantly clear from a study of hearing transcripts that members of the Congress felt very strongly about such a provision prior to the passage of the Radio Act of 1927 and the Communications Act of 1934.

Since the section of the Act establishing the "no censorship" provision is so succinct the rules of the Commission virtually add nothing in terms of interpretation. A portion of a single sentence is all that is used: "... Provided, That such licensee shall have no power of censorship over the material broadcast by any such candidate." 98

Certain basic interpretations have been made by the Commission, however, which bear noting here:

1. The provision is absolute. A station may not delete material in a broadcast under Section 315. 99

2. The immunity to censorship, however, applies only to

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98 F.C.C. Rules and Regulations, op. cit., section 3.120, subsection (b).

99 12 FCC 1069. See also 7 RR 769.
a candidate and not to one speaking in his behalf. 100

3. Stations are absolved of liability for defamatory remarks made by candidates when such remarks are made utilizing the facilities of the station. 101

4. The immunity to censorship does not carry over where a candidate uses private citizens on his program under Section 315 and a station may censor any remarks made by such third parties. 102

5. Stations may require both advance scripts and a recording, both at the expense of the candidate, if the requirement is applied equally to all applicable candidates under Section 315. Subsequent ownership of the recording is a matter outside the discretion of the Commission. 103

Some of the above interpretations bear additional discussion.

While the provision of the law, and the Commission's inter-

100Felix V. Westinghouse Radio Stations 186 F. 2d 1, cert. den. 341 US 909.


10311 RR 236.
Interpretations of its rules make the no-censorship provision appear to be absolute, the Commission has, from time to time, published interpretations which would indicate that the "no-censorship" provision applies to the political elements of the speech or comment and does not prohibit deletion of materials the broadcasting of which would violate provisions of the Communications Act or other Federal law.

In the Port Huron decision the Commission clearly affirmed the "no censorship" provision but it also declared that the licensee was not without power to prevent the violation of other laws.

The Port Huron case arose when one Carl E. Muir, a candidate for the city council in Port Huron, Michigan contracted with radio station WHLS for an appearance in behalf of his candidacy. When it became known that Muir was planning to make strong attacks against other city council members the station refused to broadcast the speech. Following Muir's complaint to the Commission a hearing was held in November 1945. No decision was actually made in the case until June 1948 when the license of WHLS was up for renewal.

\[104\]

12 FCC 1069, op. cit.
In its decision the Commission indicated that the censorship as practiced by WHLS in this case was illegal. It pointed out that where a station broadcasts one speech by a candidate for political office which contained attacks on other political figures in the community who were not candidates at the time, its subsequent decision, after the candidate (in this case Muir) had submitted a script for another broadcast which contained additional attacks on the same persons, not to permit further broadcasts was censorship and was illegal.

Licensees are free to refuse all broadcasts by candidates for a particular office but once they have exercised their discretion to carry such programs they may not recind such action, for to so would be the application of censorship.

The Commission said that

... if licensees are going to take it upon themselves to censor ... they, in effect, set themselves up as sole arbiters of what is true and what is false, what is in fact libel and what is not, an exercise of power which may readily be influenced by their own sympathies and allegiances. ... The assumption of a right to censor 'possibly libelous' material or statements which 'might subject the station to a suit' would give the station a positive weapon of discrimination between contesting candidates which is precisely the opposite of what Congress intended to do. 105

105 Ibid.
The Commission, however, made the censorship provision a little less than absolute in this decision. They indicated their belief that the censorship provision did not prevent elimination of profanity, materials which were clearly obscene, and materials which to broadcast them, would contradict existing federal statutes.

The decision said further:

The censorship prohibited under Section 315 includes the refusal to broadcast a speech by a candidate because of the allegedly libelous or slanderous content of the speech. Nothing in this opinion is intended to indicate that the licensee is necessarily without power to prevent materials in violation of the Communications Act or any other Federal law on broadcasting. 106

The Port Huron case was only one of many which highlighted a problem of great significance to the broadcasters of the country. Under the "no censorship" provision of Section 315 broadcasters faced a dilemma; if they permitted political broadcasting, but could not censor to prohibit the broadcasting of defamatory material, they opened the station to potentially difficult and possibly expensive litigation regarding defamation. (Plaintiffs often chose to bring suit against broadcast stations since stations were more often more solvent than were candidates who had uttered the remarks.) On the

106 Ibid.
one hand stations were required to carry some political broadcasting, had to carry all broadcasting by candidates for the same office if one such candidate was permitted to air his remarks, but could not censor any, and were held accountable in courts of law for what was said over their facilities.

Following the issuance of the Port Huron decision a Federal court in Texas indicated it felt some doubt as to whether the Commission actually intended its decision in the Port Huron case to be binding on stations. The court suggested that the Commission may have been using this method to urge Congress to pass clarifying legislation which would remove stations from the dilemma of the "no censorship" provision.

In 1950 station WDSU in New Orleans, in order to protect itself, began requiring the submission of advance scripts from candidates who sought to use WDSU facilities. The purpose was to eliminate potentially defamatory materials from political broadcasts.

Complaints were filed with the FCC and in a subsequent ruling, which came in 1951 at the time of the station's license renewal, the Commission said that while it believed the station had acted in good faith it nonetheless would not condone any such arrangement in the future wherein the station required a change in the content of a
political broadcast as a means of getting access to the station's facilities. The Commission warned that in the future stations must abide strictly by the wording of the provisions of the Act itself. 107

The entire history of the question of the rights of the broadcast station in the situation under discussion has been clouded to say the least. State courts have issued contrary decisions. Federal courts have varied in their interpretations. It was not until the definitive decision in the Farmers Union case in 1958 that the issue was resolved.

Historically, a 1932 decision first tested the forerunner of Section 315. Section 18 of the Radio Act of 1927 prohibited censorship of material broadcast over a radio station in the course of a political speech. In Sorenson vs. Wood 109 the court established dicta that broadcast defamation is libel. Here the court noted that the law prevented the licensee from censoring words as to their

107 7 RR 769 (1951).
108 Farmers Educational and Cooperative Union of America vs WDAY, 79 S. Ct. 1302, op. cit.
109 Sorenson vs. Wood, 123 Neb. 348, 243 NW 82, 82 ALR 1098 (1932), 290 US 599.
political and partisan trend and did not grant any immunity to the
station from the consequences of defamatory statements by candidates.

In other cases courts held that stations were not responsible
for such defamatory statements. In 1951 a California court held that
where a station is required to offer time but cannot censor the sta-
tion is not liable for damages.

In Tennessee a state court held that a broadcast licensee was
not liable for defamatory remarks made by a candidate for public
office during a political broadcast.

A New Hampshire court ruled that Section 315 did not prohibit
the censorship of libelous material in order to protect the station
against liability. Only the censorship of words as to their political
or partisan trend is prohibited the court said.

Some states passed defamation statutes which clearly relieved
stations of any liability insofar as political broadcasts by or on
behalf of a political candidate were concerned. Georgia was among
these. The Georgia statute, which has not been tested in the ap-

110 Yates vs. Associated Broadcasters Inc., 7 RR 2088, op. cit.
pellate courts of the state during the 15 years of its existence, reads, in part, as follows:

105-712 **Radio Broadcasting Stations; Liability for Defamatory Statements.** The owner, licensee, or operator of a visual or sound radio broadcasting station or network of stations, and the agents or employees of any such owner, licensee or operator, shall not be liable for any damages for any defamatory statement published or uttered in or as part of a visual or sound radio broadcast, by one other than such owner, licensee or operator, or agent or employee thereof, unless it shall be alleged and proved by the complaining party, that such owner, licensee, operator or agent thereof has failed to exercise due care to prevent the publication or utterance of such statement in such broadcast.

105-713 **Same -- Liability for Political Broadcasts.** In no event, however, shall any owner, licensee or operator, or the agents or employees of such owner, licensee or operator such station or network of stations be held liable for any damages for any defamatory statement uttered over the facilities of such station or network by or on behalf of any candidate for public office. 113

There is some feeling that if the Georgia section were to be tested in the courts it would be found to be unconstitutional on the grounds that it denies a plaintiff who has been wronged due process of the law. The statute prohibits suits even in cases where the licensee could censor political broadcasts, i.e., those made on behalf of the candidate by someone other than the candidate. This ability to

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censor, coupled with the absence of such, would, in effect, make
the licensee a party to the defamation.

The Farmers Union case, previously referred to as establish­
ing dicta in the case of broadcast defamation by a candidate arose
in the state of North Dakota. The Supreme Court of that state found
Section 315 to be constitutional and upheld the "no censorship" pro­
vision which had been attacked by the defendant WDAY. The court
added, however,

... that since power of censorship of political broad­
casts is prohibited it must follow as a corollary that the
mandate prohibiting censorship includes the privilege of
immunity from liability for defamatory statements
made by the speakers. 114

Continuing, the court said it could not believe that it was the
intent of the Congress "to compel a station to broadcast libelous
statements and at the same time subject it to the risk of defending
actions for damages." 115

The case was subsequently appealed to the U. S. Supreme

114 Farmers Educational and Cooperative Union of America vs.
WDAY, 79 S. Ct. 1302, op. cit.

115 Ibid.
Court which affirmed the state court's decision, holding that a station may not censor defamatory statements made by legally qualified candidates and that the licensee is immune from any liability for such statements. 116

Thus, any question of either the right of the candidate to broadcast his remarks uncensored and the immunity of the station to litigation as a result is now settled. The problem regarding obscene material or material which contravenes another Federal law remains largely unanswered.

116Ibid.
7. **Obligation of the station to Provide Time for Candidates and Political Parties Including the Obligation to Carry Political Broadcasting**

In assessing the obligations of stations to provide time for candidates as well as political parties the rules and regulations of the Commission are very basic but become rather complex and comprehensive upon careful examination. Under the title "General Requirements" the Commission says:

No station licensee is required to permit the use of its facilities by any legally qualified candidate for public office, but if any licensee shall permit any such candidate to use its facilities it shall afford equal opportunities to all other such candidates for that office to use such facilities. 117

Commission interpretation of this seemingly simple requirement might well be grouped into five basic headings:

1. Appearance by a candidate on a program constitutes "use" of the facilities (except where otherwise provided in the case of exempt appearances) and entitles opposing candidates for the same office to equal time. The occasion of his appearance, unless otherwise exempted by other provisions of Section 315, his practical chances of winning,

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117 *F.C.C. Rules and Regulation, op. cit., Section 3.120, subsection (b).*
and the nature of the subject about which he speaks is of no importance in determining "use" of the station's facilities.

2. A candidate may not claim "equal opportunities" on the basis of use of facilities by a person who is not a bona fide candidate.

3. The rights conferred by Section 315 apply only to qualified candidates themselves; not to political parties or individuals speaking in behalf of candidates.

4. There is no requirement for "equal opportunities" for discussion of controversial public issues.

5. A policy of not carrying any political broadcasts, for whatever reason, is not considered operation in the public interest.

A discussion of each of the above five basic facets of licensee responsibility is in order.

1. Use of Facilities

It would seem reasonable to conclude that appearance by a candidate on a program would constitute "use," unless his appearance was "exempt" under other provisions. A number of questions, however, have arisen before the Commission in this regard and should be dealt with here.
In a letter to WMCA, Inc. dated May 15, 1952 the Commission affirmed that Section 315 did not distinguish between the uses made of broadcast time by a candidate and that the licensee may not make judgments for equal use based upon his (the licensee's) evaluation of whether or not the original use was of material aid to the candidacy of the individual. Likewise if a station presents a candidate in a public service type program, not at all related to his candidacy, and the program is not otherwise exempt, the requirement for equal opportunity for use will apply insofar as all other candidates for that same office are concerned. The fact that the program was a non-commercial public service does not alter the requirement.

The same would apply to non-commercial educational stations where a candidate delivers a lecture or appears, the Commission maintaining that "the use to which the candidate puts the time is immaterial."

118 7 RR 1132 (1952).


120 Letter to WFUV-FM, as reported in FCC 62-1019, ibid.
Station owners, advertisers, or employees making appearances over the station after having qualified as candidates are considered to be "making use" of the facilities and Section 121 315 would apply.

An issue in regard to advertisers making appearances was raised by station KTTV since an automobile dealer, an announced candidate, was acting as master of ceremonies on a television program sponsored by his company and was making commercial announcements on another program similarly sponsored. The Commission told KTTV, in effect, that this constituted "use" and that the station must make its facilities available to all other legally qualified candidates on the same basis. The exact method, the commission said, of allotting comparable time to other candidates in a situation such as this is a matter of licensee responsibility but the time segments must be substantially equal in duration, quality, and desirability of hours.

121 14 RR 1227 (1958). See also Brigham vs. FCC, 276 F. 2d 828 (CA 5), 1960 and 14 RR 1226b, op. cit.

122 Ibid.
In a similar case, involving one Kenneth Spengler, the facts show that his name was not mentioned over the air but only that his voice was heard as an announcer. Nonetheless the Commission held that opposing candidates were entitled to equal treatment.

2. Exempt Appearances

Certain appearances, as earlier noted, have been determined to be exempt under provisions of the latest amendment to Section 315. Drawing the line between "exempt" and "non-exempt" appearances has been a difficult one for the Commission. Such was the case with KWXT and use of its facilities by its weathercaster. The Commission ruled that such appearance did not constitute "use" and the appearances were exempt. On appeal the ruling was later affirmed by the Fifth Circuit Court of Appeals which held that the weathercaster's appearances did not involve anything but a bona fide effort to present news. Since the issue revolved around presentation

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123 14 AR 1226b, op. cit.

124 276 F. 2d 828 (CA 5), op. cit.
of weather -- and not news -- it presented a unique problem. The entire issue of exempt appearances in news programs will be dealt with presently.

3. Not Applicable to Political Parties

The Commission has been called upon to clarify any application of section 315 to political parties. In a letter to the National Laugh Party, dated May 8, 1957, the Commission indicated that political parties do not qualify as "candidates" and thus are not covered under the equal time provisions of Section 315.

4. Controversial Public Issues

Likewise the provisions of Section 315 do not apply to controversial public issues, even when those issues are political issues. It is noted that the Congress, in its 1959 amendment exempting news programs, indicated that its action was not to be construed "as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries and on-the-spot coverage of news events, from the obligation imposed upon them under this act to operate in the public interest and to afford reasonable views on

125 FCC 62 - 1019, op. cit.
issues of public importance." 126 Earlier, in its Report on Editorializing By Broadcast Licensees 127 the Commission had reached basically the same conclusion and in a subsequent report to Congress had stated that it viewed the Congressional action as an affirmation of its earlier conclusion. 128

Thus it would be fair to say that licensees have continuing obligations for the discussion of controversial public issues, including political issues, but such obligation does not arise under the requirements of Section 315.

5. Policy of Carrying no Political Broadcasting

As noted earlier both the statute itself and the rules of the Commission contain the affirmation that "No station licensee is required to permit the use of its facilities by any legally qualified candidate for public office...." In its interpretations of this provision, however, the Commission has clearly indicated that a policy of not carrying political broadcasting is not operation in the public interest. In its "Obligation of Licensees To Carry Political Broadcasting" 129 the

126 73 Stat. 557, op. cit.
127 13 FCC 1246, 1 RR 91, op. cit.
128 FCC 62 - 1019, op. cit.
Commission said it can properly consider, as a facet of public interest, whether a broadcasting licensee has met the needs and interests of the community with respect to political broadcasts. It indicated that it is the licensee's responsibility to make good faith judgments as to what those needs are and how they can best be met, and specifically, whether any particular race warrants coverage in view of other pertinent program considerations.

One of its earliest pronouncements on this policy was that contained in a letter to KOB, Albuquerque, New Mexico. KOB had indicated that its difficulties in determining the true source of funds used by a political candidate for sponsorship of programs over its facilities had led it to establish a policy of carrying no political broadcasting. To this the Commission said that "such a refusal" was "inconsistent with the concept of public interest established... as the criterion of radio regulation."\(^{130}\)

Similarly, the Supreme Court of the United States arrived at virtually the same conclusion. In the WDAY case,\(^{131}\) in which it immunized licensees against certain defamation suits, the court heard

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\(^{130}\) RR 1820 (1946), \textit{op. cit.}

\(^{131}\) 360 US 525, \textit{op. cit.}
an argument that a licensee could protect himself against suits simply by exercising his right under Section 315 not to allow the use of his facilities by any candidate. In replying to this contention the Court said:

Petitioners reliance on the station's freedom from obligation to allow the use of its station by any such candidate seems equally misplaced. While denying all candidates use of stations would protect broadcasters from liability it would also effectively withdraw political discussion from the air. Instead the thrust of Section 315 is to facilitate political debate over radio and television. Recognizing this, the Communications Commission considers the carrying of political broadcasts a public service criterion to be considered both in license renewal proceedings, and in comparative contests for a radio or television construction permit... Certainly Congress knew the obvious -- that if a licensee could protect himself from liability in no other way but refusing to broadcast candidates' speeches, the necessary effect would be to hamper the congressional plan to develop broadcasting as a political outlet, rather than to foster it. \(^{132}\)

If the court had believed that the Commission's authority to require the carrying of political broadcasts was doubtful it could hardly have reached the conclusion which it did. Even the four

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\(^{132}\) 360 US 525, _op. cit._, at 534-5. The Court also cited City of Jacksonville, 12 RR 113; Loyola University, 12 RR 1017; 11 FCC 898; and 13 FCC 1246.
justices dissenting -- Frankfurter (who wrote the dissent), Harlan, Whittaker, and Stewart -- did not seize upon this argument and likely would have had they considered that any doubt existed regarding abilities of stations to establish policies of carrying no political broadcasting.
8. **Exemption of News Type Programs**

As noted earlier, the Congress in 1959, amended Section 315 so as to exempt appearances by legally qualified candidates on certain news-type programs from the "equal opportunities" provision.

In its interpretation of the amendment the Commission said (1) Section 315, as amended, failed to give the Commission clear guides and absolute standards and that it (the Commission) must make its rulings on a case-by-case basis; and (2) if the 1959 exemptions are to prove workable the Commission must be given authority to use its own discretion.

Since that time the Commission has used its discretion in a number of instances, the earliest of which was the so-called "weather-cast ruling" involving KW TX, Waco, Texas. In this instance the Commission told KW TX (the largest stockholder in which is Mrs. Lyndon B. Johnson) that its use of one Jack Woods, a full time em-

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133 73 Stat. 557, op. cit.


135 Hearings Before The Freedom of Communications Subcommittee, S.R 994, Pt. 5, pg. 9 - 14, 227 - 244.
ployee, and a candidate for the state legislature, as a weather-
caster did not constitute "use" of facilities and his appearances
were exempt under the 1959 amendment. The plaintiff, one William
H. Bingham, himself a candidate for the state legislature, had
sought free time, been denied, and appealed to the Commission. In
the benchmark decision, which was 5 - 1 - 1 (one abstention) the
Commission cited the following as its basis:

1. The weather information is a regular portion of a regularly
scheduled newscast, a program type specifically exempted by the
amendment.

2. The weatherman in question was a full time employee of
the station and had been since 1957, long before he became a candi-
date.

3. There was no evidence of subterfuge between Woods and
KW TX.

The decision of the Commission was appealed by the plain-
tiff but the appeals court found for the station defendant. 136

Subsequently, the Commission issued the following interpretation

136 19 RR 2068 (1960).
as a part of its 1962 summation of "Use of Broadcast Facilities By Candidates For Public Office":

In determining whether a particular program is within the scope of one of these specified news-type programs, the basic question is whether the program meets the standard of 'bona fides'. To establish whether such a program is in fact a 'bona fide' program, the following considerations, among others, may be pertinent: (1) the format, nature and content of the programs; (2) whether the format, nature and content of the programs has changed since its inception, and if so, in what respects; (3) who initiates the programs; (4) who purchases and controls the programs; (5) when the program was initiated; (6) is the program regularly scheduled; and (7) if the program is regularly scheduled, specify the time and day of the week when it is broadcast. Questions have also been presented by the appearances of station employees who are also legally qualified candidates. In such cases, in addition to the above, the following considerations, among others, may be pertinent to a determination of the applicability of Sec. 315: (1) What is the dominant function of the employee at the station; (2) What is the content of the program and who prepares the program; (3) to what extent is the employee personally identified on the program? 137

The Commission followed with specific exempt and non-exempt appearances which are summarized herewith:

1. Inclusion of non-exempt materials, such as a weekly Congressional report, as a part of an exempt program, such as a newscast

is inconsistent with the legislative intent and recognition of such an exemption "would subordinate substance to form." 138

2. Inclusion of film clips supplied by a candidate in a bona fide newscast would constitute use and such appearance would not be exempt. 139

3. If content and format of a program are determined by a candidate, even though the program may have been broadcast regularly prior to candidacy, the appearance would not be exempt, since to exempt such would be contrary to the intent of the Act. 140

4. Where candidates appeared on programs, the content of which had been determined by the station, the format of which was a news interview type, and the appearance was based on a determination of "newsworthiness" and where the program had been regularly scheduled for some time prior to the election, such appearances are exempt. 141

138 23 RR 178.

139 Letter to Congressman Miller, dated June 15, 1962, as reported in FCC 62-1019, op. cit.

140 Letter to WCLG, dated April 27, 1960, as reported in FCC 62-1019, op. cit.

5. In border-line cases of interview type programs with candidates, particularly those cases wherein complete and total control of the questions asked, format adopted, and supervision and control of the production is not in the hands of the stations the Commission has ruled that the exemption is not valid and does not apply. (The Commission contrasted a "Governor's Radio Press Conference" which had been aired for two years and in which questions are not screened or edited in the governor's office but are handled entirely by the station and a "Governor's Forum" program wherein certain of the questions were selected and edited by the governor's office. The conclusion reached was that the former was exempt, the latter non-exempt.)

In summation it would appear that the Commission has attempted to base "exemption" rulings on whether the program was a news-type program, whether elements of the program were under the control of the candidate, whether the program may have been conceived or designed to further a particular candidacy, and whether, in essence, the program was a bona fide representation of the types indicated in the amendment.

142 Letter to Gov. Michael DiSalle of Ohio, as reported in FCC 62-1019, ibid.
9. Other Interpretations

Certain interpretive rulings by the Commission do not appear to fall into any specific categories. One of these is the so-called "burden of proof" rule which was put into the Commission rules and regulations in 1959:

It reads as follows:

**Burden of Proof:** 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.\(^{143}\)

The Commission has not, as of the present writing, publicly interpreted the above subsection. Generally speaking, the change simply shifts the burden from the station or licensee to the protestor insofar as proving bona fide candidacy of parties concerned.

In 1962 the Commission was called upon to rule whether the use of taped excerpts of the voice of a candidate, made off the air during earlier broadcasts, might be incorporated into new tapes, together with comment by his opponent, and broadcast without consent of the first candidate. Plaintiff argued that Section 325 of the Act re-

\(^{143}\) FCC 59-757 of July 31, 1959, codified as subsection (f) of sections 3.120 (AM), 3.290 (FM), and 3.657 (TV).
quired permission prior to any re-broadcast of material previously broadcast. The Commission was unable to resolve the question.

Two commissioners voted that consent was required, two voted that consent was not required, three abstained, and no ruling was issued. 144

It could conceivably be argued that such a procedure violated the censorship provision of Section 315, through the elimination of certain portions of the previous appearance and selection of others for inclusion in the re-broadcast. It is true that in such case the censorship would not be made by the station and Section 315 prohibits censorship only on the part of the station as licensee. The station would actually be powerless to prevent such since it could not censor the second candidate who had put together the tape of the first candidate. The station might deny the candidate the right to broadcast the tapes on the ground that this was not an appearance by the candidate himself but it also follows that the station has no control over how the second candidate would utilize the time since the first candidate had already appeared.

144 24 RR 521 (1962).
This question could possibly have been raised in a broadcast over a number of Ohio stations by Republican senatorial candidate John M. Briley. Mr. Briley had inserted taped comments into his own program, the comments having been made on the air in an earlier program broadcast by his opponent on a WOSU, Columbus, program.

With the advent of small, relatively inexpensive, and simple to operate television tape recorders it seems quite likely that the number of instances where one candidate will tape record portions of his opponents appearance and then utilize these on his own television program to rebut statements and to present counter-arguments is bound to increase. The legal ramifications involved are considerable and the Commission will quite likely be forced to rule interpretively on this matter in the near future.

In 1963 the Commission ruled that no question under Section 315 was raised by the broadcast of spot announcements which solicited contributions for a political party, with no appearance in the spot announcement by a candidate. Under the fairness doctrine, however, licensees would have to accord the candidates of the major political
parties roughly the same treatment with respect to such announce-
ments. This does not mean, according to the Commission, that
minority party candidates would be entitled to an equal number of
similar announcements, but only that the good faith judgment of the
licensee would have to prevail here. Stations should not reject
carrying such announcements merely on the grounds that questions
under the fairness doctrine might be raised. 146

Might a candidate, who alleged violation of Section 315, sue a
licensee and recover damages for injury sustained allegedly by such
violation. No, according to a ruling of the Court of Appeals in a
case involving WBBM (C.B.S., Inc.) and Lar Daly the perennial
Chicago candidate. Daly sought to recover damages from CBS for
allegedly denying him time to which he was otherwise entitled. The
Court of Appeals ruled that nothing in the Communications Act gives
an individual a cause of action to recover damages for an alleged vio-
lation of Section 315. It added that, even if such a right existed,
Daly's suit was barred by limitations. 147

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Daly vs. CBS, Inc., 24 RR 2027 (CA 7th, 1962).
Summary

In summation it would appear that the multiplicity of rulings by the Commission, each encompassing the diverse facts and circumstances of a particular case, would make broad general conclusions impossible. Yet, in a sense, the Commission has sought to lay down some fairly broad general conclusions in its question-and-answer "Use of Broadcast Facilities By Candidates For Public Office". It should be noted that many broadcasters and communications attorneys have denounced this effort and advanced the thesis that such publication has only tended to confuse the issues and further cloud the best procedures for licensees to follow.

The truth probably lies somewhere between these points of view. As a refresher and a basic reference to further more detailed information the publication serves a useful purpose. As an indicator of the most recent rulings the publication serves a useful purpose. As a definitive answer to Section 315 problems, however, it is far from useful. In actual practice the licensee is often called upon to make a determination which does not "fit" into any of the situations enumerated.

A further point is worth noting. The interpretations and rulings of the Commission change not simply with changes in the law but with
changes in the Commission itself. What might be considered dicta today is not necessarily dicta tomorrow and the Commission does not seem as addicted to the principle of stare decisis as some of the courts of the land. The only certainty, it would appear, would be to eliminate Section 315 interpretation problems and conflicting opinions would be abolition of Section 315 by the Congress.

Since this seems quite unlikely it remains for the individual licensee and his attorney to attempt to fathom the mysteries in a particular instance by references to past Commission actions, and failing that, to seek the answer anew from the Commission itself in one of the forms in which such answers are generally made.
CHAPTER V

POLITICAL BROADCASTING, EDITORIALIZING, AND
THE FAIRNESS DOCTRINE

Section 315 of the Communications Act makes no provision for "equal time" or even "equal opportunity" for discussion of political candidacy or political questions by persons other than bona fide candidates for the same public office. The 1959 amendment which exempted certain news-type programs did provide that broadcasters should "afford reasonable opportunity for the discussion of conflicting views on issues of public importance."\(^1\)

Just precisely what constitutes "reasonable opportunity", what an "issue of public importance" is and how a station may accommodate "conflicting views" is a complex and often frustrating problem for the

\(^1\) Public Law No. 86 - 274 (73 Stat. 557), op. cit.

\(^2\) Ibid.

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broadcaster. The problem, in itself, is not new, but the complexities which have grown up and out of Commission rulings makes the entire relationship of political broadcasting, editorializing and the fairness doctrine one that demands close scrutiny.

John E. McMillin, writing on the history of the broadcast editorial concept, characterizes the growth of the concept in four phases, or periods:

1. The Early Radio Period (1921 - 1941).
4. The Period of Executive Confusion (1962 to present).

In order to grasp the intertwined relationships existing between political broadcasting, editorializing, and the fairness doctrine one must examine the historical background of the broadcast editorial concept. The historical periods set forth by Mr. McMillin seem to provide an adequate and suitable grouping of historical events which are necessary to such understanding.

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The Early Radio Period
1921 - 1941

During debate on HR 9971 it became clear that there was genuine Congressional concern regarding the use of radio for the furthering of political objectives of broadcasters or others in whom broadcasters had an interest. A study of the transcript shows that Senators Dill and Fess, among others, debated the issue of whether non-political appearances by a candidate were to be covered in the section dealing with political broadcasting and also whether or not it would be wise to include provisions for equal treatment of all controversial public issues. One would conclude that the "equal treatment" herein referred to was a mathematical equality.

Senator Howell of Nebraska argued for inclusion of such a provision, saying:

If any public question is to be discussed over the radio, if the affirmative is to be offered, the negative should be allowed upon request also, or neither the affirmative or the negative should be presented. 6

4 HR 9971, (69th Congress, 1st Session, 1926). Together with the Senate amendments this bill became the basis for the Radio Act of 1927.

5 Congressional Record (Vol. 67, June 30, 1926), 12503.

6 Ibid.
Despite the concern of certain members of the Congress, however, no controversial issues amendment was added and when the Radio Act of 1927, as it was called, became law on February 23, 1927 the political broadcasting section made provision only for equal opportunity for candidates themselves and not for persons speaking for them or in their behalf.\(^7\)

That the matter of controversial issues and broadcasting had not been settled was evident some five years later when HR 7716 was debated by the Congress.\(^8\) This bill contained a provision which would have broadened the provisions of the political section (section 18) of the Radio Act of 1927. It would have required broadcasters to grant "equal opportunities" not only for candidates for public office but also for persons using a station in support of or in opposition to a candidate for public office" ... or in the presentation of views on a public question to be voted on at an election." The section would also have provided that:

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.\(^9\)

\(^{7}\)44 Stat. L. 1166, *op. cit.*, Section 18.

\(^{8}\)HR 7716 (72nd Congress, 2nd Sess., 1933), Section 14.

\(^{9}\)Ibid. See also HR Report No. 2106, 72nd Congress, 2nd Sess., pg. 4.
Senator Dill raised the question of whether such a legislative provision was even necessary, saying that under the original Radio Act of 1927 the Federal Radio Commission was empowered to promulgate regulations which would require such equal opportunity with regard to public questions.  

The bill, HR 7716, was passed by both Houses of Congress but President Hoover, through a pocket veto, permitted the bill to die. Subsequently S. 2190, which contained virtually identical provisions, including the equal opportunities section quoted above, became the basis for the Communications Act of 1934. With the passage of the Act of 1934 broadcasters had both Section 315 and the "equal opportunity" provision to consider when dealing with candidates and issues. Such a dual responsibility has served as the basis of much of the confusion and misunderstanding surrounding the area of political broadcasting, editorializing, and the fairness doctrine.

In considering the period from 1921 to 1941 one should not overlook the national climate which prevailed when these concepts toward political broadcasting and editorializing were being developed and adopted. As McMillin says, in speaking of this period:

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10See Hearings Before the Committee on Interstate Commerce, U.S. Senate, 71st Congress, 2nd. Sess., on S. 6, pg. 1616.
At that time it seemed to legislators that the chief problem in regulating broadcasting was to protect the public against the individual broadcaster, that essentially the public interest could best be served by denying the interest of the individual. 11

It should also be noted that during this period there was little interest on the part of the broadcasters in editorializing. Broadcasters looked upon themselves more as entertainers rather than shapers of opinion. McMillin points to two other factors which might account for the indifference and coolness toward editorializing during this period. 12

1. The emergence of a large number of well-known commentators whose broadcasts reflected strong personal viewpoints on current subjects. While most of these did not necessarily speak for the stations which carried their broadcasts nor even for the networks which supported them, they none-the-less gave the audience a variety of essentially editorial opinions.

2. The competitive position of the broadcasting station with regard to the newspaper may have caused the broadcaster to utilize the sales pitch that radio was unbiased, presenting only the facts, while

11 New Voices In A Democracy, op. cit., 4.

12 Ibid.
the newspapers were biased, partial and often unreliable in their editorial approaches. Whether such an attitude of aloofness from the problems and controversies of the period actually did result in a sales assist is, it would seem, debatable.

Toward the end of the early radio period under consideration the Commission published a listing of some fourteen types of program materials or program practices which it regarded as "objectionable." Included in the list was "refusal to give equal rights to both sides in controversial discussions." While the Commission later insisted that the items listed were not official prohibitions they did indicate that consideration of them would be made in passing on license renewals. 13

The Mayflower Period
1941 - 1949

In 1941 the Commission was considering the application for renewal of the license of station WAAB, Boston, Massachusetts, along with a competing application for the frequency WAAB occupied. The Mayflower Broadcasting Company was the competing applicant.

13 Variety, March 8, 1939, p. 40.
Mayflower subsequently was denied the grant on grounds of not being financially qualified.

In considering the renewal of WAAB, however, the Commission noted that during 1937 and 1938 it had been the policy of the station to broadcast editorials during the election of various candidates for public office or supporting one side or another of controversial public issues. No effort was made to be impartial or objective, according to the Commission, but subsequent to hearing the Commission noted that the practice had ceased.

In its decision, following the hearing, the Commission said, in part:

Radio can serve as an instrument of democracy only when devoted to the communication of information and the exchange of ideas fairly and objectively presented. A truly free radio cannot be used to advocate the causes of the licensee. It cannot be used to support the candidacies of his friends. It cannot be devoted to the support of principles he happens to regard most favorable. In brief, the broadcaster cannot be an advocate.\(^1\)

From the adoption of this policy by the Commission in 1941 until June 1949 when the Commission, following a hearing on its own

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\(^{1}\) In Re the Yankee Network, Inc., 8 FCC 333 (1941).\\n
\(^{15}\) Ibid.
motion, issued its Report On Editorializing By Broadcasters the broadcasters of the country broadcast no editorials. There is no evidence that the "no editorializing" policy was ever challenged in the courts by any holder of a broadcast license. 17

The Reversal And Development Period

1949 - 1962

On September 5, 1947, on its own motion, the Commission ordered hearings on the subject of editorializing by broadcast licensees, "because," as the Commission said, "of our belief that further clarification of the Commissioner's position with respect to the obligations of broadcast licensees in the field of broadcasts of news, commentary and opinion was advisable." 18

Following eight days of hearings, which involved testimony from some 49 witnesses representing the broadcasting industry and various interested organizations and members of the public, and

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16 In the Matter of Editorializing By Broadcast Licensees, F.C.C. Docket 8616, 13 FCC 1246, 1 RR 91 (1949).

17 McMillin, op. cit., pg. 5.

18 Editorializing By Broadcast Licensees, op. cit.
written statements by 21 other persons, the Commission concluded that expression of editorial opinion by broadcast licensees within reasonable limits and subject to the general requirements of fairness was not contrary to the public interest. The essence of the fairness requirement was that controversial issues must be treated in a balanced fashion and that a broadcaster had an affirmative responsibility to aid and encourage the airing of opposing viewpoints.

In its majority report the Commission made a number of points which bear noting here:

1. Individual licensees have the responsibility for determining the specific program material to be broadcast over their station.

2. The choice of such material must be exercised in a manner which is consistent with the basic policy of the Congress that radio be maintained as a medium of free speech for the general public as a whole rather than as an outlet for the purely personal or private interests of the licensee.

3. Licensees, if they are to operate in the public interest, must devote a reasonable percentage of their broadcasting time to the dis-

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19 Ibid.

20 Ibid.
cussion of public issues, with the programs so designed that the public has a reasonable opportunity to hear different opposing positions.

4. The particular format for such programs must be determined by the licensee in the light of the facts in each individual situation.

5. Such presentation may include the identified expression of the licensee's personal viewpoint, so long as this does not result in a purely partisan or one-sided presentation of issues.

6. Licensee editorialization is only one aspect of freedom of expression by broadcast means. This editorialization must be exercised in conformity with the right of the public to hear a reasonably balanced presentation of all responsible viewpoints. To do otherwise would not be in the public interest.

7. The licensee is a trustee impressed with the duty of preserving for the public generally, radio as a medium of free expression.

Not all of the Commissioners agreed fully with the majority. Chairman Coy and Commissioner Walker did not participate. Commissioner Webster field additional views, indicating he felt the majority opinion still left the licensee "in a quandary and in a state
of confusion" and felt the licensee was "entitled to know from the Commission just what he can or cannot do." 21

Commissioner Jones concurred but cited additional grounds and called for reversal of the Mayflower decision 22 on the grounds that it was unconstitutional. In his objection to the manner in which the majority approached the conclusion reached, Commissioner Jones said:

Whatever may be the constitutional validity of the approach the Commission takes, I believe the fundamental policy against previous restraint of speech requires the Commission to meticulously avoid the imposition of prospective conditions upon speech of licensees that is entitled to the protection of the first amendment. 23

Commissioner Hennock dissented, saying that she did not feel the Commission's decision would bring about the results desired, i.e., a high standard of impartiality in the presentation of issues of public controversy by broadcasters. Miss Hennock commented:

The standard of fairness as delineated in the report is virtually impossible of enforcement by the Commission with our present lack of policing methods.

21 Ibid. Additional Views of Commissioner E. M. Webster.

22 Ibid. Separate Views of Commissioner Jones.

23 Ibid.
and with the sanctions given us by law....

In the absence of some method of policing and enforcing the requirement that the public trust granted a licensee be exercised in an impartial manner, it seems foolhardy to permit editorialization by licensees themselves. I believe that we should have a prohibition, unless we can substitute for it some more effective method of insuring fairness. 24

Thus broadcasters were free to editorialize, within certain general limits, but it was evident that even the Commission could not agree on just what constituted these limits.

A year later, in 1950, the Commission placed another requirement on the licensee who would espouse a point of view: he must affirmatively seek out and encourage the broadcasting of opposing views. In a letter to station WLIR, New York, the Commission did not indicate that the requirement applied to programs dealing with controversy but only to editorial opinion.

Such a "seek-out" requirement continued as FCC policy until mid-1959 when the Commission dropped such a phrase from letters relating to fairness. In a letter to KNOE, dated July 29, 1959, the Commission changed the language to read that "the licensees must

24 Ibid. Dissenting Views of Commissioner Hennock.

25 6 RR 258 (1950).
follow a reasonable standard of fairness in the presentation of the
issues in the controversy and that he has an affirmative duty to aid
and encourage the broadcast of opposing views of responsible
persons."

Later in 1959 the amendments to Section 315 were passed by the
Congress and the Congress for the first time recognized the so-called
"fairness doctrine" which was first established by the Commission in
1950. The amendment, as noted earlier in this study, indicated that
exemption of equal time requirements in connection with news-type
programs did not imply that the Congress was absolving licensees of
their obligation "to afford reasonable opportunity for the discussion
of conflicting views on issues of public importance." 27

When the bill which resulted in this statute was first reported
out of committee it made no specific mention of the fairness doctrine.
The Senate Committee Report dealing with the bill, however, noted
the comments of the Department of Justice which indicated that the

26 Letter to KNOE, as quoted by Commissioner Frederick W. Ford,
NAB Public Affairs - Editorializing Conference, March 1-2, 1962,

27 48 Stat. 1064, Section 315, op. cit.
standard of fairness would still apply to any exempted program and it is clear from a study of the report that members of the committee felt the standard of fairness would continue to be applied to all broadcasts involving controversial public issues.

Senator Proxmire introduced an amendment which provided that "all sides of public controversies shall be given as fair an opportunity to be heard as is practically possible." While some members of the Senate felt such an amendment was unnecessary the Senate agreed to its inclusion in the bill.

Later the House-Senate Conference Committee modified the bill and the resulting language was, as noted above, that which required licensees to "afford reasonable opportunity for the discussion of conflicting views on issues of public importance."

Congressman Oren Harris, chairman of the House Committee on Interstate and Foreign Commerce, made it plain in his comments on the floor of the House that licensees should not expect to take advantage of the liberalization of section 315. He pointed out that the

\[28\text{Senate Report No. 562, (86th Congress, 1st Session), pg. 13}\]
\[29\text{105 Congressional Record 14457.}\]
\[30\text{48 Stat. 1064, op. cit.}\]
standard of fairness still applied and that the bill simply restated
the basic policy of fairness which was required of broadcasters by
the Communications Act of 1924.

The Commission in its public notice titled "Use of Broadcast
facilities by Candidates for Public Office" calls attention to
differences in the requirements of Section 315 and the fairness
doctrine set forth in "Editorializing by Broadcast Licensees."
In the former publication the Commission warns licensees that:

... it is particularly important that licensees recognize that the specific 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 broadcast not falling
within the "equal opportunities" provision of Section
315. On the contrary, in view of the obvious impor-
tance of such programming to our system of representa-
tive government it is clear that these precepts as set
forth above (Editorializing by Broadcast Licensees)
and in the Commission's Report and Statement of Policy
with respect to programming, issued July 29, 1960, are
of particular applicability to such programming.

In 1960 the National Association of Broadcasters indicated its
legal staff felt that appearances by candidates and the fairness doc-

31 105 Congressional Record 17778.
33 FCC 62-1019, op. cit.
trine were two separate issues. The statement said, in part:

... Inclusion of the "controversial issues" doctrine in Section 315 has in no way changed the law pertaining to political broadcasts by legally qualified candidates. As long as the station licensee affords equal opportunities to legally qualified candidates for the same office, he has complied with the mandate of the law. Under the no-censorship provision of Section 315, a licensee cannot concern himself with what a political candidate has said. Therefore it would appear that the "controversial issues" doctrine is not applicable to speeches delivered personally by candidates.

One of the best summations of the interrelationship of Section 315 and the fairness doctrine came in the Times-Mirror case in 1962. In this instance the Commission affirmed the right of the broadcaster to carry the views of any person he may choose on the issues involved in a political campaign, without censorship by the Commission. Under the fairness doctrine, however, when a broadcast station permits a commentator or any person other than a candidate to take a partisan position on the issues involved in a race for political office and/or attack one candidate or support another by direct or even by indirect identification, the station should send that person, or persons, so attacked a transcript of pertinent

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35 24 RR 404 (1962).
portions of the material broadcast. Likewise the licensee should offer the person so attacked a comparable opportunity for his answer, either in person or through a spokesman.

Where commentators, who broadcast with a great degree of regularity, have continuous and repetitive opportunity to promote certain views, the offering of only occasional opportunities to reply or present opposing views would appear, according to the Commission in the Times-Mirror case, to violate the right of the public to a fair presentation of views. It is the responsibility of the licensee to make a determination as to who is an "appropriate spokesman" but where a political candidate has been personally attacked he, obviously, should be given what the Commission called "a substantial voice" in the selection of a spokesman to reply to the attack.

If the candidate himself were permitted to reply the provisions of Section 315 involving equal time for all other candidates for that office would become operative.

The Period of Executive Confusion

1962 - Present

For the past two years the entire area of broadcast editorialization, endorsement of candidates, responsibility to seek out or not
to seek out opposing points of view, and similar topics has become confused. More and more stations have begun to editorialize. More and more requests for interpretation have come to the Commission. As our modern society has grown the complexities of the editorial situations have increased.

By mid-1963 there was some degree of concern over just what was involved in broadcast editorialization. A national conference on this topic was called and more than 150 broadcasters from across the nation met on the campus of the University of Georgia, Athens, to discuss the problems. The conference adopted a resolution which said that "ambiguous interpretations" of the fairness doctrine had hurt the public interest.

Congressional interest has been exhibited in the problem of the fairness doctrine and its relationship to political broadcasting during the current session. Congressman Moss of California has introduced a bill which would require fairness in terms of equality of time in editorializing by radio and television stations which supported or opposed candidates for public office. 36 Congressman Younger, also of California, has introduced a bill which would not

36 HR 7072, (88th Congress, 1st Session).
require a station to broadcast contrasting views on controversial questions where the first broadcast was sponsored unless the person or group wishing to make the contrasting views known was willing to pay a charge comparable to that paid the licensee by the first advocate. While hearings were held in July 1963 by the Communications Subcommittee of the House Interstate and Foreign Commerce Committee on the Moss bill neither bill has been brought to the floor of the Congress.

In a further effort to expand its views on the fairness doctrine the Commission issued a public notice dated July 26, 1963 which dealt with what it called "three currently important situations." The Commission said its views as expressed in the 1949 report still stood and that it continued to apply

37 HR 9158 (88th Congress, 1st Session).
38 FCC 63-734 of July 26, 1963.
39 RR 91-201, op. cit.
the policies stated therein. The reason for the new notice, the Com-
mission said, was "to better define certain of the licensee's responsi-
bilities in this area." 40

41 The notice made three specific points:

1. When a controversial program involves an attack of a
personal nature upon an individual or an organization the licensee
must furnish the person or group attacked a copy of the text either
prior to broadcast or at the time of broadcast and must accompany it
with a specific offer of facilities to permit an adequate response.

2. When a licensee permits a commentator or some other person
other than a candidate to take a partisan position on the issues in a
political contest or to attack a candidate or to support a candidate he
must so notify other candidates who would be concerned and send each
a transcript of the material broadcast. He must likewise make an
offer of comparable opportunity for an appropriate spokesman to
reply.

(It should be noted that in each of the above two rulings the
Commission based its decision on factual cases which had come be-

40 FCC 63-734, op. cit.
41 Ibid.
fore it, citing Clayton W. Maypoles, 23 RR 586, 591, and Billings Broadcasting Company, 23 RR 951, 953 in the first instance and the Times-Mirror Broadcasting Company, 24 RR 404, in the latter. In the third ruling, developed below, the Commission acted not on an existing case but on a hypothetical basis. This prompted Commissioner Ford to comment:

... the third ruling of the Notice relating to the presentation of views on issues of current importance such as segregation which, regardless of its appropriateness or inappropriateness, should not have been included in the Notice. Although this ruling was adapted from the Report it was not based on a factual situation and, therefore, was a departure from the case-by-case approach. I consider this case-by-case approach essential to the proper development of the doctrine. 42

3. When a licensee permits the use of his facilities for the presentation of views regarding an issue of current importance such as racial segregation, integration, or discrimination, or any other issue of public importance, he must offer spokesman for other responsible groups within the community similar opportunities for the expression of contrasting viewpoints of their respective groups.

The Commission's notice in general, but more specifically the third major provision enumerated above, brought forth many

resolutions, editorials both in newspapers and on broadcast stations, and public speeches by broadcasters and other associated with the industry. Representative Oren Harris told the Commission that it should "review its fairness statement to determine whether it is in conformity with the Communications Act...." In a letter to Chairman Henry of the Commission and in a speech before the Arkansas Broadcasters Association Mr. Harris said the notice "if actually enforced ... is likely to place an intolerable burden upon the members of the Commission which the members cannot possibly discharge without neglecting other important responsibilities." It should be noted that Commissioner Hennock in her dissent to the original report on editorializing used almost the identical argument for forbidding any editorializing by licensees.

Senator Talmadge of Georgia called the July 26 policy statement "an unwarranted infringement upon freedom of speech." In a letter to Mr. Henry Senator Talmadge said the Commission "en-

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44 Ibid.

45 Ibid.
courages stations to editorialize but at the same time restricts stations so as to make it a virtual impossibility in some areas." \(^{46}\)

Almost a year later, on July 6, 1964, the Commission issued a more definitive compilation of points applicable to the fairness doctrine. Titled "Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance" the 20 page document's purpose, according to the Commission, was "to advise broadcast licensees and members of the public of the rights, obligations, and responsibilities of such licensees under the Commission's 'fairness doctrine', which is applicable in any case in which broadcast facilities are used for the discussion of a controversial issue of public importance." \(^{47}\)

The notice cited the 1949 report \(^{48}\) and noted that it still constitutes the Commission's basic policy in this field. It noted also that the Congress recognized this policy in 1959 and it quoted the 1959 amendment \(^{49}\) as well as pointing to the comment from the hearings

\(^{46}\) Ibid., pg. 70.

\(^{47}\) FCC Public Notice 64 - 611 of July 6, 1964.

\(^{48}\) RR 91-201, op. cit.

\(^{49}\) FCC 62-1019, op. cit.
which preceded the amendment, such comment being that the amendment is "a restatement of the basic policy of the 'standard of fairness' which is imposed on broadcasters under the Communications Act of 1934."

After differentiating between the requirements imposed by Section 315 and the requirements of the fairness doctrine (a summation contained earlier in this chapter) the Commission cited a series of 28 interpretive rulings in six broad areas.

The six broad areas are:

1. Controversial issues of Public Importance. (8 rulings).
2. Licensee's Obligation to afford reasonable opportunity for the presentation of contrasting viewpoints. (3 rulings).
3. Reasonable opportunity for the presentation of contrasting viewpoints. (4 rulings).
4. Limitations which may reasonably be imposed by the licensee. (4 rulings).

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50 HR 1069 (86th Congress, 1st Session), op. cit., pg. 5.
Certain of the rulings in each of the above categories are appropriate to discussion here since they relate to both political broadcasting and to editorial comment on controversial issues.

1. Controversial Issues of Public Importance

Here the Commission pointed to a question raised as to whether the airing of spot announcements designed to promote campaign contributions for candidates of the two major parties came either under Section 315 or the fairness doctrine. The Commission ruled that Section 315 was not applicable here but that the fairness doctrine was applicable. In amplifying the applicability of the fairness doctrine the Commission said:

If there were only two candidates of the major parties in question, fairness would obviously require that these two be treated roughly the same with respect to the announcements. But it does not follow that if there were, in addition, so-called minority party candidates for the office of Senator, these candidates would also have to be afforded a roughly equivalent number of similar announcements. In such an event the licensee would be called upon to make a good faith judgment as to whether there can reasonably be said to be a need or interest in the community calling for some provision of announcement time to these other parties or candidates, and, if so, to determine the extent of that interest or need and the appropriate way to meet it. In short, the licensee's obligation under the fairness doctrine is to afford a reasonable opportunity for the presentation of opposing views in the light of circumstances -- an obligation
calling for the same kind of judgment as in the case where party spokesmen (rather than candidates) appear.

With regard to a question as to whether a "Report To The People" by a public official who reports on his stewardship and who, as a part of such report, may discuss a controversial topic or make an attack against the opposition political party, comes under the fairness doctrine the Commission indicated that this was a matter for the licensee to determine and then act accordingly. The Commission said:

...it is clear that the characterization of a particular program as a report to the people does not necessarily establish such a program as non-controversial in nature so as to avoid the requirement of affording time for the expression of opposing views....there can be no one all embracing formula which licensees can hope to apply to insure the fair and balanced presentation of all public issues. 52

2. Licensee's Obligation to Afford Reasonable Opportunity For The Presentation of Contrasting Viewpoints

Here the Commission says that a licensee's obligation to serve the public interest cannot be met merely through the adoption of a general policy of not refusing to broadcast opposing views where a de-

51 FCC 64 - 611, op. cit., pg. 13.
52 Ibid., pg. 5.
mand is made for broadcast time. Rather, the Commission says, "It is clear that any approximation of fairness ... will be difficult, if not impossible ... unless the licensee plays a conscious and positive role in bringing about balanced presentation of opposing viewpoints." 53

3. Reasonable Opportunity For The Presentation of Contrasting Viewpoints

Here the Commission points out that the licensee is only under obligation to insure "that proponents of opposing viewpoints are afforded a reasonable opportunity for the presentation of such views" and that the "requirement of section 315 becomes applicable only when an opposing candidate for the same office has been afforded broadcast time." 54

4. Limitations Which May Reasonably Be Imposed By The Licensee

Where a licensee permits the use of its facilities for the expression of views on controversial issues of public importance and, subsequently must afford reasonable opportunities for the presentation

53 Ibid., pg. 9.

54 Ibid., pg. 11.
of contrasting views there is no single method by which this obligation has to be met. The licensee has considerable discretion as to the techniques and formats to be employed and the spokesman for each point of view. The Commission points out that "...with the exception of the broadcast of personal attacks there is no single group or person entitled as a matter of right to present a viewpoint differing from that previously expressed on the station."

Also in commenting upon the limitations which licensees may impose the Commission indicated that a station which has permitted a point of view favoring a bond issue (or other issue upon which the public will vote) must permit the broadcasting of views which call upon citizens not to vote. To do otherwise would place the licensee in the position of failing to discharge the obligations placed upon him by the Commission's "Report on Editorializing."

5. Personal Attack Principle

The Commission indicated here that a licensee must not use his station for purely personal or private interests and is obligated

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55 Ibid., pg. 14.

56 Ibid., pg. 15.
not to present biased or one-sided news programming. They ruled also that where a station, in its editorials or in commentary on controversial issues, makes a personal attack on a person by name, the fairness doctrine requires that a copy of the material used in the broadcast be made available to the person either prior to or at the time of the attack. The reasoning here is that the person must have time in which to plan his reply. The Commission, in defining "personal attack" says:

...the personal attack principle is applicable where there are statements, in connection with a controversial issue of public importance, attacking an individual's or group's integrity, character, or honesty or like personal qualities, and not when an individual or group is simply named or referred to.... The personal attack principle has not been applied where there is simply stated disagreement with the views of an individual or group concerning a controversial issue of public importance. Nor is it necessary to send a transcript... with an offer of time... in the case of an attack upon a foreign leader....

Where a licensee assumes a partisan attitude on a political campaign, certain candidates, and certain issues, and permits this bias to be developed on a somewhat regular basis through the use of commentators who espouse such position, the licensee has the re-

\[57\text{Ibid.}, \text{pg. 17.}\]
sponsibility to protect the public's right to a fair presentation of views. This quite likely will involve continuing opportunity for reply from among spokesmen who hold opposing views.

If such attacks involve an individual candidate does that candidate have the right to insist upon his own appearance to respond to such broadcasts? No, says the Commission. Since a response by the candidate personally would involve equal opportunities under Section 315 for all such candidates the fairness doctrine requires only that the licensee afford the attacked candidate an opportunity to respond through an appropriate spokesman. The candidate should, of course, be given a substantial voice in the selection of such a spokesman.

6. Licensee Editorializing

The Commission makes it clear that there is no requirement for a station to editorialize but that if such a station does editorialize it must meet the requirements of the fairness doctrine.

58 Ibid., pg. 19.
59 Ibid., pg. 20.
SUMMARY

A study of the provisions of Section 315 and the provisions of the Commission's public notices dealing with "fairness" in discussion of controversial public issues shows that the two are quite different in their operation. Section 315 deals only with bona fide candidates for public office and provides only that all candidates for the same office shall be accorded equal opportunity for access to the facilities of the station. It does not deal with issues; only with people.

The fairness doctrine, on the other hand, deals more with issues than with people, although people become involved when a personal attack is involved. This doctrine provides that in order to fulfill their obligations to operate in the public interest licensees must afford reasonable opportunity for a balanced discussion or presentation of conflicting views on issues of public importance.

In handling problems under Section 315 the licensee relies primarily upon his stop-watch since the requirement is purely one of mathematical equality, tempered, of course, by sound judgment.

In handling problems under the fairness doctrine the licensee is expected to "play a conscious and positive role in bringing about
balanced presentation". The method he uses, the format he follows, the precise way in which he does it is not of great concern, provided he exercises his "best judgment and good sense."  

Section 315 is the work of the Congress and is an integral part of the law covering broadcasting. The fairness doctrine is the handwork of the Commission, but the Commission makes it clear that it feels the Congress has approved the basic principles on which the fairness doctrine rests. A study of pertinent materials would bear out this contention.

In assessing the fairness doctrine and its relationship to political broadcasting several questions might be asked:

1. Is controversy and the discussion of controversy necessary over broadcast stations under the American system?

2. Where controversy exists is it necessary that broadcasters present more than one side of the issue? Is it necessary that broadcasters be "fair" in what they present? Does fairness mean impartiality? Does "fairness" prevent the broadcaster from presenting a point of view which represents his own thinking?

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60 Ibid., pg. 9.

61 Ibid., pg. 5.
3. Is a written "fairness doctrine" necessary?

It would be difficult to argue the negative aspects of the first question. Granted there are hundreds of American broadcasting stations which do not involve themselves in controversy but it would appear that the responsible broadcaster will seek to involve himself and his station in the problems and controversies which surround and involve his listeners and viewers. Without such an involvement there can be little justification for use of a valuable public commodity, the spectrum.

Question two becomes somewhat more involved. It would appear that if controversy is present the broadcaster is obligated to apprise his audience of the possible courses of action. This may not involve the necessity of presenting all of the alternatives but certainly enough to equip the listener/viewer to make a reasonably sound judgment. Fairness only seems to imply that the broadcaster will defer judgment until he has enough facts at hand to make a rational and intelligent judgment. On this basis one could conclude that a broadcaster, even if he were not "required" to, would expect to be "fair". Fairness, however, should not require impartiality for if the broadcaster is to be a responsible citizen of the community he serves he must lend his talents toward leadership. He believes in
something and he must seek to utilize his resources, including
his license to broadcast, to improve the community he serves and
of which he is a part. Thus, fairness does not mean impartiality
and it does not mean that a broadcaster may not speak out. Rather,
it means, reduced to the simplest form, that he will not permit
his audience to make judgments merely on the basis of his own
views.

The third question may involve degree rather than kind. Com-
missioner Ford has said:

In my opinion no extensive rules can be devised to
insure fairness without becoming so enmeshed in
technicalities that the good judgment of the broad-
caster upon which the Commission relies would be
smothered in the maze. Each factual situation may
differ requiring different solutions. 62

Thus, he would endorse broad limited guidelines as opposed to
rather detailed instructions on fairness from the Commission. But
any formal, written guideline is apt to cause dissent. As the editor
of the Journal of Broadcasting said:

No group wants to be singled out for what may ap-
pear to them as a gratuitous label of mistrust,
analogous to the small boy who resents the large

64, op. cit., 8.
white napkin tied firmly around his neck when having dinner at grandma's. Some normally law-abiding people resent strongly the evidences of mistrust typified by the impersonal myriad of regulations imposed by the law and by private enterprises that "reserve the right to inspect packages....

He goes on to point out for the benefit of those who do chafe under such restriction that:

its (the fairness doctrine) purpose is to help broadcasters understand some of the pitfalls in the exercise of fairness that have particularly plagued broadcasters in the past. With such guidelines in existence broadcasters need no longer fear that inadvertent slips will cause serious trouble at license renewal time.... The doctrine is not restrictive, it is liberative. 63

There are many who would disagree that written guidelines are necessary and some who would even question the necessity of government activity in the area at all. One view, which essentially is a middle-of-the-road view, is that advanced in McMillin's "Report on Television Editorializing":

The minute you set up a government operation to insure "the public's right to fairness" you place power in the hands of a few individuals whose judgments may be as faulty as their intentions are honorable. Second you substitute for the free play of truth in the market place

a condition of bureaucratic control which may begin by being benevolent but end entirely differently. Third, you inevitably change the position of the editorializing broadcaster from that of ardent, concerned advocate to that of neutral and nervous mediator. Fourth, and probably most serious, you deny, by implication at least, the basic concepts on which our constitutional principles are based.

The First Amendment rights of free speech and free press were never made conditional on a fairness doctrine.\(^\text{64}\)

I can hardly be argued that the broadcaster occupies a privileged position since he enjoys a monopoly right to use a portion of the spectrum, the total being severely limited. A person occupying such a privileged position does so at the expense of certain obligations which he assumes in return for this privilege. One could then legally argue that government oversight is necessary to insure that the broadcaster carries out his obligations satisfactorily. One such obligation would be that the broadcaster would not use his privileged position to advocate or effect a denial of a basic right, such as free speech, for those who were not privileged to occupy a frequency. On this basis some form of governmental oversight would appear to be justifiable. It is the form which such governmental oversight takes which produces the problems.

\(^{64}\) McMillin, \textit{New Voices In A Democracy}, op. cit., pg. 27.
Whether such governmental oversight and the form in which it exists will diminish or will increase in the years ahead remains to be seen. One broadcaster sees a diminishing governmental oversight:

There are enough FCC safeguards now against a station's misusing its editorial power... Just in case I might be wrong in my editorial views opposite points of view have positive opportunity to be heard.

This is the only kind of government control that broadcasters should tolerate over the content of their editorials; and, hopefully, the industry will become so responsible and fair, and the public will so come to expect replies to editorials, that even this control will wither away as a government function.

With the "fairness doctrine" in effect now, there should be no government control over what we say or how we say it. Libel and slander laws; the general rules of taste; pride in our research, accuracy and judgment; and the interest of our audiences -- these are the only limitations we should accept. 65

Herein may lie the future; that broadcasters will so respond to the privilege of their position that they will develop such a sense of responsibility in their editorial approach and their use of facilities to discuss controversial issues that such governmental oversight as now exists will grow dormant.

CHAPTER VI

CONGRESS AND POLITICAL BROADCASTING

Chapters two and three of this study have traced in some detail the legislative history of Federal regulation of political broadcasting. From a study of this history one might well conclude, with considerable justification, that there has been little effort on the part of the Congress to develop a genuine public policy for broadcasting. The role that the Congress has taken has been sporadic, often confused, and, generally speaking, well behind public demand for definitive legislation. An example was the initial effort to secure national broadcasting regulation during the early 1920's. Considerable public reaction, coupled with highly organized lobbying as a result of national conventions of interested broadcasters, finally brought about the long-overdue and sorely needed Radio Act of 1927.

As Friedrich and Sternberg have pointed out, congressional action has always tended to lag behind technical progress in the
communications field. Congress has generally effected legislation only after the needs of the new developments have become so urgent that immediate Congressional attention was mandatory. This is obvious in an analysis of early legislative efforts referred to above. Indeed, as one writer said, in commenting on the collision of two passenger liners in 1909 off the East coast, "The use of wireless in the collision released a wave of popular sentiment and provoked reams of hortatory editorials upon the virtues of this new medium of communications and the imperative need to provide by law for the installation of wireless on all passenger vessels."  

Continuing, the writer said that "The Act (The Ship Act of 1910) symbolizes the first hesitant recognition by Congress of the need for government intervention in a fresh area of business, and little else."  

Later, the Titanic disaster of 1921 provided strong reason for

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3 Ibid., p. 305.
the Congress to strengthen earlier legislation and the result was the "Radio Act of 1912."\(^4\)

The reluctance of the Congress to act in the field of radio transmission and broadcasting might well stem from the inability of the individual members to cope effectively with matters of technical complexity.

Whatever the reason for Congressional reluctance to enter the broadcasting field until prodded by outside circumstances, the laissez faire philosophy prevailed for some 15 years following the Radio Act of 1912. And, as noted earlier, it was only due to continued organized lobbying that the 1927 Act was finally passed.

The record since that time has indicated that succeeding sessions of the Congress preferred to deal with broadcasting only in response to well organized public pressures from outside the Congress.

Indeed, it was the feeling generally within the Congress that passage of the 1927 Act and creation of the Federal Radio Commission was merely a temporary measure to restore order to the

\(^4\) 37 Stat. 199 (1912), op. cit.
chaotic radio industry and that within a year the job of handling licensing could be returned to the Secretary of Commerce.

More recently the 1960 suspension of the equal-opportunity rule under Section 315 in the case of presidential and vice-presidential candidates came about primarily as a result of considerable pressure from the industry itself, although there were political and economic overtones in the background. Had the matter been left wholly to the discretion of the Congress it is quite likely that no suspension would have been effected.

Since the 1960 action, however, there is mounting evidence that the Congress is beginning to take a more active role in the oversight of the broadcasting industry and the attendant legislation.

A number of reasons are quite likely cogent in this regard:

1. The growth of broadcasting, not only in terms of numbers of stations, but also in terms of the advertising revenues which accrue to broadcast advertising and the impact of broadcast advertising upon the national economy.

2. The importance of broadcasting to the political effort of the country.

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5 S. 2270 (71st Congress, 1st Sess., 1929), op. cit.
3. The growing efforts of broadcasters themselves, both as individuals and acting within organizations, to influence legislation. This would include the rise of broadcast editorials and documentaries as well as the increased attempts to influence legislation on the part of the National Association of Broadcasters and various state associations and the growing number of broadcasters who have become active in state and national politics.

Growth Of Broadcasting

According to Cotter there were eight stations in the United States under commercial license in December 1921, with approximately 60,000 sets being in use. By the end of 1922 the number was approaching 600 and the number of sets had grown to 1,500,000.

In January 1964 the total number of stations (AM and FM) authorized had reached 5288, with 688 television stations authorized. Radio set saturation had grown almost to totality, with more than 96 percent of the homes reporting sets. Television saturation had reached more than 91 percent of the homes.

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6 Cotter, op. cit., p. 309.

7 Station Analysis, mimeo. of National Assn. of Broadcasters, Feb. 1964, quoting FCC figures.
Advertising revenues for broadcasting had reached new highs by 1964 with more national advertising going into television than into any other media. The impact of broadcast advertising had become more pronounced than ever.

Thus, the Congress, both as individual members and collectively, could hardly fail to take notice of broadcasting in its national role.

Across the country membership in the National Association of Broadcasters and in state organizations continued to grow and the topic of influencing legislation was in general appearance at convention programs. More and more broadcasters were actively combining roles as broadcasters and as politicians or as political advisors. These factors have made the Congress more aware of broadcasting.

These reasons, however, are almost certainly overshadowed by the third. Congress is more aware of broadcasting today than ever before because of the importance of broadcasting to the political effort.

**Political Importance Of Broadcasting**

Broadcasting, and particularly television, is the most important medium available today to candidates for public office.8 Without

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8See Senate Report No. 1539, June 8, 1950.
question broadcasting is playing a vital and unprecedented role in the selection of political leaders, in stimulating discussion of political issues, and in dissemination political information and ideas.

Charles A. H. Thompson, the noted political scientist, says that television is the single most potent means through which the voting public is influenced. With direct access to the public through television the candidate of today has a tremendous advantage over the candidate of yesterday.

As early as 1952 studies indicated that more people considered television to be "the most important source of news" and "more reliable." This feeling continues in 1964 as evidenced by Steiner's research.

Insofar as increasing the level of public information on political issues radio and television seem to be more effective than

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other media, especially in groups where the educational level is low, and Steiner's research indicated such would hold true for the population as a whole, with 42 percent reporting television giving the clearest understanding of candidates and issues in national elections, as compared with 36 percent so naming the newspaper. This, incidentally, was prior to the 1960 presidential elections and the difference likely may be more pronounced as of this time.

This is partially true, it would seem, because less effort is required on the part of the viewer than the reader and the source of the information on radio or television is more highly personalized than in the printed media, making identification with the source easier.

An index of the increased frequency of use of broadcasting for political purposes can be found in a comparison of expenditures for political purposes. In 1952 more than six million dollars was

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invested in political broadcasting. By 1956 the purchase of broadcast time was the greatest single item of expense, amounting to more than thirty percent of the total costs of campaigning by the two major parties, or more than ten million dollars. More than three million of this was for network exposure.

In 1960 the total amount grew by forty-five percent, with the Republican candidates spending about seven-and-a-half million, the Democratic candidates accounting for approximately six-and-three quarters million and all other candidates spending about four hundred thousand dollars. Expenditures for national television networks in 1960 approximated the 1956 level while national radio networks lost 75 percent of the political advertising they carried in 1956. The substantial increase of 1960 over 1956 is accounted for by expenditures on individual stations, a gain of nearly 93 percent for television stations and 42 percent for radio stations.

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13Hearings on 1956 Presidential and Senatorial Campaign Contributions and Practices Before the Subcommittee on Privileges and Elections of the Senate Committee on Rules and Administration, 84th Congress, 2nd Session. (Parts I and II) 1956.


15Hearings Before the Communications Subcommittee of the Committee on Interstate and Foreign Commerce on Review of Section 315 of the Communications Act (1960 Temporary Suspension of Equal Time Provision) 87th Congress, 1st Sess., 1961.
Thus, it is easy to establish that broadcasting has become significant in the realm of political campaigns. This is true at all levels and as Elliott has said, "... television has now come to call the tune on American politics."

In the field of political conventions the same basic thesis may be advanced. Television has brought about sweeping changes in the organization, staging, and perhaps even the results, of national political conventions. Without question the 1964 conventions of the major parties have been tailored to television and television coverage. The general chairman of the 1964 Democratic convention is himself a television broadcaster and was elevated to the post of convention chairman in 1960 largely because of his abilities to tailor the convention to the demands of television without sacrificing the basic purpose for which the convention was called. 17

With the Congress more aware of American broadcasting and its role of growing importance in the political arena it should be


noted that only three modifications or changes in that portion of the Communications Act dealing with political broadcasting have been made in the 30 years of its existence. Two of the three have been made within the past five years. As detailed in Chapter III of this study the Congress first modified the political broadcasting section by establishing that rates for political use could not exceed those charged for other purposes; secondly, exempted certain news type programs from provisions of the section; and, thirdly, provided for temporary suspension of the equal time provisions during the 1960 campaigns for presidential and vice-presidential candidates.

While there have been a number of hearings into operations of the Communications Commission during the 30 year period the only hearing of any magnitude dealing with political broadcasting came following the 1960 campaign.

The first two changes in Section 315 have been adequately dealt with in Chapter IV. The third, the equal-time suspension and the effects thereof, will be further analyzed in the chapter following.

20 74 Stat. 544 (1960), op. cit.
What then of the hearing into the operation of Section 315?

On September 12, 1959 the Subcommittee on Freedom of Communications of the Senate Commerce Committee was appointed as an oversight committee to oversee operations of broadcasting licensees following the 1959 amendment to Section 315. The subcommittee was instructed to "receive information and complaints concerning the treatment of news by media operating under government license, in order to insure freedom, fairness, and impartiality in such news presentations." 22

On February 24, 1960, in the second session of the 86th Congress, the subcommittee was reappointed as a subcommittee of the Subcommittee on Communications and on June 14 of that year the Senate adopted Senate Resolution 305 which authorized the subcommittee to:

... examine, investigate, and make a complete study of any and all matters pertaining to -- (1) Federal policy on uses of government licensed media for the dissemination of political opinions, news, and advertising, and the presentation of political candidates; and (2) a review and examination of information and complaints concerning the dissemination of news by such media. 23

22 Ibid.
23 Ibid.
Thus was the stage set for what could possibly have been a muchly-needed formulation of a comprehensive policy for broadcasting and the forerunner of a substantial revision of the entire Communications Act. Such was not to be the case. The results, it would be fair to say, give continuing validity to Friedrich and Sternberg's contention that the Congress has a poor record of coming to grips with the rapidly changing picture of broadcasting in the United States and formulating a policy therefor.

Senator Magnuson, Chairman of the Committee on Commerce, in forwarding the final report of the Subcommittee clearly indicated the course he hoped the Congress would follow. He said, in part,

I think the recommendations contained herein are provocative and timely. It is from such studies as this that the Senate will garner the information it needs to be able to legislate intelligently in the field of Government-licensed media.

In the marketplace of ideas, there is always room for the fresh approach -- a new look at our traditional ways of thinking about things. The thrust of these recommendations is toward more discussion of controversial issues on Government-licensed media. Responsible controversy is good for the body politic.

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24 Carl Friedrich and Evelyn Sternberg, op. cit.
If the recommendations provoke discussion, and I hope they do, that will be good. It is out of the give and take of recommendation and alternative that we achieve sound judgment for public policy.  

The reports of the subcommittee filled 5,326 pages but unfortunately 5,315 dealt with topics other than thoughtful recommendations toward an improved policy regarding political broadcasting. The first three major parts of the report, comprising 3,505 pages, reported the speeches and other appearances of the two major presidential candidates in 1960; the fourth consisted entirely of the scripts of network newscasts during the final two weeks of the campaign. These occupied an additional 1,180 pages. The fifth part consisted of transcripts of three days of hearings by the subcommittee on Monday, March 27; Tuesday, March 28; and Wednesday, March 29, 1961, occupying 180 pages. The remainder of part five is devoted to exhibits, primarily letters to and from broadcasters, candidates, and the Commission, for a total of 453 pages.

Part six dealt with recommendations and occupied less than eleven full pages, more than half of which dealt with the philosophical background of regulation and the acknowledgments of assistance.

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It should not be questioned that the hearings during the three day period provided some edification for members of the subcommittee. This, in itself, in the long run may provide the spark for additional study of the communications policies of the United States, particularly the policies for dealing with political broadcasting. But it is clear that no result affecting the communications policies has, as yet, been evident more than three years later. Since the country is once again ready to be embroiled in a major political campaign and the Congress has made no move to modify the regulatory concepts (other than to once again propose suspension of Section 315 for appearances by presidential and vice-presidential candidates) it would follow that the hearings and the study undertaken by the subcommittee were not fruitful.

In response to a request of the Congress\(^2\) the Commission itself undertook to study the 1960 campaign and it made a report on March 1, 1961 containing its findings. As a result of a 10-page questionnaire distributed to all broadcasting stations on August 15, 1960, to be returned no later than December 5, 1960 following the

\(^2\)S. J. Resolution 207, 86th Congress, op. cit.
27 election, the Commission compiled a substantial document of some 102 tables in 100 pages measuring approximately 12 to 15 inches.

Ostensibly for the edification of the Congress, the report, other than the summary contained in the prefatory statement, had little of interest or value to the member of Congress seeking information and guidance on political broadcasting.

Tables 1 - 9 show charges for political broadcasts by networks and stations during the campaign from September 1 to November 8. Table 10 shows the amounts of free time made available. Table 11 shows stations carrying "The Great Debates". Table 12 shows stations carrying all other network-originated political programs during the campaign. Table 13 compares the intervals of program time purchased on the three television networks by the two major parties for their presidential and vice-presidential candidates. Table 14 shows for both radio and television the amount of time consumed by appearances of the presidential and vice-presidential candidates of the two major parties. No time used by spokesmen for these candidates is included in this table.

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Reproduced as appendix c.
Tables 15 - 25 show use of station facilities by all candidates for public office and those appearing in their behalf. Shown is the amount of paid time, the amount of free time, the amount of time and the number of announcements requested of stations, the amount of time and number of announcements denied by stations. Tables 26 - 39 show the extent of appearance of all candidates by parties, on radio and television, for the country as a whole and by individual states. Tables 40 - 101 contain detailed information for the entire nation and for each individual state on the appearances by candidates for president, vice-president, senate, and house of representatives, as well as for governor of the various states on television and radio. Table 102 shows the number of radio and television stations carrying editorials in support of or against political candidates. Table 103 summarizes information on the general policy of radio and television stations with respect to political broadcasts.

It is interesting to note that one television station and fifteen standard broadcast radio stations reported a general policy of not carrying political broadcasts. Of the other stations 43 percent of the radio stations indicated they sold program time and announcements as well as made free time available in both forms for political purposes. Ninety-six percent of the television stations reported likewise.
Fifty-one percent of the radio stations said they did not make free time available for political broadcasts and 4 percent of the television stations indicated likewise.

Four percent of the radio stations indicated they sold political announcements only and made no free time available for programs nor did they sell political program time commercially. No television station reported following this policy.

Slightly more than 1 percent of the radio stations said they sold announcements and made free program time available but did not sell program time. No television station reported this policy.

As noted above about one-half of one percent of the radio stations of the country indicated they did not engage in political broadcasting while only three-tenths of one percent of the television stations reported a similar policy. Whether these stations subsequently had this policy questioned by the Commission at time of license renewal is not known.

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Findings of the Subcommittee

Findings of the subcommittee have been reported in detail previously in this study and will not be repeated here. It is sufficient to say that none of the findings has resulted in legislation. It appears quite unlikely that previous findings of the subcommittee will ever result in legislation. The normal course would be, rather, to institute new hearings at some future date.

It would appear that Congressional lethargy toward a new look at regulatory aspects of American broadcasting will be broken in only one of two manners: (1) a repetition of the past, wherein technical, social or economic conditions create such reaction within the industry that considerable and consistent pressures are brought to bear on the Congress and new legislation results; or (2) a non-congressional group, possibly composed of broadcasters, political scientists, and others attempts to develop a new concept of the Federal regulatory position in relation to broadcasting and then seek to promote passage of such a re-statement of the Communications Act through political pressures.

The first appears to be unlikely since the present Act is largely what the Commission seeks to make it and by adapting to changing

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29 See Chapter IV.
conditions the Commission can forestall most congressional attempts to restate the Federal regulatory position, particularly if it appeared that such a re-statement might affect the existence or even the status-quo of the Commission structure.

The second approach appears more likely since there is a growing feeling among broadcasters and their attorneys, as evidenced in the trade press, that nothing short of a complete revamp of the regulatory approach can resolve some of the pressing problems in broadcasting regulation today. Just what might give impetus to the formation of such a group and how its make-up might evolve remains to be seen but quite possibly it could grow out of a series of high-level, retreat-type seminars under the auspices of an educational institution. Such has been proposed by the Association For Professional Broadcasting Education, composed of institutions offering substantial work in the area of broadcasting.
CHAPTER VII

SUSPENSION OF PROVISIONS -- THE 1960 CAMPAIGN

Messrs. Kennedy and Nixon, sitting blind under the lights of a television studio, were the flower of the first political generation weaned in the age of mass communication. In his moment of mortal peril, Harry Truman headed by instinct for the rear platform of a special train. The standard-bearers of 1960 sent for a platoon of opinion pollsters, motivational researchers, voice coaches, mass psychologists, and make-up experts. For better or worse, this surely represents a qualitative change in American politics worthy of protracted pondering.

Harry Ashmore

Just who first suggested repeal of Section 315 of the Communications Act of 1934 is not known, nor likely will ever be. Quite likely he was a broadcaster who followed closely the adoption of the Act in 1934 and who suggested repeal shortly after he heard the vote

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1Harry Ashmore, The Great Debates (Santa Barbara, California: The Center For Study of Democratic Institutions), 1962.
had been taken. His imitators have been legion in the years since. The campaign continues for outright repeal but the prospects for such would appear to be dim.

Just who first suggested suspension of Section 315 for the 1960 political campaign might be somewhat easier to discover but a substantive answer has so far eluded discovery.

The first suggestion may have grown out of an economic consideration. During the 1956 campaign the two major parties had spent more than three and a quarter million dollars on radio and television network time and as the 1960 campaigns approached some party leaders wondered if the parties could "afford" the 1960 campaign.

Representative Stewart L. Udall (D., Arizona) introduced HR 11260 which, had it passed the Congress, would have required television networks to donate an hour a week of prime evening time to each of the major candidates in the eight weeks preceding election night. Candidates of smaller parties would have received time if

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2 The Senate version was S. 3171. See Congressional Record, Vol. 106, August 22, 1960, p. 17036. Representative Oren Harris (D., Arkansas) who led the debate in the House for suspension of the equal time rule indicated that SJ Res. 207, which authorized the suspension, was introduced as a result of earlier hearings held by the Senate Interstate and Foreign Commerce Committee on S. 3171, the "free-time" bill.
they could show sufficient voter strength. A similar bill had been introduced prior to the 1956 campaign. 3

As might be expected the broadcasting industry organized to oppose the bill, saying that such a requirement would infringe upon the basic rights of the industry under the first amendment to the Constitution. A Senate version was introduced but after a bitter fight it died on the Senate floor. Out of the hearings and debate on the "free-time" bill came the suggestion, that the equal time provision be suspended and see just what the effect would be.

Dr. Frank Stanton, President of C.B.S., had led a continuing fight, along with other broadcasters, for outright repeal of Section 315. With 17 other candidates running against Kennedy and Nixon4 Dr. Stanton and others argued that the networks and stations would not be able to present the major candidates because of the possibilities of granting equal time to the "splinter" candidates.

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3 S. 3962 (84th Congress, 1st Session), 1956.

4 The group included Lar Daly, Tax Cut Party; C. Benton Coiner, Conservative Party of Virginia; Meritt Curtis, Constitution Party; Farrell Dobbs, Socialist Workers Party, Farmers Labor Party of Iowa, Socialist Workers and Farmers Party; Utah; Orval E. Faubus, National States Rights Party; Symon Gould; American Vegetarian Party; Eric Hass, Socialist Labor Party, Industrial Government Party, Minnesota; Clennon King, Afro-American Unity
The ad hoc joint resolution was passed by the Congress on August 22, 1960 by a voice vote in the House, with no dissent heard, and was signed into law by President Eisenhower two days later, suspending the equal time provision in the case of candidates for the presidency and the vice-presidency.\(^6\)

The President told his news conference:

"It seems to me over these years the cost of presenting the issues and cases and personalities to the public has gone way up, and if these networks can help out on this equal time basis it will be a fine thing.\(^7\)

What, then, were the effects of the first suspension of Section 315 in the history of the nation? To examine such effects it must be borne in mind that for the first time in a major presidential election year the broadcasters of the country would also be operating under the 1959 amendment exempting news-type programs from the equal time requirement. The 1959 amendment gave the broadcasters

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\(^6\)Public Law 86-677 (74 Stat. 544).

\(^7\)Broadcasting, August 22, 1960, p. 32.

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greater freedom in political broadcasting but it fell far short of outright repeal. The 1960 amendment which provided for limited, temporary suspension gave the broadcaster further leeway.

The effects of the suspension might be examined in three different categories:

1. The amount of time devoted to political broadcasting in 1960 as compared with the preceding campaign.
2. The "Great Debates."
3. Complaints concerning political broadcasting.

Time Devoted to Political Broadcasting

The survey made by the Federal Communications Commission\(^8\) showed a substantial growth in political broadcasting in 1960, far more than could be justified through population growth or any factor other than the two major modifications to Section 315.

All candidates for all parties spent 45 percent more in 1960 than in the preceding campaign year of 1956 for broadcast time. The total was $14,195,278 of which the Republican party accounted for

\(^8\) The figures used are taken from the F.C.C. Report Survey of Political Broadcasting, Sept. 1 - November 8, 1960, op. cit., Table 10.
$7,558,809; the Democratic party $6,204,986; and all other parties $431,483.

For television networks along the charges for 1960 as compared with 1956 remained about the same. For network radio the usage dropped 75.4 percent.

The real difference, however, was in sustaining time, which more than doubled. Both major parties combined received some 80 hours and 10 minutes of sustaining time; without cost, from the four major radio networks and the three television networks. In some instances free time was available which could not be used. Some 429 television stations averaged 6 1/2 hours of free time each given to the presidential and vice presidential candidates. The paid time average was 10 hours. On the television networks the Republican candidate received two hours and 54 minutes of free time, the Democratic candidate two hours and 55 minutes, and the minor party candidates 35 minutes. On radio networks the Republican candidate for the presidency received two hours and five minutes, the Democratic candidate two hours and eight minutes and the minor party candidates 35 minutes.
The increase in the use of free time on all major radio and television networks was 131 percent for the Democratic party and 71 percent for the Republican party. For the minor party candidates there was a decrease of 85 percent.

The cost to the networks, according to the best estimates, was about five million dollars, of which the "Great Debates" accounted for more than two million.

Thus, suspension of the equal time provision brought the major national parties a substantial amount of financial help, permitting far more exposure of their candidates than would have been possible without such assistance. Money expenditure alone, however, does not provide the whole picture. Audience size is of tremendous significance.

According to Dr. Frank Stanton the broadcasts for which the parties paid attracted less than a third of the average audience which the "free" debates attracted.

Thus, it becomes clear that the suspension of the equal-time provision, even of a limited basis in 1960, produced a greater use

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of radio and television by candidates. It also brought about larger audiences than ever before and resulted in substantial gifts of free time to the two major political parties, something which had not been possible before. It reduced, however, use of broadcast time by minor party candidates for the presidency and the vice presidency.

The Great Debates

The 1960 electronic debates between the two major presidential candidates were unprecedented in every way. Never in the history of the nation had two Presidential candidates been face-to-face on the same platform, much less before the eyes of the nation by means of television. The debates attracted the largest total audience in the history of television. More than 120 million persons in the United States alone saw one or more of the debates on television and at least 20 million more heard them on radio. The audience for the first one far surpassed the audience for the Sunday World Series game and millions more saw and heard them on tape in more than 100 foreign countries. 10

10Ibid., 80.
Ten percent more Americans than ever before went to the polls and voted for one of the debate participants, yet the winning margin of less than two-tenths of one percent was the narrowest in history. The total turnout of 68,833,000 exceeded the Eisenhower-Stevenson vote of 1956 by more than six million.\footnote{Ibid.}

Probably no other television series in history has been examined as thoroughly, discussed as much, brought about as much criticism, or received so much praise.

Just where did the idea for the "Great Debates" originate?

One authority\footnote{Robert W. Sarnoff, Chairman of the Board, N.B.C., Behind the Great Debates, address before the San Francisco Advertising Club, October 5, 1960.} traces the "debates" idea to the late Senator Blair Moody (D., Michigan). During the course of a radio program called The People's Platform which was heard on C.B.S. on July 27, 1952 Senator Moody said:

You know television and radio have remade the American political scene. People are now sitting in on conventions where the candidates can talk to people even though they can't get around on different stops and see them all. I think it might be very good for
CBS or NBC or someone else to put on a series of debates between General Eisenhower and Governor Stevenson. 13

Shortly thereafter Dr. Stanton wrote to Senator Moody and told of hearing his comment. He then solicited Senator Moody's support to help get relief from what he called "the onerous restrictions" of Section 315. Dr. Stanton also pursued the matter through other avenues, including personal contact with members of the advertising agency handling the Eisenhower campaign. 14

Meanwhile, on August 15, N.B.C. had made an offer of time on their radio and television networks for a debate between General Eisenhower and Governor Stevenson. The candidates declined the offer, however, and some two months later N.B.C. made another proposal to the two candidates in which it was proposed that the candidates would be in separate studios and would be interviewed simultaneously rather than engage in debate. 15

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14 Ibid.

15 NBC and The Great Debates, mimeo distributed by the National Broadcasting Co. as background material.
In 1955 Dr. Stanton again broached the idea of a debate between presidential candidates. In a column in the New York Herald Tribune he said:

If Congress amends section 315 as we propose CBS would provide free time for the major presidential candidates to debate the main issues.... One way this might be done would be to have a group of the country's leading newsmen, during the closing weeks of the campaign, designate the half dozen or so chief issues as they have developed. In special live programs CBS would invite the candidates to speak, one after another, on these issues from wherever they may be. 16

Thus was the stage set for Congressional action on Section 315.

But it was to come only in time for the 1960 elections and not those of 1956. On February 19, 1959 the Commission voted 4 - 3, reversing an earlier ruling, that regular newscasts did fall under Section 315. The vote came in response to a complaint from Lar Daly, the details of which have been covered earlier in this study, and the results was that the Commission ordered four Chicago television stations to grant Daly time equal to that which his opponent for mayor had enjoyed in newscasts on the stations. Three of the four stations

agreed to give Daly time. WBBM-TV, the CBS-owned affiliate, protested and asked for reconsideration. 17

Subsequently Section 315 became the target of hundreds of editorials in newspapers across the country and the broadcasters, through various trade associations organized to seek remedial legislation.

The public outcry which developed apparently made it clear to members of the Congress that action was necessary, particularly since the ruling of the Commission would affect almost all members of the Congress seeking reelection. Hearings began before the Communications Subcommittees of the Senate and the House Interstate and Foreign Commerce Committees. Eleven bills were considered. S. 1858, introduced by Senator Vance Hartke (D., Indiana) proposed to eliminate the application of the equal opportunity rule to fringe candidates for the presidency and the vice presidency, and would have exempted newscasts and similar broadcasts from the provisions of Section 315. 18

17 FCC, op. cit.
18 HR 802, Amending Section 315 of the Communications Act, op. cit. p. 4.
Thirty-six witnesses were heard, including top broadcasting executives. While the matter was being considered in the Congress, Robert W. Sarnoff, of the National Broadcasting Company, proposed the broadcasting of six debates of one hour each between the presidential candidates, one between the vice-presidential candidates, and one between the minor party candidates for a total of eight hours. In order to do this he proposed to expand "Meet The Press" to one hour and reschedule it on Saturday night. Such a move would have been possible under the proposed amendment to Section 315.

On September 14, 1959 Congress passed S. 1858 and news-type programs became exempt from the provisions of Section 315.

Already the possible suspension of Section 315 for the coming presidential campaign was being discussed and final approval came just in time for the 1960 campaign.

Soon after SJ 207 was signed into law representatives of the candidates and the networks met in Washington at the Mayflower Hotel on August 31 to work out details and by September 14 final

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19 NBC and The Great Debates, op. cit.

20 Public Law 86 - 247, op. cit.
Four one-hour debates were decided upon, to be carried on all national radio and television networks.

The first would originate in Chicago on September 26 and be handled by C.B.S. The second was to originate from WRC, the N.B.C. station in Washington, on October 7. The third would be handled by the American Broadcasting Company and would be a two-way, split-screen presentation with Mr. Kennedy in New York and Mr. Nixon in Los Angeles on October 13. The fourth would originate in New York on October 21, with arrangements being handled by A.B.C. All programs would be fed live to all points on the networks with no taped delay. Each would include an opening statement of eight minutes, two and a half minutes spent answering questions, a rebuttal time of one and a half minutes and a three or four minute summary, depending upon the time. Newsmen to handle the questions and to act as moderators would be chosen by lot. The debates, by

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Details contained herein developed as a result of personal interviews concerning the "Great Debates" with J. Leonard Reinsch, who represented the Democratic Party and Mr. Kennedy, and Herbert Klein, who acted in behalf of the Republican Party and Mr. Nixon.
agreement of the networks, would be unsponsored and there would be no station break time.

Subsequently there was a proposal for a fifth debate to be scheduled the first week of November but for various reasons the debate did not materialize.

The "Great Debates" stand as one of the most well-documented examples of electronic journalism and it is not proposed to recount the details here. What is important is to suggest here what the suspension of Section 315 for the duration of the 1960 campaign did: the suspension brought about the election of John F. Kennedy as President of the United States, and, subsequently, changed the course of world history.

Earl Mazo, head of the Washington bureau of the New York Herald Tribune said:

President Kennedy and those intimate with his campaign for the Presidency in 1960 are certain that the paramount factor in his victory was the Great Debates on television, especially the first one. . . . My own view, based on an analysis of surveys and polls I consider reliable and on a first hand acquaintance with much of the campaign and its participants, is that if there had been no debates on television, Nixon would have been elected President. 22

22 The Great Debates, op. cit., p. 2.
Robert Kennedy, campaign manager for his brother, told newsmen two days after the election that without the debates "the election would have been close."  

The winning candidate, John F. Kennedy, was asked at his November 10 press conference if he felt he could have won without the debates. He replied, without hesitation, "I don't think so."  

Complaints

Did suspension of Section 315 precipitate any abuse or misuse of the privilege on the part of the broadcasters of the nation? No, according to the best available information.

On September 12, 1959 Senator Ralph Yarborough (D., Texas) was named by Senator Warren Magnuson (D., Washington) to be chairman of the special Freedom of Communications subcommittee of the Senate Committee on Interstate and Foreign Commerce. The purpose of the subcommittee was to serve as a "watchdog" committee to observe how changes in Section 315 affected the 1960 election coverage on radio and television.

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23 Broadcasting, November 20, 1960, p. 29.
24 Ibid.
On June 14, 1960 the Congress further empowered the subcommittee and appropriated funds for it to study the election in terms of radio and television. Later the subcommittee was made a subcommittee of the Subcommittee on Communications of the Committee on Interstate and Foreign Commerce.

As noted earlier in this study the subcommittee made an examination of the way in which broadcasters of the nation handled the campaign and complaints made to the subcommittee and to the Commission were analyzed and reported on in part five of its report.

Complaints were fewer than normally expected for a national election. Chairman Frederick W. Ford of the Commission testified, before the Congress that only 30 complaints were received by the Commission with respect to the applicability of Section 315; 88 complained about editorializing of a political nature; 12 complaints were received dealing with rules requiring identification of sponsorship on political broadcasts; and 53 complaints were received on

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26 Ibid.  
27 Ibid.
such matters as news-slanting, dubbing applause to speeches made over the air by candidates, and similar complaints not directly related to provisions of the Communications Act.

Following Commissioner Ford's testimony Dr. Frank Stanton told the Congress:

Resolution 207 was frankly an experiment. I hope you readily agree that the experiment proved that broadcasters are sufficiently mature and enlightened, in their voluntary application of principles of fairness and nonpartisanship, to take their full and rightful place among the free media of a self governing people.... There is powerful evidence that radio and television, unshackled by the equal time restrictions, can greatly revitalize the fundamental democratic process in this country, minimizing the dangers, classical in a democracy, of indifference and ignorance, and maximizing new opportunities for an interested and informed electorate.

Jack Gould, television editor of the New York Times said,

...the dominant gain of the 1960 campaign is that TV has been freed from the unrealistic restrictions and that by assuming as never before the cost responsibility of bringing the campaign into the home it has contributed substantially to fairness in politics and to a greater interest in the outcome of the election.

28 Statement Before The Subcommittee of the Subcommittee on Communications of the Committee on Interstate and Foreign Commerce, January 31, 1961, mimeo. distributed by C.B.S.
There is no question that hereafter TV and politics will be inseparable as never before; the importance of the 1960 experience is how to make that relationship even more fruitful. 29

In any analysis of the suspension of the provisions of Section 315, even on the limited basis enjoyed by the broadcasters in 1960, one would have to conclude that the experience was very worthwhile both for the country and for the broadcasters.

By permitting the "Great Debates," by bringing about substantial increases in the amount of sustaining time devoted to political broadcasting, and by making the public aware of the great stake it, the public, has in how political broadcasting shall be regulated, the experiment was a success.

It would appear that many members of the Congress, after observing the experience in 1960, are far less concerned as to how the broadcasters of the country might measure up under future, and perhaps more liberal, suspensions and revisions. No serious case of irresponsible conduct in the realm of political broadcasting appeared as a result of the suspension.

To say that the 1960 suspension set the stage for complete revocation of Section 315, would, of course, not be true. It is doubtful that the experience was substantial enough to bring about total revocation on the part of the Congress.

It is quite likely, however, that it has set the stage for a series of suspensions similar in nature, which, perhaps, in the long run will create an atmosphere in which serious consideration of revocation can take place. By providing both quantitative and qualitative data such a series of suspensions may achieve what has not been achieved heretofore, complete revocation.

This would appear to be particularly true in the area of the economics of political broadcasting. As members of the Congress begin to see that suspension of the provisions of Section 315 provides more political contact with the electorate for less money perhaps the view from this point will become particularly attractive. It might replace the view now held by many members of the Congress, a view that sees only misuse of the airwaves by broadcasters in the absence of Federal regulatory power.
CHAPTER VIII

CONCLUSIONS AND RECOMMENDATIONS

This study has concerned itself with an historical analysis of
the regulation of political broadcasting in the United States.

It has examined those changes which have been written into the
law and those changes which have been proposed, but which have not
been made a part of the regulatory act.

It has examined the rulings of the Federal Communications Com­
mission and of the various courts as these rulings have affected reg­
ulation of political broadcasting.

It has assessed the role of the fairness doctrine in political
broadcasting, particularly as that doctrine applies to the practi­
calities of day-to-day political broadcast activities.

It has examined the suspension of the equal time requirement in
the 1960 presidential campaign, the only such suspension in the
history of broadcasting.

The study has brought together many facets of the regulatory
pattern of political broadcasting in the United States which hitherto
have been available only in a diversity of sources. As such, it provides a contribution to the overall knowledge in the field of broadcasting.

Throughout the period of the regulation of political broadcasting in the United States a number of proposals to modify the regulatory pattern have been proposed. Some of these proposals have been what one would term "substantial" in that they would modify some basic underlying philosophy. Other proposals would be termed "secondary" in that they dealt with relatively minor provisions of the regulatory process. (In the "secondary" category would be placed proposals to establish a time period immediately prior to an election when no political broadcast could be made or the proposal to deny the equal time provision of the law to persons convicted of subversive activities.  

No effort will be made here to analyze the ramifications of such secondary proposals. Rather, major proposals advanced in the Congress will be considered. These include proposals that:

(1) stations be permitted to censor political broadcasts, primarily for the purpose of protecting stations against suits for defamation:

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1 S. 1333 (80th Congress, 1st Session, 1947), op. cit.
(2) specified time periods be set aside for discussion of political issues or the broadcasting of political programs;

(3) equal time requirements be abolished in the case of candidates for major offices;

(4) equal time be required in the case of all political broadcasts, including programs broadcast by political parties, those dealing with controversial issues, and those involving persons speaking on behalf of candidates, as well as appearances by candidates themselves; and,

(5) the equal time provision of the act be abolished.

Censorship of Political Broadcasts

The proposal to censor political broadcasts is now academic in that the Supreme Court of the United States has absolved stations of liability for defamatory statements made by candidates when the station was unable to prevent the defamation because of its lack of ability to censor. Numerous proposals were introduced into the Congress to remove the liability of stations.

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2 79 S. Ct. 1309, op. cit.

3 S. 1333, op. cit., is an example.
In 1943 a Senate bill would have deleted the provisions of Section 315 which forbade licensees to censor political broadcasts made by candidates themselves. A 1947 bill would have permitted censorship by the station as well as granting immunity from suits for defamation. Two bills introduced in 1952 would have brought about conditions which were somewhat similar. All of the bills were generally opposed both by the Commission and by the industry.

Comments by Robert W. Sarnoff, Chairman of the Board of the National Broadcasting Company, who testified against portions of the 1952 bills, seem to sum up the arguments against the Congress giving stations the right to censor broadcasts by candidates. Sarnoff said:

But the language of both bills has the effect of also eliminating the provision forbidding broadcasters from censoring political candidates. We do not believe broadcasters desire the right to censor candidates. Not only would it be inappropriate, in our view, but it would be a function extremely difficult to exercise properly in the heat of a campaign, and with political presentations often on an extemporaneous basis.

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4 S. 814 (78th Congress, 1st Session, 1943), op. cit.

5 S. 1333, op. cit.

6 S. 2035 and S. 3434 (83rd Congress, 1st Session), op. cit.
The courts have wisely ruled that since broadcasters are prohibited from censoring a candidate they are also protected from liability for defamation based on the candidate's remarks. We believe the resulting situation is a sensible one that need not be disturbed. 7

With the situation resolved in this manner, it is unlikely that broadcasters will press for the right to censor political broadcasts since they would have virtually nothing to gain by such a proposal.

**Specified Time For Political Programs**

In 1937 a bill was introduced which would have required every licensee to set aside regular periods at desirable times of the day and night for the uncensored discussion of political, social and economic problems. No sponsorship would have been permitted. 8 In 1960 a House bill, had it passed, would have required networks to donate an hour each week of prime time to each of the major candidates for the presidency, and a lesser amount to candidates for the vice-presidency, in each of the eight weeks preceding election night. 9

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7Hearings on S. 2035 and S. 3434 Before The Subcommittee on Communications of the Committee on Commerce of the U. S. Senate; Testimony by Robert W. Sarnoff.

8HR 3030 (75th Congress, 1st Session, 1937), op. cit.

9HR 11260 (86th Congress, 1st Session, 1960), op. cit.
As might be expected, the industry vigorously opposed each of these attempts to require free time. It did so primarily on the grounds that such a requirement would infringe upon the basic rights of the broadcasters under the First Amendment to the Constitution.

The theory behind proposals such as these is that broadcasting, using spectrum space which belongs to the public must return a portion of that use in the form of public service. To say that such service must be returned in the form of specific amounts of time on specified topics can hardly be defended in present day situations. If such a conclusion were valid it would follow that airlines could be required to transport political candidates without charge, telephone and telegraph companies could be required to provide wire service, and a myriad of equally unlikely situations could develop.

Despite the strong opposition of broadcasting interests to such proposals it is likely that they will continue to be raised in the Congress from time to time. Whether the courts would hold such a requirement to be constitutional would remain to be seen.
Abolition of Equal Time For Candidates

For Major Offices

Proposals which would have effected a permanent suspension of the equal time requirements in the case of candidates for major political offices have been made periodically in the Congress.

S. 2035, introduced by Senator Pastore (D., Rhode Island) in 1962, and reintroduced as S. 251 in 1954, would have permanently suspended the equal time provisions of Section 315 in the case of candidates for the presidency, the vice-presidency, the senate, and the house of representatives, as well as for state governorships.

A number of points of view on such a possible suspension have been heard. The Subcommittee of the Subcommittee on Communications of the Senate Committee on Commerce, writing its reports and recommendations following the temporary suspension in 1960 indicated such legislation might well be class legislation. It held such action would "be at variance with the fundamental objectives which Congress seeks to protect." Representatives of minor parties, labor groups and the American Civil Liberties Union testified against such a proposal.

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Taking the opposite view, Mr. Sarnoff, speaking for N.B.C., indicated he felt the proposal did not go far enough in that candidates for mayor were not included in the proposed suspension. 11

Substantial argument on both sides of the question can be advanced. On the one hand, to freeze minority candidates at all major levels out of a campaign would not appear to be in the public interest. It would appear that a question of some magnitude is raised by a proposal which would allow the government to freeze or crystallize by federal statute the traditional two-party system in this country. One does not have to delve far back into American history to see the contributions made to the national development by secondary minor or so-called "splinter" political parties. If the federal government, controlled by the two major parties, is to deny secondary parties the most effective means of bringing the aims of the parties to the attention of the public, we run counter to the principles on which our system of government was founded.

If television offers the means to reach an American public numbering more than one hundred and ninety million and it denies minor parties adequate use of television, it tends to separate those

11 Testimony of Robert W. Sarnoff, op. cit.
parties from the public and makes substantial changes in the political system while ostensibly achieving a far different purpose.

Looking at another view of this problem, a study made by the National Broadcasting Company of contests for state governorships, the Senate and the House of Representatives in the elections of 1958 and 1960 showed statistics which are pertinent.

One-third of the contests for governor and for the U. S. Senate involved more than the candidates of the two major parties.

In the contest in Massachusetts in 1958, there were four candidates. Between them, the two candidates running on the Socialist-Labor and Prohibitionist tickets polled only six-tenths of one percent of the vote.

In New Jersey, the same year, there were eight candidates for the Senate. Six of them, other than the Democratic and Republican nominees, polled slightly more than one-and-a-half percent of the votes together. In 1960 in New Jersey there were three minority party candidates for the Senate and among them they polled slightly more than one percent of the votes.

In Indiana in 1958 there was a single minority party candidate for the Senate who received only one-and-one-tenth percent of the
vote. In 1960, two such candidates entered the race for Governor in Indiana and received only three-tenths of one percent of the vote.

In the state of Washington in 1958, three minority party candidates entered the campaign for the Senate and together received only one and three-tenths percent of the vote.¹²

A requirement that grants equal time to such candidates would seem to work against the public interest in that broadcasters hesitate to invite major candidates to appear since equal time must be granted the minor candidates. Such gives the appearance of presenting a rather one-sided and disproportionate view of the campaign.

To suspend the provisions only in the case of candidates for the two highest offices gives the appearance of a double standard. There seems little justification in permitting a suspension in the case of these candidates and to deny such in the case of all other candidates, particularly if the reasoning behind the requirement is to insure fairness on the part of broadcasters.

¹²Ibid.
Equal Time For All Political Broadcasts

In 1933 a proposal was made in the U. S. House of Representatives which would have required stations to afford equal opportunity for use of facilities to equal numbers of persons, if persons used the station to support or oppose candidates or to discuss public questions. Thus, equality of treatment would have been extended to supporters and opponents of candidates, as well as in the discussion of questions of public controversy.

The White-Wolverton bill, introduced in 1947, would virtually have rewritten the Communications Act of 1934. In so doing, it would have extended the equal time requirement to persons who spoke in behalf of candidates, to "regularly organized political parties," and, to all different views on public measures to be voted on in an election.

None of the above proposals were enacted into law, but something close to the intent of these proposals has come about through Commission interpretation of the fairness doctrine. Section 315

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13 HR 7716 (72nd Congress, 2nd Session, 1937), op. cit.
14 S. 1333 (80th Congress, 1st Session, 1947), op. cit.
makes no provision for equal time or even equal opportunity for discussion of political candidacy or political questions by persons other than bona fide candidates for public office. The 1959 amendment, however, did provide that broadcasters should "afford reasonable opportunity for the discussion of conflicting views on issues of public importance."15

The significant difference is that candidates are entitled to a mathematical equality of time, while issues require only the opportunity for the discussion of conflicting views. Under Section 315 the licensee has no choice as to who uses his facilities. Under the fairness doctrine he may make a choice as to who shall appear, except in the case where a personal attack has been made. In such an instance, the person attacked may reply or designate someone to make the reply in his behalf.

It is questionable whether a good case can be made in support of a requirement of mathematical equality in the case of issues. To do so would open up myriad possibilities, not the least of which is that one view of a controversial subject would result in equal time for another view which, in turn, would create a requirement for a third, and on ad infinitum.

15Public Law 86 - 274, op. cit.
Such a potential disruption of the normal programming pattern for a broadcast station would, it seems, lead either to abolition of controversial discussion in order to protect station programming or to loss of audience as the requirement of such equality led to degradation of the program offering. Since the speakers would be free to develop new controversy in answering old the possibility of degradation of service to the public appears to be very real.

The general provisions and requirements of the present fairness doctrine covering presentation of controversial situations and issues seem to closely parallel the position advanced by Charles A. Siepmann.

In proposing a set of ground rules for the handling of discussion of controversial issues Siepmann proposed that: (1) the licensee alone should decide who the parties are to a broadcast of a controversial subject; (2) speakers should be required to confine their remarks to the subject under discussion; and (3) personal attacks should be prohibited.

Abolition of All Equal Time Requirements

It would be both inaccurate to state that broadcasters have contended all political broadcast regulation should be abolished. There undoubtedly have been incidents wherein a broadcaster publicly contended that the absence of all regulation in political broadcasting would be desirable, but there is no indication this represents a responsible consensus in the industry.

There has been, and continues to be, effort to release broadcasters from the equal time provision of the law. Such a release would leave other segments of the regulatory act in force. These would include the prohibition against censorship, requirement of equality of rates, and the requirement for the presentation of opposing points of view.

Arguments for elimination of the equal time provisions generally center around these major points:

1. The equal time requirement prevents the broadcaster from presenting the major candidates.

2. The equal time requirement makes the broadcaster a "second class citizen."

3. The equal time requirement violates the freedom of speech guaranteed the broadcaster by the First Amendment to the Constitution.
Arguments in opposition to elimination of the provision center around these two points:

1. Broadcasters may show favoritism to one candidate over another.

2. Such a change would be unfair to the minority parties.

Each of the arguments has validity in some degree. It is basically a question of the degree of validity and the degree of importance each plays in relationship to the public interest.

Prior to the 1959 amendment which exempted news-type programs from the equal time provisions of Section 315, broadcasters had a more cogent and effective argument that major candidates could not be presented. Since news-type programs have become exempt, the broadcaster is able to utilize the formats of news programs to present major candidates without becoming involved in equal time for reply. Such programs as "Meet the Press" and "Face the Nation" are notable examples.

It is true that appearance of a candidate on this type of program would possible lead to demands for reply to the issues discussed, but the licensee would be under no obligation to permit replies by any specific persons or candidates.
The argument that the equal time requirement makes the broadcaster a "second class citizen" would appear to have little validity. It is true that the broadcasters of the nation turned in an excellent record of fairness during the suspension of the equal time requirement in 1960. Even more important is the fact that over the years broadcasters have not taken advantage of the lack of an equal time rule in the discussion of controversial issues. This tradition of fairness could well continue to operate in political campaigns in the absence of the arbitrary requirement of equal time. To conclude otherwise is to judge the broadcaster "guilty" without trial, a concept which is alien to the American sense of justice and fair play.

But the presence or absence of federal regulation does not of itself imply a degradation of citizenship or character. The application of regulatory concepts to all monopolistic enterprises in the United States is an accepted way of life. The fact that airline or telephone rates are regulated does not imply that executives so employed hold a lesser degree of citizenship than say, doctors, whose fees are not regulated.

The third argument that the equal time requirement violates the freedom of speech guaranteed by the Constitution must be examined in the light of what this guarantee holds. It is clear the
Congress did not intend to permit any censorship on the part of the government of what a broadcaster might choose to say on the air. The Congress emphasized, in adopting legislation concerning broadcasting, it did not intend to exclude broadcasting from the protection against government interference which is provided by the First Amendment.

This would seem to mean that broadcasters were free to say what they pleased and the government was absolutely forbidden to interfere, except for such materials which are injurious by their very nature, such as obscenity; material which presents a clear and present danger to the state; and materials, such as advertising, which are purely private in nature.

But, in actual practice, as Head says, "government regulation goes a long way beyond these limits." He says:

On the one hand broadcasting is recognized as a form of 'the press' that is protected from government interference by the First Amendment; on the other hand the government interferes with the freedom of the broadcaster to say what he chooses. This contradiction becomes understandable when it is recognized that the inclusion of broadcasting in the phrase 'the press' cannot be taken quite literally. For the want of

17 Head, op. cit., 360.
another word 'press' must do, but this does not mean that broadcasting is really exactly like the press. To be sure broadcasters have long argued that as far as the first amendment is concerned they are literally the same thing. The fact remains, however, that broadcasting is inherently different from the printed media and always will be; mere words cannot erase the differences. 18

Head then goes on to point out the differences. He indicates that broadcasting uses the publicly-owned frequency spectrum and that therefore all people are entitled to a broadcasting service; that there is a limitation on the number of channels available; that the public has a huge investment in the medium itself in the form of receivers, and therefore the public, as well as the licensee, has a property interest to be considered; and that broadcasting, being received in the home and available to children, must observe certain restraints not expected of a medium so situated. "Clearly," he said, "broadcasting has a social responsibility not quite like that of any other medium." 19

Not all observers would agree with Head in his analysis.

WARNER, as developed earlier in this study, states a conviction that

18Ibid.

19Ibid.
broadcasting and print may be treated alike and that the only control
should be on the part of the listener who has the option to listen or
not to listen as he desires. 20

Under the libertarian theory of mass communications referred
to earlier it might seem that abandonment of all regulation of po­
litical broadcasting would be in order. With this theory modified
by the newer social-responsibility theory, it does not appear that
limited government regulation in the field of political broadcasting
is necessarily bad in itself. 21

In examining the charge that broadcasters may show favoritism
and thus be unfair, one may look to the experience of the 1960 cam­
paign. With the removal of the equal time requirement for the two
major races there was no indication that the suspension resulted in
any less fairness than was exhibited in previous campaigns. There
is, in fact, no evidence that broadcasters would be unfair in their
treatment of political candidates in the absence of a statutory re­
quirement for equal time. On the other hand, there is evidence,
based on the 1960 campaign, that removal of the requirement might stimulate and increase the amount of political discussion available to the American people. 22

The contention that elimination of the equal time provision would be unfair to minority parties has some validity. The earlier discussion of the role of minority party candidates and the vote they received in the elections should occasion some consideration of whether there might be a more equitable method of dealing with them. If the equal time requirement in the case of a candidate who polls less than one percent of the vote denies broadcast exposure to major candidates, it would seem that a question of fairness to the public has been raised.

The presence of minority candidates in a race merely for the purpose of capitalizing on the equal time provision is not unknown.

It would seem, however, that some method of selection of just who is a serious and substantial candidate could be evolved. Certainly there must be avenues to such a determination which would be

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The viewership of the Great Debates, the large amounts of time devoted to political broadcasting, coupled with the large voter turnout are some of the indications.
adequate and would bring about a situation which would not be unfair to minority candidates but would not deny majority right.

The only conclusive way to make a determination of the value, or lack of value, of the equal time rule to the American political process would be to suspend it for a fixed period and attempt to assess the results. It is true that such a study might tend to be more statistical than political or sociological in nature but it should not prove impossible to draw some valid conclusions.

There are, to be sure, some risks inherent in such an action. But there are risks in all courses of action, even that of doing nothing. If continuation of the equal time provision does fetter free and open political discussion by broadcast means, as many contend, then doing nothing, may entail the greatest risk of all.

Other Research Studies

It would appear that any substantial study should, by its very nature, generate a climate for additional research and study in the same or closely related areas.

Several possibilities for additional study appear to grow out of the present undertaking.

One study might well be centered around development of an
alternate regulatory pattern to the equal time provision. It would seem that the equal time provision was developed without recourse to the views of broadcasters, since in 1927, few broadcasters, as we now understand the term, existed. It would also follow that technological and sociological developments since 1927 might well affect the validity of continuing the equal time requirement. A study which would reflect the views of broadcasters, political candidates (both successful and unsuccessful), sociologists and others concerned might result in the development of an alternative regulatory pattern.

There is little evidence that the average broadcaster has considered the alternatives to equal time. Most of the call for change has been for abandonment of the equal time provision and most of it has come from the network level or from broadcasters in the larger markets. Whether the typical broadcaster actually finds the present requirement restrictive or whether he feels it is restrictive because he has been told it is restrictive, is open to further determination. In an effort to determine if the equal time requirement has been restrictive, in fact, the study could examine what possible effect a suspension would have had on particular races at particular times.
The net effect of such a study might be to remove the issue of suspension or revocation of the equal time requirement from a somewhat emotional, generally negative approach and determine what broadcasters could reasonably have expected to have taken place under specific circumstances if suspension had been in effect.

A second study would be feasible, assuming that 1964 will see no suspension of the equal time provision in the national presidential elections. With the Commission again undertaking a quantitative study of political broadcasting during the 1964 elections, a comprehensive study of the effects of suspension might result. Certain changes in the amounts of broadcast time utilized by major and minor party candidates which were attributed to the suspension in the 1960 elections could be studied in the light of the 1964 results. If suspension does occur in 1964 the study would seek correlation with earlier campaigns conducted during periods of non-suspension. In addition to other factors, the study could analyze the complaints generated during such campaigns which were attributable to the suspension. These could be compared in number and content with complaints made to the Commission in other election periods.

A study of a different nature, but one which relates, would be to examine the possible effects of a surplus of spectrum space.
If one were free to establish his own broadcast station, due to technological advances, would governmental regulation still be justified? Would the "power" of the medium still be such that governmental intervention and regulation would be justified to insure adequate social responsibility, or would the situation be such that, like the newspaper, the broadcaster would be free of any governmental oversight?

Such a situation is not outside the realm of possibility and, particularly in the light of the development of wired systems of television program distribution, it takes on added importance. What validity would there be, for instance, to regulation of a wired system if anyone were free to start his own wired system? Would the impact of a wired system be any less than the impact of a wireless system, particularly if powerful interests were to acquire substantial wired systems and link them into a national network? This area offers possibility of future study in the regulatory field, because this could be accomplished prior to the establishment of such a circumstance.

Summary

Free and unfettered discussion in the political realm is clearly in the national interest. Operation in the interest of the public has,
through the years, been the consistent standard set for the broadcasting industry. In order to achieve political discussion which will serve the best interest of the public at large, the Congress adopted a regulatory pattern requiring equal broadcast time for all candidates for the same office.

Various alternatives to this requirement have been proposed. These have ranged from proposals to require equal numbers of persons to be permitted to appear, to abolition of the requirement. Other proposals have included abandonment of the no-censorship provision, abandonment of the equal time provision in the case of candidates for major offices, setting aside of specified periods of broadcast time for political discussion, and the application of the equal time provision to all political and controversial discussion, rather than limiting it only to candidates for public office.

None of these proposals have passed the Congress, although some have been given serious consideration. An analysis of them shows that none of them would necessarily produce positive results insofar as improving the service to the public is concerned. Some would most likely work to the detriment of the public interest. A limited suspension of the equal time provision holds the most promise
and would provide a means of assessing the value or lack of value to the public embraced in such a move.

Other studies which appear to have value and to be related to the present study would include a study of alternate methods of insuring fairness in the handling of political broadcasts, a comparison of political broadcasting in two national campaigns where Section 315 was suspended or in a campaign wherein Section 315 was suspended and a campaign wherein no suspension was granted.

A third study would be developed around a concept of no shortage of spectrum space or the alternative, i.e., that through a wired system anyone who desired would be able to program to the public. Would regulation still be necessary and/or desirable in such a case, or in the case of the development of a wired network of such a size that it would be competitive with broadcast networks?

Such studies could contribute to the fund of knowledge which is so necessary and so desirable if broadcasting is to move toward a high standard of professionalism. As Head says:

... in the final analysis the progress of broadcasting toward a higher status depends upon the intelligence, good will, social insight, and conscientiousness of the people responsible for its conduct. 23

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23 Head, op. cit., pg. 414.
Contributions to the overall fund of knowledge of broadcasting will help achieve such an aim.
Dear Sir:

Reference is made to section 315 of the Communications Act of 1934, as amended, which requires equal time opportunities in the use of broadcast facilities by political candidates. Public Law 274, 86th Congress, modified the equal time requirement in the use of Government-licensed broadcast facilities in section 315 by exempting bona fide news reports, interviews, coverage and documentaries from its provisions even when a legally qualified candidate appeared on such a bona fide news program.

On June 14, 1960, Senate Resolution 305 was passed establishing a subcommittee to its Committee on Interstate and Foreign Commerce charged with the duty to examine, investigate, and make a complete study of any and all matters pertaining to--

(1) Federal policy on uses of Government-licensed media, radio and television, for the dissemination of political opinions, news, and advertising, and the presentation of political candidates; and

(2) A review and examination of information and complaints concerning the dissemination of news by such media.

This bipartisan subcommittee attaches great importance to the purpose for which it was created and in order to better assure fulfillment of the national policy of fairness and impartiality in the use in political campaigns of communications media operating under Government license invites you to direct complaints of unremedied violations of these principles to the Subcommittee on Freedom of Communications, room 5202, New Senate Building, Washington 25, D. C.

Sincerely yours,

Ralph W. Yarborough, Chairman,
Subcommittee on Freedom of Communications
To the TV or Radio Station Addressed:

As you know, on June 14, 1960, Senate Resolution 350 was passed establishing a subcommittee to its Committee on Interstate and Foreign Commerce charged with the duty to examine, investigate, and make a complete study of any and all matters pertaining to--

(1) Federal policy on uses of Government-licensed media for the dissemination of political opinions, news, and advertising, and the presentation of political candidates; and

(2) A review and examination of information and complaints concerning the dissemination of news by such media.

This bipartisan subcommittee attaches great importance to the purpose for which it was created and in order to better assure fulfillment of the national policy of fairness and impartiality in the use in political campaigns of communications media operating under Government license in these last 3 crucial weeks prior to our national election, you are requested to report to the subcommittee within 24 hours of your receipt of any complaint made directly to you by any candidate for public office, political committee, or individual alleging discrimination by you in the handling of political opinions, news, and advertising and the presentation of political candidates.

Following this immediate notification to the subcommittee of any complaint received by you, we would further request that you advise us of your action and disposition in the handling of said complaint.

Sincerely yours,

Ralph W. Yarborough, Chairman,
Subcommittee on Freedom of Communications
TO THE TV OR RADIO STATION ADDRESSED:

The Commission in the discharge of its statutory responsibilities and to assist the Congress in its consideration of political broadcasting requires information from all stations with respect to political broadcasts in the forthcoming election campaign in the period September 1 - November 8, 1960.

In this connection your attention is invited to recent Congressional enactments relating to political broadcasting. Sec. 315 of the Communications Act, as recently amended, exempts from the "equal time" provisions of the Act appearances by legally qualified candidates on certain types of news programs, and states further:

"Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance."

In addition, pursuant to Senate Resolution 305, adopted June 14, 1960, the Senate Committee on Interstate and Foreign Commerce created a sub-committee to

"examine, investigate, and make a complete study of any and all matters pertaining to: (1) Federal policy on uses of government licensed media for the dissemination of political opinions, news, and advertising, and the presentation of political candidates; and (2) a review and examination of information and complaints concerning the dissemination of news by such media."

Accordingly, and pursuant to the authority contained in Sections 308 and 403 of the Communications Act, you are requested to furnish the Commission with answers to the attached questionnaire.

Please read carefully the questionnaire and instructions now so that you will know the information that is required and will arrange to keep whatever records may be necessary. Please file only one copy with the Commission; the other copy is for your files.
The national radio and television networks (American Broadcasting Company, Columbia Broadcasting System, Mutual Broadcasting System, and National Broadcasting Company) will supply their affiliates with part of the basic information required for Schedules D and E. They will list under appropriate headings corresponding to those on Schedules D and E network programs involving appearances of the Presidential and Vice-Presidential candidates. By simply checking those programs which you carried and adding up the program time, you will have the information you need to answer the questions regarding network programs.

In addition, it is expected that you will inform these networks directly as to any programs of these networks involving appearances of 5 minutes or longer by candidates for President and Vice-President which were carried by your station, whether sustaining or non-sustaining. The named networks in turn will report to the Commission as to station clearances of each such program in order to indicate the extent of exposure of these candidates on a program-by-program basis.

Answers to the questionnaire should be signed by a person authorized to sign applications on behalf of the licensee. (See Section 1:303, FCC Rules.) You are requested to submit your reply no later than December 5, 1960. A separate questionnaire should be filed for each station.

BY DIRECTION OF THE COMMISSION

Ben F. Waple
Acting Secretary

Attachment
A SURVEY OF POLITICAL BROADCASTING

GENERAL INSTRUCTIONS

All TV, AM, and FM stations are required to reply to this questionnaire. It is important that we receive a reply from you even if it does no political broadcasting at all. In that case answer only the questions on Schedule A, B, and C. Return completed Questionnaire to the Federal Communications Commission, Wash. 25, D. C.

A separate report must be submitted for each station. If the programming of an FM station duplicates that of the AM station in a joint AM-FM operation, the same information should appear in both reports, except for information requested in Schedule C. (This information should be entered on the AM report, and the FM report should contain a note to that effect.) Be sure that you have identified your station above.

Please supply as much information as possible even if precise data are not available on all questions. Reasonable estimates will be acceptable. Write "none" where appropriate, rather than leave a blank space.

Network - Whenever information is requested in this survey as to "network" programs or announcements, report in this category the programs or announcements of ABC, CBS, MBS, or NBC only. Similar information as to any other network should be included with local and other non-network programs or announcements in the category of All other.

SPECIFIC INSTRUCTIONS

Schedule A - The information requested applies to the general policy of AM or FM stations in the field of political broadcasting and is not limited to any particular primary or election campaign. Television stations have reported this information in a previous survey. The information requested on all other schedules applies to all stations (AM, FM, and TV) and is for the specific period September 1 - November 8, 1960.

Schedule B - Editorializing in this schedule is limited to the case in which the station itself broadcasts its support for or opposition to a political candidate.

Schedule C - This schedule seeks information on the use of station facilities by or on behalf of any political candidate. It is concerned with programs and announcements on which others may appear on behalf of a candidate as well as those on which a candidate himself appears:

I. Program time or announcements requested - Exclude requests originating with ABC, CBS, MBS, NBC. Also exclude requests which were withdrawn before the station granted or denied the requests. Include all requests which were granted by the station but were cancelled by a candidate or his supporters prior to broadcast of the program or announcement.

II. Total charges - Exclude revenues received from commercial advertisers although they may have sponsored political broadcasts. Also exclude any sums received from the named networks (ABC, CBS, MBS, NBC). Include amounts receivable from any other network as well as monies owed or paid directly to the station whether for programs, announcements, production facilities, preemption charges, or any other charges.

Schedule D - Applies to all broadcasts by a political candidate for any office. Excluded are broadcasts by others on behalf of the candidate.

I. Appearance - An appearance occurs only when a candidate is heard on a program or announcement. Such appearance may be live or by film, tape, transcription, or other recording. Do not include photographs, film clips or other visual reproductions of a candidate unless these are accompanied by the voice of the candidate. (This definition is not to be considered as an interpretation of "use" under Sec. 315)

Paid for by candidate or supporters - Broadcast time paid for by the candidate, his party, or any individual or group supporting the candidate.

Program time - Use full time of normal program segment (Example, 5, 15, 30, 60 minutes). Do not deduct time of announcers, interviewers, etc. Candidates of more than one political party may appear on the same program. (For example, a debate, forum, or panel show.) In such instances, an actual count of the time used by candidates of each party may not always be practicable. Where this is the case, the time reported for each party should be the total program time divided equally among the parties. (Example, in a 30 minute program with Republican and Democratic candidates, each party is credited with 15 minutes.)

Network programs - Include only programs from ABC, CBS, MBS, and NBC, if any broadcast by your station. These networks will supply your station with the information covering appearances of the Presidential and Vice-Presidential candidates. Candidates for other offices appearing on the programs of the named networks need not be reported.

FILE ONE COPY ONLY
SPECIFIC INSTRUCTIONS • cont.

All other programs - Include programs from all other networks as well as those originating with the station on which programs any candidate for any office appears.

Announcements - Count only announcements on which a candidate speaks.

II. Programs Sponsored by Commercial Sponsors - Programs involving appearances by candidates (of 5 minutes or longer) on which programs a commercial product, service, or trade name is advertised. *Excluded* are sponsored newscasts or other programs involving appearances by candidates of less than 5 minutes on a single broadcast.

III. Sustaining Time - Programs involving appearances by candidates of 5 minutes or longer for which programs the stations do not receive compensation either from the candidates or supporters, or from any commercial sponsor.

Schedule E - Applies to all broadcasts by candidates for the offices specified. *Excluded* are broadcasts by others on behalf of the candidates.

Appearances - See definition,Schedule D, I.

Candidates - For the offices of President and Vice-President break down the information between programs from ABC, CBS, MBS, NBC, and all other programs by making entries on the appropriate lines. For other offices include only information on programs or announcements which do not originate with the named networks.

Column 1 - Announcements - Report only a numerical count of all those announcements containing appearances by can-c. (Example, 50, 100, 500, etc.). If more than one candidate appears on any announcement, credit the announcement separately for each candidate.

Column 2, 3 - Programs on which the candidate's appearance is less than 5 minutes - Report only the number of all such appearances by a candidate. If more than one candidate appears, credit an appearance separately for each candidate.

Columns 2, 4, 5 - Programs exempt from the "equal time" provisions - Exemption from the "equal time" provisions of the Communications Act, as contained in Sec. 315, applies to the "appearance by a legally qualified candidate on any bona fide newscast, bona fide news interview, bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subject covered by the news documentary), or on-the-spot coverage of bona fide news events". In addition, S.J. Res. 207, which has already been approved by the Senate, provides that appearances of candidates for the President or Vice-President are also to be exempt from the "equal time" provisions of Sec. 315. If this Resolution is finally enacted, all appearances of candidates for these two offices should be reported under Cols. 2, 4, and 5. If the Resolution is not finally enacted, the appearances not presently exempted under Sec. 315 should be reported under Cols. 3, 6, and 7.

Columns 4, 5, 6, 7 - Programs on which the candidate's appearance is 5 minutes or longer - Report the total amount of time of all such appearances. If two or more candidates appear on the same program and an actual count of the time used by each is not practicable, the time reported for each candidate should be the total program time divided equally among the candidates.

Columns 4, 6 - Sustaining - See definition, Schedule D, III.

Columns 5, 7 - Non-Sustaining - Include programs sponsored by commercial sponsors as well as those paid for by the candidate or his supporters.

NOTE: Cols. 1, 2, and 3 ask for NUMBER; Cols. 4, 5, 6, and 7 ask for TIME

(You are urgently requested to refer to instructions in responding to this questionnaire)

SCHEDULE A
AM AND FM STATIONS ONLY REPLY
(TV Stations Have Reported Previously and Need Not Reply)

General Policy with Respect to Political Broadcasts

(ANSWER A, B, AND C BELOW)

With respect to political broadcasts relating to election to office, state whether it is your policy to:

(CHECK):

(a) Sell program time
YES ☐ NO ☐

(b) Sell announcements
YES ☐ NO ☐

(c) Make broadcast time available without charge
YES ☐ NO ☐

SCHEDULE B
ALL (AM, FM, TV) STATIONS REPLY
For period September 1 - November 8, 1960

1. Did your station editorializ e in support of or against any political candidate? YES ☐ NO ☐

2. If "Yes", supply the following information:

(a) Number of editorial broadcast ..........................................

(b) Number of "reply" statements broadcast .............................

(c) Indicate below what efforts were made to encourage "reply":

(VERIFY ANNOUNCEMENTS ☐ LETTERS OR PHONE CALLS ☐ OTHER SPECIFY ☐)

OTHER SPECIFY ☐
(You are urgently requested to refer to instructions in responding to this questionnaire)

**SCHEDULE C**

**ALL STATIONS REPLY**

For period September 1 - November 8, 1960

This schedule applies to the use of station facilities by a candidate or his representative, whether or not the candidate appears. (Exclude requests originating with or payments received from ABC, CBS, MBS, NBC)

1. In respect to all requests for political broadcasts by or on behalf of any candidate (Excluding requests withdrawn by candidates or supporters prior to station action on request) show following:
   - A. Program time requested (in hours and minutes):
     - 1. Paid
     - 2. Suspended
   - B. Program time denied (in hours and minutes):
     - 1. Paid
     - 2. Suspended
   - C. Announcements requested (number)
   - D. Announcements denied (number)

2. Total charges made by station for political broadcasts by or on behalf of all candidates (before commissions and after discounts).
   - Amount (rounded to nearest dollar)...

**SCHEDULE D**

**ALL STATIONS REPLY**

For period September 1 - November 8, 1960

1. Appearances of candidates on broadcasts paid for by candidates or supporters
   - A. Total program time (in hours and minutes):
     - Network programs (ABC, CBS, MBS, NBC only)
     - All other programs
   - B. Total number of announcements:
     - Network announcements (ABC, CBS, MBS, NBC only)
     - All other announcements

2. Appearances of candidates on programs sponsored by commercial sponsors (where appearance of candidate on any single broadcast is 5 minutes or longer)
   - Total program time (in hours and minutes):
     - Network programs (ABC, CBS, MBS, NBC only)
     - All other programs

3. Appearances of candidates on sustaining programs (where appearance of candidate on any single broadcast is 5 minutes or longer)
   - Total program time (in hours and minutes):
     - Network programs (ABC, CBS, MBS, NBC only)
     - All other programs
(You are urgently requested to refer to instructions in responding to this questionnaire)

**SCHEDULE E**
**ALL STATIONS REPLY**
For period September 1 - November 8, 1960

**APPEARANCES OF CANDIDATE ON:**

<table>
<thead>
<tr>
<th>Candidates</th>
<th>Announcement</th>
<th>Programs on which the candidate's appearance is less than 5 minutes</th>
<th>Programs on which the candidate's appearance is 5 minutes or longer</th>
<th>Total amount of TIME of candidate's appearances on: (in hours and minutes)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>NUMBER of announcements by candidate</td>
<td>NUMBER of candidate appearances on:</td>
<td>Programs exempt from the &quot;equal time&quot; provisions</td>
<td>Programs not exempt from the &quot;equal time&quot; provisions</td>
</tr>
<tr>
<td></td>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td>Sustaining</td>
</tr>
<tr>
<td>President</td>
<td>Republican</td>
<td>ABC, CBS, MBS, NBC only...</td>
<td>All other programs</td>
<td></td>
</tr>
<tr>
<td>Vice-President</td>
<td>Republican</td>
<td>ABC, CBS, MBS, NBC only...</td>
<td>All other programs</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Democratic</td>
<td>ABC, CBS, MBS, NBC only...</td>
<td>All other programs</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td>ABC, CBS, MBS, NBC only...</td>
<td>All other programs</td>
<td></td>
</tr>
<tr>
<td>U.S. Senator</td>
<td>Republican</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Democratic</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>U.S. Representative</td>
<td>Republican</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Democratic</td>
<td></td>
<td></td>
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</tr>
<tr>
<td></td>
<td>Other</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Governor</td>
<td>Republican</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Democratic</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Exclude programs received from ABC, CBS, MBS, and NBC.

**NOTE:** Cols. 1, 2, and 3 ask for NUMBER; Cols. 4, 5, 6, and 7 ask for TIME
A Survey of
POLITICAL BROADCASTING

The purpose of this survey is to provide information on political broadcasting as it relates to the election of candidates.

Name of Network ________________________________  AM □  TV □ (check one)
Submitted by: ___________________________ Name ___________________________ Title ___________________________

NETWORK - SCHEDULE A

General Policy with Respect to Political Broadcasts
(Check appropriate boxes) YES NO

With respect to political broadcasts relating to election to office, state whether it is your policy to:

a. Sell program time □ □
b. Sell announcements □ □
c. Make program time available without charge □ □

NETWORK - SCHEDULE B

For period September 1 - November 8, 1960

1. Did your network editorialize in support of or against any political candidate? YES □ NO □

2. If "yes", supply the following information:
   a. Number of editorials broadcast.
   b. Number of "reply" statements broadcast.
   c. Indicate what efforts were made to encourage "reply".

   (check) Announcements □
   Letters or phone calls □
   Other (specify) □
All requests for political broadcasts by or on behalf of any candidate which were granted or denied by the network (Exclude requests withdrawn by candidates or supporters prior to network action on requests)

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>Republican</th>
<th>Democratic</th>
<th>All Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Program time requested (in hours and minutes):</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Paid</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Sustaining</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>b. Program time denied (in hours and minutes):</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Paid</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Sustaining</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>c. Announcements requested (number)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>d. Announcements denied (number)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I. Total charges by network for political broadcasts by or on behalf of any candidate (before payments to stations)</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

Amount (before commissions and after discounts).................
**NETWORK - SCHEDULE D**

For period September 1 - November 6, 1960

**Appearances of Candidates Only on:**

<table>
<thead>
<tr>
<th>Candidates for:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td><strong>President</strong></td>
</tr>
<tr>
<td><strong>Vice President</strong></td>
</tr>
<tr>
<td><strong>Republican</strong></td>
</tr>
<tr>
<td><strong>Democratic</strong></td>
</tr>
<tr>
<td><strong>All</strong></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td><strong>Republican</strong></td>
</tr>
<tr>
<td><strong>Democratic</strong></td>
</tr>
<tr>
<td><strong>All</strong></td>
</tr>
</tbody>
</table>

**Announcements**
- Number of announcements

**Programs on which the candidate's appearance is less than 5 minutes**
- Programs exempt from the "equal time" provisions
  - Number of candidate appearances
- Programs not exempt from the "equal time" provisions
  - Number of candidate appearances

**Programs on which the candidate's appearance is 5 minutes or longer**
- Sustaining programs exempt from the "equal time" provisions
  - Total amount of time of candidate appearances (in hours and minutes)
- Non-sustaining programs exempt from the "equal time" provisions
  - Total amount of time of candidate appearances (in hours and minutes)
- Sustaining programs not exempt from the "equal time" provisions
  - Total amount of time of candidate appearances (in hours and minutes)
- Non-sustaining programs not exempt from the "equal time" provisions
  - Total amount of time of candidate appearances (in hours and minutes)
NETWORK - SCHEDULE F

For period September 1 - November 8, 1960

[Supply as separate attachments, information requested below]

With respect to every program, segment, or participation of the network on which a candidate for President or Vice-President appears for 5 minutes or longer, supply the following information:

I. Title of program, if any.

II. Name and party of each candidate for President or Vice-President appearing.

III. Time at which program broadcast by network.

IV. Whether exempted from "equal time" provisions (In event S.J. Res. 207 is not finally enacted into law).

V. If program is non-sustaining, report:
   a. Total stations ordered.
   b. Total stations clearing.
   c. Whether paid for by:
      1. Candidate or supporters.
      2. Commercial sponsor.

VI. If program is sustaining, report call letters and location of each station carrying the program. With respect to the stations carrying the program, indicate by an appropriate notation those stations which:
   a. Carried program on delayed basis
   b. Carried less than full program.
In order to detail the legislative history of political broadcasting provisions in the Radio Act of 1927 and the Communications Act of 1934 and the efforts to amend these Acts, the Congressional Record constituted the major basic source. The Record for the period from March 1926 through July 1928 supplied data about the early legislative efforts. The proceedings of the 72nd and the 73rd Congresses provided background on the debates concerning the Act of 1934. Proceedings of the 80th Congress were examined to provide source materials relating to the White - Wolverton bill (S. 1333) which was the first major effort to completely revamp the Act of 1934. Records of the 86th Congress were researched for details of the 1959 amendment which excepted news type programs from the equal time provisions of Section 315. Volume 106 of the Record gave congressional argument on the equal time suspension for presidential and vice presidential candidates in 1960.

Not all of the original source material, however, came from the Congressional Record. Much material was found in official reports.
of the Senate and the House of Representatives. House Reports 404 and 464 of the 69th Congress, 886 of the 86th Congress, and 359 of the 88th Congress all deal with the topic under consideration.

Likewise, Senate Report 565 of the 72nd Congress, 781 of the 73rd Congress, 1539 of the 81st Congress, 562 of the 86th Congress, and 994 of the 87th Congress provided much valuable assistance for research into the area of political broadcasting and federal regulation.

Hearings of both the Senate and the House provided background material. In particular, Hearings of the Senate Committee on Commerce of the 78th Congress, 1st Session, 1943, provided data relative to the first major attempt to rewrite the Act of 1934. Hearings of the Subcommittee on Communications of the Senate Interstate and Foreign Commerce Committee of the 80th Congress, 1st Session; the Senate Subcommittee on Privileges and Elections of the Rules and Administration Committee, 84th Congress, 2nd Session, 1950; and the same committee of the 85th Congress, 1st Session, 1957, yielded valuable information.

In attempting to develop the administration and regulation of political broadcasting in terms of the Commission itself at least four special publications of the Commission relating specifically to
political broadcasting were used to point the way to original sources. In 1954 the Commission published "Use of Broadcast Facilities By Candidates for Public Office." This was followed in 1958 by its revision of the same publication and in 1960 a supplement thereto was issued. In 1962 the Commission's latest official declaration under the same title was issued.

On four occasions also the National Association of Broadcasters issued its Political Broadcast Catechism which summarized and explained some of the basic considerations when political candidates use the airwaves.

All statutes reflecting the regulatory authority of the Government of the United States insofar as political broadcasting is concerned were researched. These included 37 Stat. 199 (1912); 44 Stat. 1162 and 1170 (1927); 45 Stat. 373 (1928); 46 Stat. 844 (1929); 48 Stat. 1064, 1066, 1083, and 1088, all of 1934; 49 Stat. 1475 (1936); 66 Stat. 717 (1952); 73 Stat. 557 (1959); and 74 Stat. 544 (1960).

An extensive review of the cases involving determinations which are pertinent to the study at hand was made. Cases researched included: Hoover vs. Intercity Radio Co. (280 Fed. 1003); United States vs. Zenith Radio Corp. 12F. (2d.) 614 (1926); F.R.C. vs.
Radio Regulation, more commonly known as the Pike and Fischer reports, provided a compilation of major issues reaching the Commission for adjudication or reply. All such issues to which Pike and Fischer make reference were analyzed for their impact and the light they were able to shed on the topic under study.

Secondary source material and general background information was provided from books which deal, generally in part rather than entirely, with the issue at hand. Among the more important of these are Dill's Radio Law, Cushman's The Independent Regulatory Commission, Emery's Broadcasting and Government, Key's Politics, Parties and Pressure Groups, Socolow's The Law of Radio Broadcasting, Warner's Radio and Television Law, the N.A.B.'s Broadcasting and The Bill of Rights, Freedom and Responsibility In Broadcasting, and The Great Debates.
In dealing with the effects of the partial suspension of Section 315 much original source material, including the major network television logs, as well as network memoranda and publications dealing with the 1960 campaign were assembled and utilized for purposes of research in this study.
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Volume 67, July 30, 1926
Volume 67, July 1, 1926
Volume 78, May 15, 1934
Volume 81, March 17, 1937
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Volume 106, August 22, 1960

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