(Please Print)
RADIO STATION:_____ DATE:_____

NAME:_____ POSITION:_____

1. List on reverse side hereof the name of all corporations, companies, firms, governmental organizations, research organizations and educational or other institution in which you are serving as employee, officer, member, owner, trustee, director, expert, adviser, or consultant, with or without compensation.

2. Name all corporations, companies, firms, or other business enterprises in which you have any financial interest through the ownership of stock, stock options, bonds, securities, or other arrangements.

3. Do you now or have you ever personally, or on behalf of the station, accepted money or other consideration from anyone, other than the station, for broadcasting any information?

4. Describe the method of payment for services. (Use additional pages if needed.)

5. Do you now or have you ever personally, or on behalf of the station, accepted money or other consideration from anyone, including persons in the record or music publishing field, for playing records or broadcasting any other information?

6. To what extent do you engage or have any business interest in shows, dances, hops or outside business activities? (Explain on back of this page)

7. Describe the method of payment for services. (Use additional pages if needed.)

8. Do you have an interest in or connection with record companies, retail record stores or music publishing companies? If the answer is in the affirmative, please list all such companies or stores detailing your interests in such ventures.

9. Have you ever required recording artists to appear at functions without pay (or at a rate lower than the artist would ordinarily command), with the implication that if they did not so appear, their records would not be played on the air?

It is recognized that all attachments constitute an integral part of this response. I agree to up-date or revise this affidavit from time to time as situation dictates, as a condition to my continued employment.

Signature:_____

Subscribed and sworn to before me this _____ day of _____, 19___.

_____
Notary Public

My Commission expires:_____

500-4-a ANNOUNCER AFFIDAVITS (Cont.)

Here are several of the most outstanding problems which can arise in these areas and which must be avoided, as follows:

1. "Payola" is the taking of money, goods or services as an inducement to playing records or presenting other programming or announcements over a radio station which would otherwise be presented or for playing records more often than they would otherwise be played, without the knowledge of the management. It is a federal crime. "Payola" can easily arise from outside activities involving recording artists and recording companies of which the following are illustrative:
   a. An announcer accepts money, food, payment on his car, transportation money or any similar benefits in return for an understanding, express or implied, that he will play records over the radio station.
   b. An announcer makes a recording for a record company for a fee and royalties and with the understanding, express or implied, that the record will be played over the radio station.
   c. An announcer participates in a show or dance at which recording artists appear. The artists agree to appear for free, or less than they would ordinarily be paid, with the understanding, express or implied, that their records will be played over the radio station.

500-4-a ANNOUNCER AFFIDAVITS (Cont.)

d. An announcer makes reference over the air to particular local services, such as a gasoline station, in return for which the station gives him free service.

2. "Plugola" is the making of a commercial announcement or references over a radio station for something in which the announcer is personally interested without reporting the same to management and without their being logged as commercial announcements. Examples of this are as follows:

a. Same situation as paragraph 1(b) above, except that the announcer makes unusual promos for the record on which he appears on his own initiative with the view to increasing his own royalties or to insure the popularity of the record so that he will be called upon to make other records in the future. This is "Plugola".

b. An announcer participates in outside activities such as dances or shows. He makes announcements for those shows over the air without telling management and without logging them as commercial announcements in order to increase his income at the shows or insure their success so that he will be called upon for other shows. This is "Plugola".

All employees are cautioned not to become involved in any outside activities which could either result in profit to them or cause any

500-4-a ANNOUNCER AFFIDAVITS (Cont.)

motivation to affect the material that is broadcast over this station without bringing it to the attention of management in advance. Failure to do so will be considered an offense which merits appropriate disciplinary measures, including dismissal.

Penal provisions relative to this section follow:

Sec. 501. Any person who willfully and knowingly does or causes or suffers to be done any act, matter, or thing, in this Act prohibited or declared to be unlawful, or who willfully or knowingly omits or fails to do any act, matter, or thing in this Act required to be done, or willfully and knowingly causes or suffers such omission or failure, shall, upon conviction thereof, be punished for such offense, for which no penalty (other than a forfeiture) is provided in this Act, by a fine of not more than $10,000 or by imprisonment for a term not exceeding one year, or both; except that any person, having been once convicted of an offense punishable under this section, who is subsequently convicted of violating any provision of this Act punishable under this section, shall be punished by a fine of not more than $10,000 or by imprisonment for a term not exceeding two years, or both.

Sec. 502. Any person who willfully and knowingly violates any rule, regulation, restriction, or condition made or imposed by the Commission under authority of this Act, or any rule, regulation, restriction, or condition made or imposed by any international radio or wire communications treaty or convention, or regulations annexed thereto,

500-4-a ANNOUNCER AFFIDAVITS (Cont.)

to which the United States is or may hereafter become a party, shall, in addition to any other penalties provided by law, be punished, upon conviction thereof, by a fine of not more than $500 for each and every day during which such offense occurs.

Sec. 317. (a) (1) All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person: PROVIDED, That "service or other valuable consideration" shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification in a broadcast of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast.

(2) Nothing in this section shall preclude the Commission from requiring that an appropriate announcement shall be made at the time of the broadcast in the case of any political program or any program involving the discussion of any controversial issue for which any films, records, transcriptions, talent, scripts, or other material or service of any kind have been furnished, without charge or at a nominal charge, directly or indirectly, as an inducement to the broadcast of such program.

500-4-a ANNOUNCER AFFIDAVITS (Cont.)

(b) In any case where a report has been made to a radio station, as required by section 508 of this Act, of circumstances which would have required an announcement under this section had the consideration been received by such radio station, an appropriate announcement shall be made by such radio station.

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

(d) The Commission may waive the requirement of an announcement as provided in this section in any case or class of cases with respect to which it determines that the public interest, convenience, or necessity does not require the broadcasting of such announcement.

Sec. 508. (a) Subject to subsection (d), any employee of a radio station who accepts or agrees to accept from any person (other than such station), or any person (other than such station) who pays or agrees to pay such employee, any money, service or other valuable consideration for the broadcast of any matter over such station shall, in advance of such broadcast, disclose the fact of such acceptance or agreement to such station.

(b) Subject to subsection (d), any person who, in connection with the production or preparation of any program or program matter which is intended for broadcasting over any radio station, accepts

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or agrees to accept, or pays or agrees to pay, any money, service or other valuable consideration for the inclusion of any matter as a part of such program or program matter, shall, in advance of such broadcast, disclose the fact of such acceptance or payment or agreement to the payee's employer, or to the person for whom such program or program matter is being produced, or to the licensee of such station over which such program is broadcast.

(c) Subject to subsection (d), any person who supplies to any other person any program or program matter which is intended for broadcasting over any radio station, shall, in advance of such broadcast, disclose to such other person any information of which he has knowledge, or which has been disclosed to him, as to any money, service or other valuable consideration which any person has paid or accepted, or has agreed to pay or accept, for the inclusion of any matter as a part of such program or program matter.

(d) The provisions of this section requiring the disclosure of information shall not apply in any case where, because of a waiver made by the Commission under section 317 (d), an announcement is not required to be made under section 317.

(e) The inclusion in the program of the announcement required by section 317 shall constitute the disclosure required by this section.

(f) The term "service or other valuable consideration" as used in this section shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with a broadcast, or for use on a program which is intended for

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broadcasting over any radio station, unless it is so furnished in consideration for an identification in such broadcast or in such program of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property in such broadcast or such program.

(g) Any person who violates any provision of this section shall, for each such violation, be fined not more than $10,000 or imprisoned not more than one year, or both.

500-4-b STATEMENT OF MUSIC POLICY

Each station should have on file (at the station and at the Washington attorney's office) a statement of policy which governs the selection of its music. This sample policy gives you an example of how it should be done:

STATEMENT OF POLICY GOVERNING MUSIC SELECTION (KXXX)

1. Music at KXXX is selected by the music director (who is also a disc jockey). All records programmed by KXXX must show sales action in one, or all, of three sources (Billboard, Cash Box, and Bill Gavin Record Poll). If a record received reports of sales action in our immediate area, it may then be added to our list. Occasionally, the music director may add "ear" picks to the playlist (these are records which have no sales justification, but are, in the MDs opinion, good additions to the playlist). These picks are held to a minimum.

500-4-b STATEMENT OF MUSIC POLICY (Cont.)

2. Each Wednesday afternoon, the music director previews all the records added to the playlist in the presence of the Program Director. At that time, the list is either approved as is, or with omissions and additions.
3. Announcers may play any records from the current playlist and from the Klassic (old hit) file. Playing a song that has not been approved and added to the playlist is grounds for immediate dismissal.
4. All announcers are required to keep a log of the music played during their shift. Records are categorized on "A" or "C" lists (depending upon their popularity) and the ratio of play is preset by the program director. These logs are kept in program files for a period of 90 days.
5. All disc jockeys are allowed to do outside record "hops" when "prior" approval is obtained from GM. They may not give promotion to these hops on the air unless they are for non-profit organizations, and the hops are open to the public. None of our disc jockeys promotes his own dances, shows or hops on the air.

500-4-c FAIRNESS DOCTRINE

I. INTRODUCTION

The FCC has rules specifying the responsibility of licensees when their facilities are used to make a personal attack on a specified group or individual or in the event that the licensee utilizes his facilities for the presentation of a political editorial. The Rules (which embrace both radio and TV provide:

"Personal attacks; political editorials.

(a) When, during the presentation of views on a controversial issue of public importance, an attack is made upon the honesty, character, integrity or like personal qualities of an identified person or group, the licensee shall, within a reasonable time, and in no event later than one week after the attack, transmit to the person or group attacked (1) notification of the date, time and identification of the broadcast; (2) a script or tape (or an accurate summary if a script or tape is not available) of the attack; and (3) an offer of a reasonable opportunity to respond over the licensee's facilities.

(b) The provisions of paragraph (a) of this section shall be inapplicable (i) to attacks on foreign groups or foreign public figures; (ii) where personal attacks are made by legally qualified candidates, their

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authorized spokesmen, or those associated with them in the campaign, on other such candidates, their authorized spokesmen, or persons associated associated with the candidates in the campaign; and (iii) to bona fide newscasts or on-the-spot coverage of a bona fide news event (but the provisions shall be applicable to any editorial or similar commentary included in such newscasts or on-the-spot coverage of news events).

NOTE: The Fairness Doctrine is applicable to situations coming within (iii), above, and, in a specific factual situation, may be applicable in the general area of political broadcasts (ii), above. See Section 315 (a) of the Act. 47 U.S.C. 315 (a); Public Notice: Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance. 29 Fed. Reg. 10415.

(c) Where a licensee, in an editorial, (i) endorses or (ii) opposes a legally qualified candidate or candidates, the licensee shall, within 24 hours after the editorial, transmit to respectively (i) the other qualified candidate or candidates for the same office or (ii) the candidate opposed in the editorial (1)

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> notification of the date and the time of the editorial; (2) a script or tape of the editorial; and (3) an offer of a reasonable opportunity for a candidate or a spokesman of the candidate to respond over the licensee's facilities:
>
> Provided, however, that where such editorials are broadcast within 72 hours prior to the day of election, the licensee shall comply with the provisions of this subsection sufficiently far in advance of the broadcast to enable the candidate or candidates to have a reasonable opportunity to prepare a response and to present it in a timely fashion."

By adopting these Rules the Commission has codified matters that were formerly part of its general Fairness Doctrine. The reasons given by the Commission for singling out the "personal attack" and "political editorial" aspects of the Fairness Doctrine for codification into formal Rules were (1) its belief that detailed written Rules would clarify licensees' responsibilities in these areas, and (2) its view that codification of these requirements into formal Rules would permit more efficient enforcement by the Commission.

As long as these requirements were contained only in a Commission statement of policy, and not in formal Rules, there was substantial doubt whether the Commission could impose fines upon licensees who violated them. The Commission has now codified these requirements

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so that it could impose fines for their violation, and it must, therefore, be assumed that the Commission will be assiduous in enforcing these new Rules.

It must be remembered that the new Rules merely transform a portion of the Fairness Doctrine into a more specific form. Those portions of the Fairness Doctrine which were not codified into the new Rules, still remain effective, as a continuing Commission policy. Moreover, the new Rules are unrelated to the equal time requirements of Section 315 of the Communications Act; those statutory provisions and the Commission's interpretations of them continue to be in force.

II. THE PERSONAL ATTACK RULE

The personal attack Rule provides that when a radio or TV station carries a personal attack on an identified individual or group in connection with a controversial issue of public importance, the broadcaster must (a) promptly notify the individual or group that the attack occurred (b) forward a tape or transcript of the attack, and (c) offer a reasonable opportunity to respond over the licensee's facilities.

A. The Creation of the Affirmative Duty

Whenever a broadcast station carries a personal attack that is otherwise covered by the personal attack Rule, the licensee is obligated to comply with the Rule's provisions. This is true

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regardless of the source of the attack. The fact that the attack is made during a network program, rather than during a local program, does not change the licensee's obligation. An employee's attack coming without the prior knowledge or consent of the station owner, likewise falls within the scope of the Rule. Even if an employee disobeys the explicit instructions of the licensee not to make a personal attack, these facts would not constitute a legitimate defense to a charge of violating the Rule.

Summarizing, the critical factor is that a personal attack is broadcast over the station. The source of the attack is irrelevant.

The personal attack Rule applies only where "an individual's or group's integrity, character, or honesty or like personal qualities" is called into question. An obvious example of a personal attack is the statement, "John Smith is a crook." The personal attack is not to be confused with a disagreement -- even a strong disagreement -- as to views on substantive questions or issues. Such a disagreement is not covered by the personal attack Rule. Thus, the statement, "District Attorney John Smith has been doing a poor job of fighting crime," would not be covered by the Rule. Needless to say, sometimes it may be difficult to determine whether a particular statement is a personal attack or simply a disagreement as to views. For example, opinions may differ as to whether the comment, "District Attorney John Smith's actions seem to be favoring the criminal element in our city," constitutes a personal

500-4-c FAIRNESS DOCTRINE (Cont.)

attack or a disagreement on views. In any case where you have a genuine doubt whether a statement is a personal attack, you should consult us.

Questions may also arise concerning the "identification" of the individual or group which is attacked. Thus, an individual may be attacked even though he is not named, if he is described with sufficient clarity that there can be no doubt of his identity. On the other hand, an "attack" on a large group of individuals who are not readily identifiable with a specific organization or institution (such as "all left-wingers" or "all right-wingers" are dishonest) may be sufficiently indistinct so that the personal attack Rules does not come into play. The Commission has made no effort in the Rule itself to define the meaning of the term "identified," but has indicated that this is a matter on which each licensee must make a good faith judgment. Here again, if you should have questions, please consult Washington Attorney.

In order for the Rule to be applicable, the personal attack must be "in connection with a controversial issue of public importance." Thus, if a personal attack were made upon an individual who has absolutely no connection with anything or anyone in the area served by the station, the Rule would be inapplicable. We believe that there will be very few "attacks" which fulfill this requirement and that the Commission will scrutinize with great care any contention that a personal attack was not made "in connection with a controversial issue of public importance."

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B. Exceptions to the Affirmative Duty

1. Foreign Public Figures and Foreign Groups.

The Commission has expressly exempted personal attacks on "foreign groups or foreign public figures" from the requirements of the personal attack Rule. It had formerly held, in connection with the Fairness Doctrine, that it is not necessary to send a transcript or summary of the attack, or offer time for response, to a foreign leader even if he were attacked in connection with a controversial issue of public importance. We find no additional explanation or definition of the terms "foreign public figure" and "foreign group" in any reported Commission determinations. Presumably, this exception will be easy to apply in many cases, as for example an attack on President DeGaulle or Premier Kosygin. Problems might possibly arise with respect to basically foreign groups which might have membership in the United States, or "foreign" leaders who are domiciled in this country for a prolonged period of time. Here, again, the test is basically good faith judgment. In any event, whether or not the "personal attack" features of the Rule are applicable, the subject matter may deal with a controversial subject of public importance, and the non-personal attack features of the Fairness Doctrine may still be applicable. As an example, although an attack on a Premier would not entitle him to a transcript or time for a response, if the attack were part of an argument that the United States should

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withdraw from Viet Nam, the opposite point of view would have to receive exposure over the station's facilities.

2. The Political Candidate Exception.

The second exception to the personal attack Rule relates to legally qualified candidates for political office. The wording of the political candidate exception to the personal attack Rule is straightforward. It provides that if one legally qualified candidate for political office, or his authorized spokesman, or his associate in the campaign, makes a personal attack on another legally qualified candidate for political office, or his authorized spokesman, or his associates in the campaign, the Rule does not apply. At the same time, however, when one legally qualified candidate for political office makes a personal attack on another legally qualified candidate for the same office, their rights are governed completely by the "equal time" provision of Section 315 of the Communications Act, and neither the new Rule nor the Fairness Doctrine is applicable.

There may be situations which fall within the "political candidate" exception to the personal attack Rule, but where the "equal time" requirements of Section 315 do not apply, such as, e.g., a personal attack on Candidate "A" by a spokesman for Candidate "B", or an attack by a spokesman for Candidate "A" on a spokesman for Candidate "B". In these situations, the Fairness Doctrine may impose some responsibility on the broadcaster, although it will not be a responsibility under the personal attack Rule.

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Only if a matter of general controversial public importance is raised in such a program would there be any responsibility to afford time for expression of the opposing point of view. Such situations may be limited in number, and unusual. If you are in doubt, please consult Washington Attorney.

3. The Bona Fide Newscast Exception.

Generally speaking, the personal attack Rule does not apply to attacks made during a bona fide newscast or during on-the-spot coverage of a bona fide news event. In these cases, it is the Fairness Doctrine, and not the personal attack Rule which applies. It is important to note, however, that this exception does not exempt news documentaries, news interview shows, or editorials or similar commentary presented in the course of a bona fide newscast. If a personal attack is made during this type of a program, the Rule does apply.

C. What the Personal Attack Rule Requires

After a personal attack is made, the broadcaster, himself, has the affirmative duty to comply with the Rule. He must respond in accordance with the Rule - even if the person or group attacked does nothing.

The broadcaster must take prompt action. What is "reasonable" will depend on the factual context in which the attack occurs. A delay of as much as several days may, under some circumstances,

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violate the Rule, which requires that the licensee respond within a reasonable length of time after the attack, even if this is less than a week.

Within the time limit discussed above, the broadcaster must (1) notify the person or group attacked of the time, date and identification of the broadcast; (2) send to the person or group attacked a script or tape (or accurate summary if neither a script nor a tape is available) of the attack; and (3) offer the person or group attacked a reasonable opportunity to respond to the attack over the licensee's facilities.

Exactly what constitutes a "reasonable opportunity" is not a constant, but will vary with the circumstances of the particular case. The hour, date, and length of the reply broadcast are left to the good faith negotiations of the parties, subject always to review by the Commission. However, only in the rarest of cases will the broadcaster have any control over who will make the response to the personal attack. Usually the person attacked will want to respond himself. He has the right to do so.

In those cases where the person attacked is a legally qualified candidate, the station may deny him the right to personally appear and insist that the refutation be made by a spokesman on his behalf. This is so, because otherwise the station would be required to offer equal time to all persons running against him. If the person attacked wants someone else to reply for him, this decision will have to be respected by the broadcaster in most cases.

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The recent decision of the Court of Appeals for the District of Columbia (Red Lion Broadcasting Co., Inc. v. FCC) (This case has been appealed to the United States Supreme Court) held that the broadcaster is obliged under the Fairness Doctrine to make free time available to the person subjected to the attack. This does not preclude the licensee from attempting to obtain -- either from the person attacked, or elsewhere -- commercial sponsorship for the program in which the attack is answered. It simply means that if the attacked party refuses to pay, the broadcaster is then obligated to offer him -- on a sustaining basis -- an opportunity to respond to the personal attack which had been made against him.

III. THE POLITICAL EDITORIAL RULE

The political editorial Rule is separate and distinct from the personal attack Rule. The Rule requires that when a licensee, in an editorial, either endorses or opposes a legally qualified candidate for office, he must, within 24 hours after the broadcast of the editorial, send to all candidates who are directly involved a notice of the time and date of the editorial, a script or tape of the editorial, and an offer of a reasonable opportunity to respond.

A. The Creation of the Affirmative Duty

The political editorial Rule applies only where the station is responsible for a political editorial. (This contrasts with the personal attack Rule which is applicable without regard to who initiates the attack.) Therefore, if a person who has no official

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relationship with a station were to say, "Vote for John Smith for Mayor," it would not fall within the political editorial Rule. (This is true whether or not the person who made the statement was a candidate for political office.)

The political editorial Rule applies whether the station's editorial is in support of, or in opposition to, a legally qualified candidate. Thus, it is broader than the personal attack Rule, which relates only to statements directed against a person or group. But it only applies to editorials which either endorse or support legally qualified candidates for political office, and not to editorials on more general political subjects. With respect to the latter, the Fairness Doctrine is still applicable, however.

B. What the Political Editorial Rule Requires

As in the case of the personal attack Rule, the political editorial Rule places an affirmative duty upon the licensee. This means that when a licensee editorially endorses or opposes a candidate, he must comply with the political editorial Rule even though the directly concerned candidate neither asks for a copy of the editorial nor requests time to reply. The licensee must comply with the rule within 24 hours after the editorial is first broadcast. (The Commission has suggested that wherever possible, the licensee should meet his affirmative duty prior to the broadcast of the editorial). This is to be contrasted to the personal attack Rule, which gives the licensee a "reasonable time" (not to exceed one week) to meet his obligations.

500-4-c FAIRNESS DOCTRINE (Cont.)

In the special case where a licensee broadcasts a political editorial within 72 hours of election day, it has the responsibility to afford all directly concerned candidates "a reasonable opportunity to prepare a response and to present it in a timely fashion." Although some ramifications of this Rule remain uncertain at this time, one consequence is perfectly clear. In order to comply with the provisions, the licensee who intends to support or to oppose a political candidate in an editorial to be broadcast within 72 hours of election day must notify all the directly concerned candidates before the broadcast. Exactly how long before the broadcast the licensee must comply with the Rule will, of course, depend upon the circumstances. But in every case, notice must be sent early enough so that a response may be prepared and delivered "in a timely fashion."

This special provision applies when a political editorial is broadcast within 72 hours of election day. The relevant measuring point, in our judgment, is the beginning of election day, and not either the opening or the closing of the polls on election day.

If a licensee's editorial is in opposition to a particular candidate, the licensee's duty runs to that candidate alone. In this respect the political editorial Rule is analogous to the personal attack Rule. But if the editorial is in support of a political candidate, the licensee's responsibility is to all of the other legally qualified candidates for the same office.

500-4-c FAIRNESS DOCTRINE (Cont.)

Under the political editorial rule the licensee must transmit a notification of the time and date of the editorial to all directly concerned candidates. It also requires that the licensee forward either a script or a tape of the editorial. In this respect it differs slightly from the personal attack Rule which authorizes the sending of "an accurate summary" of the attack if neither a script nor a tape exists. For the purposes of the political editorial Rule, however, the licensee must send either a script or a tape; an "accurate summary" is not sufficient.

As with the case of the personal attack Rule, what constitutes a "reasonable opportunity" to respond to a political editorial will vary with the circumstances. Generally speaking, the parties themselves will be left to arrange the time, date, and duration of the response.

It is important to remember that the 24 hour requirement applies only to the time within which the offer is to be made and does not mean that the responding broadcast itself must be carried within 24 hours of the time that the editorial was broadcast. The question of the exact time for the response is left to the good faith negotiation of the parties. Although in most cases it will probably not be essential for the broadcaster to offer the responding candidate an opportunity to speak within 24 hours of the editorial's broadcast, in a few cases this may be necessary. For example, if an editorial is broadcast within 72 hours of election day, it is

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quite possible that the broadcaster would be obligated to offer the candidate an opportunity to answer within 24 hours after the editorial was carried, in order to be certain that it is presented in "a timely fashion."

500-4-d FCC INSPECTORS

1. General

General Managers may, from time to time, be confronted with two types of field inspectors from the Federal Communications Commission. One is a field inspector, usually representing one of the nine District Offices. The other is an inspector from the Complaint and Compliance Division in Washington.

When any individual presents himself at your office and represents himself as an FCC inspector, the receptionist, office manager (or whoever receives him) should immediately ask to see his identification. When she is sure the identification is authentic, she should then usher him into the GM s office. IF THE GM IS NOT IN, OM SHOULD MAKE AN APPOINTMENT FOR THE MAN TO SEE THE GM. This may very well happen, since inspectors call, usually, during normal business hours and GM's normally are on the street selling during normal business hours. THE GM IS THE ONLY PERSON IN THE STATION WHO HAS AUTHORITY TO DO BUSINESS WITH AN INSPECTOR. Not the PD; Not the CE; Not anyone... except the GM. Any inspector, especially those from the C & C Division, may present themselves, informally, at any time to an announcer, the janitor, a secretary, or any other individual employed

500-4-d FCC INSPECTORS (Cont.)

by the station for the purpose of gaining information. Managers are warned to thoroughly orient each employee on policy regarding this matter. These employees must be warned against saying anything or answering any questions. These employees must refer the inspector to the GM.

The information below will guide your conduct.

a. Field Inspector from District Office

This man may show up at any time, but usually he will arrive at your station shortly before or after you have applied for a license renewal or shortly before you go on the air with a new facility. When we apply for transfer of license, you will be faced with such an inspection only if he shows up after the transfer has been granted and usually any discrepancies in this instance would belong to the predecessor, although you would be obliged to make any required adjustments. In most cases, the inspector involved here is simply discharging his duty. He has no axe to grind, is not functioning as an eager-beaver policeman, and is not out to do you harm. It is the exceptional inspector, who may be out for blood, with whom we are concerned here. Normally, the routine field inspector will call on you during normal office hours. Sometimes, however, a field inspector will be on a cross country trip and has to call you Saturday or Sunday. You are under NO obligation to see the inspector, since he is calling at other than normal office hours. However, Washington attorney advises that you should see him on Saturday or Sunday, should he offer the explanation that he is making a cross country visiting trip.

500-4-d FCC INSPECTOR (Cont.)

Normally, the inspector we are discussing here is primarily interested in the technical aspects of your station. He will check operating logs; he may ask your engineer to dial readings on your remote equipment. He may even wish to look at your transmitter site. He may want to examine one day's log, to see, perhaps, if the spot he heard at 7:25 a.m. Saturday was, in fact, logged at 7:25 a. m. Saturday.

This, too, is okay. You may go ahead and deal with the inspector in a friendly, businesslike manner; answering questions, asking NO questions and volunteering NO information. However, should the inspector ask to see a week's logs; should he start digging into your public file; should he question you regarding your nighttime pattern; qualifications of your engineer or engineers, STOP RIGHT THERE. CALL THE WASHINGTON ATTORNEY. SAY NO MORE TO THE INSPECTOR, AND LET THE WASHINGTON ATTORNEY HANDLE IT. This will require some judgment on the part of the GM. You must know when the inspector stops asking routine questions and begins asking probing, non-routine questions. Because this is the point where you stop answering questions and get on the telephone. Normally, it is not necessary to have a witness present when you are dealing with the inspector. On his technical questions, unless you are a qualified engineer, you should have your CHIEF engineer present during the questioning. Be sure to brief the CE. Occasionally, a CE will want to demonstrate to the inspector how much he, the engineer, knows

500-4-d FCC INSPECTORS (Cont.)

about electronics and he might begin expounding on what he has (and has not) done at the station. The CE should, as you have been doing, simply answer questions; not ask them and not volunteer any information. Should an inspector show up at the transmitter site, the operator is not authorized to answer any questions and will direct the inspector to the GM s office.

b. Inspector from Complaints and Compliance Division

Your Office Manager or receptionist has already determined that the FCC representative is from the Complaints and Compliance Division in Washington. This man is to be shown every courtesy, BUT YOU ARE TO DISCUSS NOTHING WITH HIM. He is NOT in your station on a routine visit. He is there because someone has lodged a complaint - probably a serious one, if the FCC feels inclined to send a rep out on it - against your operation. INVITE HIM TO BE COMFORTABLE WHILE YOU GET ON THE TELEPHONE AND CALL WASHINGTON ATTORNEY. SHOW HIM NOTHING, TELL HIM NOTHING. AS A CITIZEN HE CAN CHECK YOUR PUBLIC FILE, BUT NOTHING MORE. WHEN YOU GET THE WASHINGTON ATTORNEY ON THE TELEPHONE, EXPLAIN BRIEFLY TO THE ATTORNEY THAT MR. SO AND SO FROM THE FCC'S C & C DIVISION IS SITTING IN YOUR OFFICE. THE ATTORNEY WILL THEN ASK TO SPEAK TO THE MAN, AND WILL FIND OUT WHY HE IS IN YOUR STATION. THE ATTORNEY, UPON FINISHING HIS CONVERSATION WITH THE INSPECTOR, WILL ADVISE YOU OF WHAT TO DO. (see 700-6-f)

500-4-e FTC RULES

The FTC is concerned with the broadcast of misleading advertising. To this point, its actions have been primarily directed against advertisers, but in one instance it has proceeded against an advertising agency. The station itself, however, has a responsibility to insure that it does not transmit misleading information to the public. (Stations may also be concerned with the content of copy independent of whether the copy is misleading, and it is this concern which leads to policies against accepting certain types of advertising - Preparation H, etc.). It is, therefore, important that GMs know and understand what type of copy is acceptable and what standards are to be used in weighing claims made for any product.

The FTC has issued an opinion concerned with Preparation H and the advertising representations concerning its efficiency. A memorandum prepared by Washington attorney is included in this section. It serves to demonstrate the type of problem that is involved in formulating a commercial policy.

MEMORANDUM CONCERNING EFFECT OF RECENT FEDERAL TRADE COMMISSION OPINION CONCERNING ADVERTISING OF "PREPARATION H" AND SIMILAR PRODUCTS

The Federal Trade Commission has recently adopted a final order directed against four manufacturers and marketers of drugs which are sold as a palliative for hemorrhoids. The order directed the manufacturers to cease and desist from advertising their products on the grounds that the advertisements which they have been using were false and misleading. Many broadcast stations have in the past accepted

500-4-e FTC RULES (Cont.)

and are now accepting advertising copy for these products. The Federal Trade Commission Order, therefore, has a decided effect upon whether or not the advertising copy of these products should be accepted and, if so, the standards which stations should use in evaluating the copy and, if necessary, demanding changes in it. The memorandum is for the purpose of setting out the guidelines which stations should follow in evaluating future advertising copy from the companies involved in the Federal Trade Commission Order.

1. Products and Companies Affected

The Federal Trade Commission Order is directed against the following companies and products:

Name of Company	Product
American Home Products Corp.	"Preparation H" ointment and suppositories
Humphreys Medicine Co., Inc.	"Humphreys Ointment"
E. C. DeWitt & Co., Inc.	"DeWitt's Stainless Man Zan Pile Ointment," "Man Zan Pile Ointment" and DeWitt's Stainless Man Zan Suppositories"
The Mentholatum Company	"Mentholatum M.P.P." Medicated Pile Ointment

For purpose of convenience, this memorandum will refer to "Preparation H", although it should be understood that this is merely a shorthand way of referring to all of the above products.

Although the Federal Trade Commission Order is being appealed by the manufacturers to the United States Court of Appeals, the Order

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cannot be ignored by broadcast stations during the period in which the appeal is being litigated. On the contrary, there are some steps which stations must now take which involve evaluating the advertising copy, rejecting certain advertising claims, and possibly requiring copy changes in other respects. In general, the effect of the FTC orders is as follows:

1. It is not necessary for stations to refuse all copy regarding the above products. Stations may still carry such advertising copy, subject to the standards discussed below.

2. It will be necessary for stations to refuse to advertise certain claims which heretofore have been made by the above manufacturers, but which now have been found to be false and misleading. These claims specifically involve assertions or representations that "Preparation H" will avoid the need for surgery as a treatment for hemorrhoids, will "heal" hemorrhoids, will "cure" hemorrhoids, or will "remove" hemorrhoids. Moreover, the Commission's order makes it clear that such claims by the above manufacturers are not forbidden solely with regard to any of the specific named products listed above. On the contrary, stations should refuse the above claims if made in connection with hemorrhoid treatment, regardless of whether the product was specifically named in the order. In other words, merely changing the name of the product cannot be used as

500-4-e FTC RULES (Cont.)

a device to avoid the terms of the Order.

3. Stations, however, can (at least until the matter has been finally litigated in the Court of Appeals), continue to advertise certain claims heretofore made for "Preparation H", such as the fact that it will "relieve pain," "stop itch," "reduce or shrink" hemorrhoids, etc.

We will discuss below in more detail the specific claims which may or may not be accepted.

II. Advertising Claims Which May Not Be Accepted.

The "Preparation H" case involved advertising copy illustrated by the following claims which were made on behalf of "Preparation H":

"Preparation H - actually shrinks hemorrhoids without surgery. Preparation H relieves pain promptly - heals injured tissue. The secret? Only Preparation H has the new wonder substance that we call Bio-Dyne to draw the body's own healing oxygen to the painful area.

"Clinical tests show Preparation H shrinks hemorrhoids without surgery. Relieves pain - stops itching. Shrinks piles.

"For the first time science has found a new healing substance with the astounding ability to shrink hemorrhoids, stop burning rectal itch and relieve pain - without surgery or painful injections.***In fact results were so thorough that sufferers

500-4-e FTC RULES (Cont.)

were able to make such astounding statements as "Piles have ceased to be a problem." *** Heals injured tissue back to normal."

The specific representations which should no longer be accepted are as follows:

(a) Stations can no longer unconditionally represent that "Preparation H" will avoid the need for surgery as a treatment for hemorrhoids. Therefore, words which unconditionally state or imply that surgery can be eliminated or avoided should be deleted. For example, in the copy listed above, the claim is made that "Preparation H" "actually shrinks hemorrhoids without surgery," and that it possesses "the outstanding ability to shrink hemorrhoids, stop burning rectal itch and relieve pain - without surgery or painful injections." The words "without surgery" should not be accepted for advertising purposes in the above examples, although, as will be indicated below, the balance of the quoted sentence would be acceptable. Moreover, it is permissible to accept copy which limits the claims regarding surgery to stating that "Preparation H" will avoid the need for surgery "except in unusually severe or persistent cases."

(b) The representation that "Preparation H" will "heal" hemorrhoids or will "cure" hemorrhoids. The words "heal" or "cure" should be deleted from the copy.

There is a question as to whether copy can be accepted which

500-4-e FTC RULES (Cont.)

does not directly state that the ointment will "heal" or "cure", but which instead merely quotes a satisfied customer who has made a statement that "Preparation H" has "healed" or "cured" his condition.

For example, in the advertising quoted above, the copy stated:

> In fact, results were so thorough that sufferers were able to make such astounding statements as "Piles have ceased to be a problem."**"Heals injured tissue back to normal."

We believe, however, in view of the language in the Federal Trade Commission's opinion, that even statements by customers that the drug "healed" or "cured" their condition should be avoided.

(c) The representation that "Preparation H" will "remove" hemorrhoids. The use of the word "remove" should not be allowed in the copy.

III. Advertising Claims Which May Be Accepted

There are a number of claims which, although held to be false and misleading by the Federal Trade Commission, nevertheless can be accepted for advertising purposes, at least until the matter is finally resolved by the Court of Appeals. This arises from the fact that there exist substantial and material legal and factual questions

500-4-e FTC RULES (Cont.)

concerning the validity of the Commission's order. The existence of such substantial questions is manifested by the fact that the Hearing Examiner and the Commission sharply disagreed over the validity of certain of the claims. The Examiner held that certain claims were permissible, while the Commission held that they were not. It is by no means certain that the Commission's opinion in these areas will be affirmed by the Court of Appeals, particularly because there was medical testimony in the record which can be read as supporting the Examiner's decision. In view of the existence of these questions, a station is entitled to reach its own conclusion and need not treat the Commission's order as immediately binding.

The following are advertising claims which stations can continue to accept despite the Federal Trade Commission's holding:

(a) The representation that "Preparation H: will "relieve pain." The Hearing Examiner took the position that the preparation will, in effect, "relieve pain in most cases," although it may not relieve all pain in every case. The Examiner's position is based on the theory that the advertising copy does not represent that it would relieve <u>all</u> pain, and, in view of the testimony which indicates that the preparation did in fact relieve some pain in many instances, the representation was not false and misleading. We believe a substantial and serious question exists as to the correctness of the

500-4-e FTC RULES (Cont.)

Commission's determination, and that this matter need not at this time be considered a closed question.

(b) The representation that "Preparation H" will "stop itch". The Examiner found, based upon medical evidence and testimony, that "Preparation H" could, in fact, relieve or reduce itching symptoms in varying degrees. He further held that the representation that it would "stop itch" was not false and misleading since the manufacturer did not represent that it would stop all itch. The Commission disagreed with the Examiner's view. We believe, however, that a substantial question exists here also.

(c) The representation that "Preparation H" would "reduce" or "shrink" hemorrhoids. The Examiner believed, based upon medical testimony in the record, that the preparation indeed "reduced" and "shrunk" hemorrhoids to some degree, and, therefore, the representation was not false and misleading. The Commission's position was that use of the words "reduce" or "shrink" is tantamount to stating that the preparation would reduce or shrink hemorrhoids completely or, in fact, would "heal" them. Here, again, we believe a substantial and serious question exists as to the correctness of the Commission's opinion.

(d) The representation that "Preparation H" will "relieve pain". The Hearing Examiner found that "Preparation H" would, in fact, "relieve pain."

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(e) The Examiner concluded that "Preparation H" would "have a significant therapeutic effect in the treatment of hemorrhoids and that when used as directed, it will in most cases, but not in all instances, shrink hemorrhoids, relieve pain and stop itching." Thus, the Examiner would allow the manufacturer to state in its copy that the preparation has a "therapeutic effect" in three areas: The shrinking of hemorrhoids, the relieving of pain, and the stopping of itch. The Commission disagreed, holding that use of the words "therapeutic effect" would imply that the preparation is a total "cure" and/or would completely "heal". We believe a substantial question of fact and law exists over the Commission's prohibiting the use of the term "therapeutic" and therefore, the use of the term "therapeutic" is permissible, at least until the Court of Appeals rules on the question.

(f) It is still permissible to accept advertising which refers to "Bio-dyne" as an ingredient of "Preparation H". The Commission's decision would have prohibited all reference to "Bio-dyne". This holding, however, is being vigorously disputed in the appeal.

(g) Even the Commission has conceded that "Preparation H" may have some beneficial effect, and the Commission's Order allows the manufacturers to represent that use of "Preparation

500-4-e FTC RULES (Cont.)

H" may in some cases afford some temporary relief against some types of itch or pain." Thus, even under the strictest interpretation, copy which includes the above carefully limited phraseology would be acceptable without question.

"Preparation H" has already changed its advertising copy to reflect the above matters. There is attached hereto a number of examples of the new copy which have been prepared for presentation during the period in which the matter will be appealed. We have reviewed this copy and it is our opinion that the copy may be accepted for broadcast purposes.

IV. Conclusion

It would be impossible, of course, in this memorandum to comment upon all possible combinations of words used in advertising the above products. The above comments, however, can serve as guidelines to assist stations in determining what copy they can and cannot accept in this area, until the Court of Appeals has decided the question.

500-4-f EQUAL TIME (Sec. 315)

The FCC did, on October 3, 1962, issue its public notice on "Use of Broadcast Facilities by Candidates for Public Office." The file number is FCC-62-1019/25297. We reproduce it here, in full:

500-4-f EQUAL TIME (Cont.)

This Public Notice is a compilation of the Commission's interpretive rulings under section 315 of the Communications Act of 1934, as amended, and the Commission's rules implementing that section of the Act and brings up-to-date and supersedes all prior Public Notices issued by the Commission entitled "Use of Broadcast Facilities by Candidates for Public Office." The Commission has carefully reviewed both its Revised Public Notice (October 1, 1958; FCC 58-936), and its Supplement thereto (September 8, 1960; FCC 60-1050) which contained the 1959 amendments to section 315 of the Act, the amendments to the Commission's rules and additional rulings. Significant rulings made subsequent to the 1960 Supplement have been added, and editorial and other revisions have been made with respect to some of the interpretations previously published. Where appropriate, cumulative rulings have been cited. Included herein are the determinations of the Commission with respect to problems which have been presented to it and which appear likely 1/ to be involved in future campaigns. While the information contained herein does not purport to be a discussion of every problem that may arise in the political broadcast field, experience has shown that these documents have been of assistance to candidates and broadcasters in understanding their rights and obligations under Section 315.

1/ A few of the questions taken up within have been presented to the Commission informally - that is, through telephone conversations or conferences with station representatives. They are set out in this

500-4-f EQUAL TIME (Cont).

Public Notice because of the likelihood of their recurrence and the fact that no extended Commission discussion is necessary to dispose of them; the answer in each case is clear from the language of section 315.

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

We emphasize that this discussion relates solely to obligations of broadcast licensees under section 315 of the Act. It is not intended to include 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 licensees for insuring fair and balanced presentation

500-4-f EQUAL TIME (Cont.)

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 "Fairness Doctrine" 2/ With regard to programs not coming within the "equal opportunities" provision of section 315, but relating to important public issues of a controversial nature, including political broadcasts, 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 broadcasts not falling within the "equal opportunities" provision of section 315. On the contrary, in view of the obvious importance of such programming to our system of representative government, it is clear that these precepts as set forth in the Report Policy referred to above 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.

2/ In amending section 315 in 1959 so as to exempt appearances by legally qualified candidates on certain news-type programs from the "equal opportunities" provision, it was stated in the statute 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

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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."

(Public Law 86-274, Approved September 14, 1959, 73 Stat. 557).

We have continued the question-and-answer format as an appropriate means of delineating the section 315 problems. Wherever possible, reference to Commission's decisions or rulings are made so that the researcher may, if he desires, review the complete text of the Commission's ruling. Copies of rulings may be found in a "Political Broadcast" folder kept in the Commission's Reference Room. Citations in "R.R." refer to Pike and Fischer, Radio Regulations.

1. The statute. Section 315 of the Communications Act of 1934, as amended, provides as follows:

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

500-4-f EQUAL TIME (Cont.)

candidate on any --

(1) bona fide newscast

(2) bona fide news interview

(3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or

(4) On-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto), shall not be deemed to be"use of a broadcasting station"within the meaning of this subsection. Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

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

(c) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section. 3/

II. The Commission's rules and regulations with respect to political broadcasts. The Commission's rules and regulations with respect to political broadcasts coming within section 315 of the Communications

500-4-f EQUAL TIME (Cont.)

Act are set forth in ()() 3.120 (AM), 3.290 (FM), 3.590 (Non-Commercial Educational FM) and 3.657 (TV), respectively. These provisions are identical (except for elimination of any discussion of charges in 3.590 relating to non-commercial educational FM stations) and read as follows:

Broadcasts by candidates for public office - - (a) Definitions: A "legally qualified candidate" means any person who has publicly announced that he is a candidate for nomination by a convention of a political party or for nomination or election in a primary, special, or general election, municipal, county, state or national, and who meets the qualifications 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.

500-4-f EQUAL TIME (Cont.)

3/ Section 315 (a) was amended to read as above by Public Law 86-274, approved September 14, 1959, 73 Stat. 557.

Public Law 86-677, approved August 24, 1960, 74 Stat. 554, suspended the equal opportunity provision of sec. 315 (a) for the period of the 1960 Presidential and Vice Presidential campaigns with respect to nominees for the offices of President and Vice President of the United States. It provided:

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 campaigns 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.

(b) General Requirements. No station licensee is required to permit the use of its facilities by any legally qualified candidate for public office, but if any licensee shall permit any such candidate to use its facilities, it shall afford equal opportunities to all such other candidates for that office to use such facilities: Provided, that such licensee shall have no power of censorship over the material broadcast by any such candidate.

500-4-f EQUAL TIME (Cont.)

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

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

(d) Records: inspection. Every licensee shall keep and permit public inspection of a complete record of all requests for broadcast time made by or on behalf of any candidates for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if

500-4-f EQUAL TIME (Cont.)

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/

3/ (Cont) (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 in the Communications Act of 1934 as a result of experience under the provisions of this joint resolution.

4/ On July 31, 1959, the Commission amended XX 3.120, 3.290, 3.590 and 3.657 of its rules (FCC 59-797) by adding subsections (e) and (f). In addition, the attention of the licensees is directed to the following provisions of 3.119, 3.289 and 3.654, which provide in identical language:

(b) In the case of any political program or any program involving the discussion of public controversial issues for which any records, trasncriptions, talent, scripts, or other material or services of any kind are furnished, either directly or indirectly,

500-4-f EQUAL TIME (Cont.)

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

(c) The announcement required by this section shall fully and fairly disclose the true identity of the person or persons by whom or in whose behalf such payment is made or promised, or from whom or in whose behalf such services or other valuable consideration is received, or by whom the material or services referred to in paragraph (b) of this section are furnished. Where an agent or other person contracts or otherwise makes arrangement 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 behlaf such agent is acting instead of the name of such agent.

(d) In the case of any program, other than a program advertising commercial products or services, which is sponsored, paid for or furnished, either in whole or in part, or for which material or services referred to in paragraph (b) of this section are furnished, by a corporation, committee, association or other unincorporated group, the announcement required by this section

500-4-f EQUAL TIME (Cont.)

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 radio stations carrying the program.

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

Section 315 of the Act was amended by the Congress in 1959 to provide that appearances by legally qualified candidates on specified news-type programs are deemed not to be a "use" of broadcast facilities within the meaning of that section. In determining whether a particular program is within the scope of one of these specified news-type programs, the basic question is whether the program meets the standard of "bona fide". To establish whether such a program is in fact a "bona fide" program, the following considerations, among others, may be pertinent: (1) the format, nature and content of the programs; (2) whether the format, nature and content of the program has changed since its inception and, if so, in what respects; (3) who initiates the programs; (4) who produces and controls the program; (5) when the program was initiated; (6) is the program regularly scheduled; and (7) if the program is

500-4-f EQUAL TIME (Cont.)

regularly scheduled, specify the time and day of the week when it is broadcast. Questions have also been presented by the appearances on news-type broadcast programs of station employees who are also legally qualified candidates. In such cases, in addition to the above, the following considerations, among others, may be pertinent to a determination of the applicability of section 315: (1) what is the dominant function of the employee at the station?; (2) what is the content of the program and who prepares the program?; and (3) to what extent is the employee personally identified on the program? In the rulings set forth below, wherein the Commission held that the "equal opportunities" provision was applicable, it should be assumed that the news-type exemptions contained in the 1959 amendments were not involved.

A. Types of uses.

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

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

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

A. No. It applies in favor of legally qualified candidates

500-4-f EQUAL TIME (Cont.)

for public office, and is not concerned with the rights of political parties, as such. (Letter to National Laugh Party, May 8, 1957.)

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

A. No. Section 315 has no application to the discussion of political issues, as such, but is concerned with the use of broadcast stations by legally qualified candidates for public office. In the 1959 amendment of Section 315, relating to certain news-type programs, Congress stated specifically that its action was not to be construed "---as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance." The Commission has considered this statement to be an affirmation of its "Fairness Doctrine", as enunciated in its Report on Editorializing by Broadcast Licensees.

B. What constitutes a "use" of broadcast facilities entitling opposing candidates to "equal opportunities"?

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

A. Yes. Section 315 does not distinguish between the uses of broadcast time by a candidate, and the licensee is not authorized

500-4-f EQUAL TIME (Cont.)

to pass on requests for time by opposing candidates on the basis of the licensee's evaluation of whether the original use was or was not in aid of a candidacy. (Letter to WMCA, Inc., May 15, 1952, 7 R. R. 1132.)

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

A. Yes. For example, a weekly report of a Congressman to his constituents via radio or television is a broadcast by a legally qualified candidate for public office as soon as he becomes a candidate for re-election, and his opponent must be given "equal opportunities" for time on the air. Any "use" of a station by a candidate, in whatever capacity, entitles his opponent to "equal opportunities." (Letter to Station KNGS, May 15, 1952, 7 R. R. 1130; see Q. and A. 15; for a joint Congressional Report, see also letter to Senator Joseph S. Clark, January 25, 1962; and for a judge's report, see also telegram to Station KSHO-TV, April 24, 1961.)

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

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

500-4-f EQUAL TIME (Cont.)

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

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

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

A. Yes. The appearance of candidates on the above types of programs constitutes a "use" of the licensee's facilities by legally qualified candidates and, therefore, other candidates for the same office are entitled to "equal opportunities." (Letter to Harold Oliver, October 31, 1952; Letter to Julius F. Brauner, October 31, 1952. However, see S. J. Res. 207 (P.L. 86-677) (suspension statute), fn 2, supra; and III, C, infra, concerning news-type programs.)

500-4-f EQUAL TIME (Cont.)

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

A. Yes. Unless the candidate's appearance comes within the category of broadcasts exempt from section 315's "equal opportunities" provision, equal time must be granted. The use to which the candidate puts this broadcast time is immaterial. (See Q. and A. 4, supra.) (Telegram to Station WFUV-FM, October 27, 1961.)

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

A. Yes. Where the successful candidate for nomination becomes legally qualified as a candidate for election as a result of the nomination. (Letter to Progressive Party, July 2, 1952, 7 R.R., 1300; but see sec. 315 (a) (4).)

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

A. No. Section 315 applies only to stations licensed by the FCC. (Letter to Gregory Pillon, July 19, 1955.)

12. Q. A candidate for the Democratic nomination for President appeared on a network variety show. A claimant for "equal opportunities" showed that his name had been on the ballots in the Democratic presidential primary elections in two states; that the network had

500-4-f EQUAL TIME (Cont.)

shown him in a film on a program concerned with the various 1960 presidential candidates; and that he was continuing his efforts as a candidate for the Democratic nomination. Would the claimant be entitled to "equal opportunities"?

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

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

A. Yes. Such appearances of a candidate are a "use" under section 315. (Letters to KUGN, April 9, 1958; to KTTV, January 23, 1957, 14 R.R. 1227; to Kenneth Spengler, November 19, 1956, 14 R.R. 1226b, respectively; and letter to Jack Williams, May 18, 1962. But cf. letter to KWTX Broadcasting Co., March 16, 1960; Brigham vs FCC, 276 F. 2d 828 (C. A. 5), April 19, 1960 and Q. and A. 18.)

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

500-4-f EQUAL TIME (Cont.)

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

C. What constitutes an appearance exempt from the equal opportunities provisions of section 315?

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

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

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

A. Yes. Broadcasts of such film clips containing appearances by a candidate constitute uses of the station's facilities. Such

500-4-f EQUAL TIME (Cont.)

appearances do not attain exempt status when the film clips are broadcast as part of a program not subject to the equal opportunities provision, for the reasons set forth in Question and Answer 15, above. (Letter to Congressman Clem Miller, June 15, 1962.)

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

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

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

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* An asterisk denotes a new question and answer

500-4-f EQUAL TIME (Cont.)

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

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

A. No, since it was ascertained that the appearances of the three mayoralty candidates were on a bona fide, regularly scheduled news interview program and that such appearances were determined by the station's news director on the basis of newsworthiness. (Telegram to Joseph A. Schafer, November 2, 1959.)

* 20. Q. A New York television station had been presenting a weekly program called "Search Light". This program consisted of persons, selected by the station on the basis of their newsworthiness, interviewed by a news reporter selected by the station, a

500-4-f EQUAL TIME (Cont.)

member of the citizen's union (a permanent participant initially selected by the station), and a station newsman who acted as moderator. Two candidates appeared on the program and were interviewed. Is a third opposing candidate entitled to "equal opportunities?

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

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

A. No. It was determined that "City Side" was a regularly scheduled, weekly, live, news-interview program on the station for approximately six years; that the normal format of the program

500-4-f EQUAL TIME (Cont.)

consisted of the interview of a newsworthy guest or guests by a panel of reporters; that the appearances on the program were determined by the station on the basis of newsworthiness; and that it was on this basis that the three candidates were invited to appear. Such a program constitutes a bona fide news-interview program pursuant to section 315 (a) (2). (Telegram to Charles Luthardt, Sr., May 12, 1962.)

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

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

500-4-f EQUAL TIME (Cont.)

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

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

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

A. The programs "Meet the Press" and "Youth Wants to Know" were specifically referred to during the Senate debates on the 1959 amendments as being regularly scheduled news interview programs of the type intended to be exempt from the "equal opportunities" provision of section 315. Thus, if the format of these programs is

500-4-f EQUAL TIME (Cont.)

not changed in any material respect, appearances by a candidate on such programs would not constitute a "use" under section 315. (see also Q. and A. 23.) As to the "Tonight" program, see Q. and A. 12. (Letter to Senator Russell B. Long, June 13, 1962.)

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

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

* 27. Q. The "Governor's Radio Press Conference" is a weekly 15-minute program which has been broadcast approximately two years employing essentially the same format since its inception. In the program, the Governor-candidate is seated in his office and speaks into a microphone; each of the participating stations has selected a newsman, who, while located at his respective station, asks questions of the Governor which the newsman considers to be newsworthy. The questions are communicated to the Governor-candidate by telephone from the respective stations and the questions and the governor's answers are communicated to the stations by the means of

500-4-f EQUAL TIME (Cont.)

a broadcast line from his office to the stations. The questions and answers are taped both by his office and each of the participating stations, and no tapes are supplied by the Governor to the stations. Questions asked of the Governor and all of the material, including his answers, are not screened, or edited by anyone in his office or on his behalf. The program is unrehearsed and there is no prepared material of any kind used by the Governor or by anyone on his behalf. The newsmen are free to ask any question they wish and each program is under the control of the participating stations. Does the appearance of the Governor-candidate on said program constitute a "use" under the "equal opportunities" provision of section 315?

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

* 28. Q. "The Governor's Forum" program has been broadcast for approximately eight months by several participating stations. In this program, the Governor-candidate is seated in his office and speaks into a microphone. The program consists of his answers to and questions submitted by the listening public. Questions asked are either telephoned or written to the stations or directly

500-4-f EQUAL TIME (Cont.)

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

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

500-4-f EQUAL TIME (Cont.)

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

500-4-f EQUAL TIME (Cont.)

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

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

A. No. For the reasons stated in Question and Answer 29, above.

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

500-4-f EQUAL TIME (Cont.)

A. No, since the appearance of the first candidate was on a program which constitutes "on-the-spot coverage of bona fide news events", pursuant to section 315 (a) (4). (Telegram to Falkenberg & Falkenberg, July 7, 1960.)

IV. Who is a legally qualified candidate?

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

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

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

A. Not always. The term "legally qualified candidate" is not restricted to persons whose names appear on the printed ballot; the term may embrace persons not listed on the ballot if such persons are making a bona fide race for the office involved and the names of such persons, or their electros can, under applicable law, be written in by voters so as to result in their valid election. The Commission recognizes, however, that the mere fact that any name

500-4-f EQUAL TIME (Cont.)

may be written in does not entitle all persons who may publicly announce themselves as candidates to demand time under section 315; broadcast stations may make suitable and reasonable requirements with respect to proof of the bona fide nature of any candidacy on the part of applicants for the use of facilities under section 315. (3.120, 3.290, 3.657, esp. subsection (f); letters to Socialist Labor Party, November 14, 1951, 7 R.R. 766; Julius F. Brauner, May 28, 1952, 7 R.R. 1189; Press Release of November 26, 1941 (Mimeo 55732.)

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

A. The answer depends on applicable state law. In some states persons may be voted for by electorate whether or not they have gone through the procedures required for getting their names placed on the ballot itself. In such a state, the announcement of a person's candidacy -- if determined to be bona fide -- is sufficient to bring him within the purview of section 315. In other states, however, candidates may not be "legally qualified" until they have fulfilled certain prescribed procedures. The applicable state laws and the particular facts surrounding the announcement of the candidacy are determinatives. (Letter to Senator Earle C. Clements, February 2, 1954; and see also subsection (f) of 3.120, 3.290, 3.657.)

500-4-f EQUAL TIME (Cont.)

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

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

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

A. In view of the fact that a person may be nominated for these offices by the conventions of his party without having appeared on the ballot of any state having presidential primary elections, or having any pledged votes prior to the convention, or even announcing his willingness to be a candidate, no fixed rule can be promulgated in answer to this question. Whether a person so claiming is in fact a bona fide candidate will depend on the particular facts of each situation, including consideration of what efforts, if any, he has taken to secure delegates or preferential votes in state primaries. It cannot, however, turn on the licensee's evaluation of the claimant's chances for success (Letter to Julius F. Brauner, May 28, 1952, 7 R.R. 1189; and see also subsection (f) of 3.120, 3.290, s.657.)

500-4-f EQUAL TIME (Cont.)

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

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

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

A. No, for once the date of nomination or election for an office has passed, it cannot be said that one who failed timely to qualify therefor is still a "candidate." The holding of the primary or general election terminates the possibility of affording "equal opportunities," thus mooting the question of what rights the claimant might have been entitled to under section 315 before the election. (Letter to Socialist Workers' Party, December 13, 1956; letter to Lar Daly, October 31, 1956 14 R.R. 713, appeal sub. nom. Daly v U.S.

500-4-f EQUAL TIME (Cont.)

Case No 11,946 (C.A. 7th Cir.) dismissed as moot March 7, 1957; cert. den. 355 U.S. 826.)

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

A. None, insofar as a candidate may desire retroactive "equal opportunities." But this is not to suggest that a station can avoid its statutory obligation under section 315 by waiting until an election has been held and only then disposing of demands for "equal opportunities". (See citations in Question and Answer 38.)

*

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

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

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

500-4-f EQUAL TIME (Cont.)

A. In such instances, the ruling of the state Attorney General or other official will prevail, absent a judicial determination. (Telegram to Ralph Muncy, November 5, 1954; letter to Socialist Workers' Party, November 23, 1956.)

V. When are candidates opposing candidates?

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

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

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

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

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

A. No, the Commission has held that while both primary elections or nominating conventions and general elections are comprehended within the terms of section 315, the primary elections or conventions held by one party are to be considered separately from the primary elections

500-4-f EQUAL TIME (Cont.)

or conventions of other parties, and, therefore, insofar as section 315 is concerned, "equal opportunities" need only be afforded legally qualified candidates for nomination for the same office at the same party's primary or nominating convention. The station's actions in this regard, however, would be governed by the public interest standards encompassed within the "Fairness Doctrine". (Letters to KWFT, Inc., October 22, 1948, 4 R.R. 885; Arnold Peterson, May 13, 1952, 11 R.R. 234; WCDL, April 3, 1953; Senator Joseph S. Clark, January 25 and April 13, 1962; and telegram to Dr. Edward J. Leuddeke, October 25, 1961.)

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

A. No. For the reason given above. (Letter to KWFT, Inc., October 22, 1946, 4 R.R. 885.)

VI. What constitutes equal opportunities?

(a) In general.

46. Q. Generally speaking, what constitutes "equal opportunities"?

A. Under section 315 and 3.120, 3.290, and 3,657 of the Commission's rules, no licensee shall make any discrimination in charges, practices, regulations, facilities, or services rendered to candidates for a particular office.

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

500-4-f EQUAL TIME (Cont.)

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

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

A. No. The law does not require that this be done. If a candidate inquires, however, the facts must be given him. It should be noted here that a station is required to keep a public record of all requests for time by or on behalf of political candidates, together with a record of the disposition and the charges made, if any, for each broadcast. (3.120(d), 3.290(d), 3.657(d); and telegram to Norman William Seemann, Esq., May 18, 1962.

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

A. This depends on all of the circumstances surrounding the station's offer of time and, particularly, whether the station has given adequate advance notice. The Commission has held that a four day notice

500-4-f EQUAL TIME (Cont.)

by a Texas station to a Congressman while Congress is in session does not constitute adequate advance notice and the Congressman is not foreclosed from his right to request "equal opportunities." (Letter to Jack Neil, Station KTRM, April 18, 1962.)

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

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

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

A. Neither the Act nor the Commission's rules contain provisions requiring stations to sell unlimited periods of time for political broadcasts. Section 315 of the Act imposes no obligation on any licensee to allow the use of its station by any candidate. Commission's programming statement contemplates the use of stations for political broadcasting. Where the station showed that sale of limited time segments to candidates was based on its experience and the interests of viewers in programming diversification, no Commission action was required. (Telegram to J. B. Lahan, May 18, 1962; and telegrams to Grover C. Doggette, Esq., May 22 and 23, 1962. Cf., letter to Station WLBT-TV, April 17, 1962 and letter

500-4-f EQUAL TIME (Cont.)

to Station WROX, May 2, 1962, where the Commission indicated that a public interest question would be raised if the station failed to provide any broadcast time to candidates in a major election being held within the station's coverage area.)

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

A. No. The refusal of one candidate does not foreclose other candidates wishing to use the time offered. However, whether the candidate initially declining the offer could later avail himself of "equal opportunities" would depend on all the facts and circumstances. (Letter to Leonard Marks, June 13, 1956, 14 R.R. 65.)

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

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

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

A. Neither section 315 nor the Commission's rules prohibit a licensee from contracting with a party for reservation of time in advance of an election. However, substantial questions as to a possible violation

500-4-f EQUAL TIME (Cont.)

of section 315 would arise if the effect of such prior commitment were to disable a licensee from meeting its "equal opportunities" obligations under section 315. (Letter to Congressman Frank M. Karsten, November 25, 1955.)

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

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

56. Q. If a station has a policy of confining political broadcasts to sustaining time, but has so many requests for political time that it cannot handle them all within its sustaining schedule, may it refuse time

500-4-f EQUAL TIME (Cont.)

to a candidate whose opponent has already been granted time, on the basis of its established policy of not cancelling commercial programs in favor of political broadcasts?

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

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

A. Section 315 has reference only to the use of facilities by persons who are candidates for public office and not to the political parties which may have nominated such candidates. Accordingly, if broadcast time is made available for the use of a candidate for public office, the provisions of section 315 require that "equal opportunities" be afforded each person who is a candidate for the same office, without regard to the number of nominations that any particular candidate may have. (Letter to Thomas W. Wilson, October 31, 1946.)

(b) Comparability

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

A. No. The station in providing "equal opportunities" must consider the desirability of the time segment allotted as well as its length. And while there is no requirement that a station afford candidate "B" exactly

500-4-f EQUAL TIME (Cont.)

the same time of day on exactly the same day of the week as candidate "A", the time segments offered must be comparable as to desirability.

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

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

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

A. If candidates are permitted to appear without cost to themselves, on programs sponsored by commercial advertisers, opposing candidates are entitled to receive comparable time also at no cost. (Letter to Senator A. S. Mike Monroney, October 16, 1952, 11 R.R. 451; and telegram to WWIN, May 3, 1962.)

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

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

500-4-f EQUAL TIME (Cont.)

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

A. Not necessarily. The mechanics of the problem of "equal opportunities" must be left to resolution of the parties. And while factors such as the size of the potential audience because of the appearance of the first candidate on an established or popular program might very well be a matter for consideration by the parties, it cannot be said, in the abstract, that "equal opportunities" could only be provided by giving opposing parties time on the same program. (Letter to Harold Oliver, October 31, 1952; letter to Julius F. Brauner, October 31, 1952.)

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

A. Since the station's format was reasonable in structure and the station put no restrictions on what matters and issues might be discussed

500-4-f EQUAL TIME (Cont.)

by candidate "B" and others who appeared on the program in question, it offered candidate "B" "equal opportunities" in the use of its facilities within the meaning of section 315 of the Act. The station's further offer to candidate "B", prior to the primary, of its facilities on a "comparable format" was reasonable under the facts of the case, consistent with any continuing obligation to afford candidate "B" "equal opportunities" in the use of the station which he may have had. (Letter to Congressman Bob Wilson, August 1, 1958.)

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

A. Yes, provided the request is made by the candidate within the period specified by the Rules. The Commission stated that licensees should negotiate with the affected candidates and that where the offer was mutually agreeable to such candidates, "equal opportunities" were being afforded to the candidates. Where the candidate rejected the proposal, however, and other candidates accepted and appeared, the Commission stated: "Where the licensee permits one candidate to use his facilities, Section 315 then--simply by virtue of that use--requires the licensee to 'afford equal opportunities to all other such candidates for that office in the use of such broadcasting station.' This obligation may not be avoided by the licensee's

500-4-f EQUAL TIME (Cont.)

unilateral actions in picking a program format, specifying participants other than and in addition to the candidates, setting the length of the program, the time of taping, the time of broadcast, etc., and then offering the package to the candidates on a 'take it or leave it-this is my final offer' basis. For...Section 315 provides that the station 'shall have no power of censorship over the material broadcast.' (Cf. Port Huron Broadcasting Co., 4 R.R.1.) Clearly, the 'take it or leave it' basis described above would constitute such prohibited censorship, since it would, in effect, be dictating the very format of the program to the candidate--and thus, an important facet of 'the material broadcast.' We wish to make clear that the Commission is in no way saying that one format is more in the public interest than another. On the contrary, the thrust of our ruling is that the Act bestows upon the candidate the right to choose the format and other similar aspects of 'the material broadcast', with no right of 'censorship' in the licensee." Cf. Farmers Educational and Cooperative Union of America, North Dakota Division v. WDAY, Inc., 360 U.S. 525. (Letter to Nicholas Zapple, October 5, 1962.)

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

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

VII. What limitations can be put on the use of facilities by a candidate?

500-4-f EQUAL TIME (Cont.)

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

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

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

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

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

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

500-4-f EQUAL TIME (Cont.)

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

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

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

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

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

500-4-f EQUAL TIME (Cont.)

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

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

A. Yes, provided that the practice is uniformly applied to all candidates for the same office using the station's facilities, and the station does not undertake to censor the candidate's talk. (Letter to H.A. Rosenberg, Louisville, Ky., July 9, 1962, 11 R.R. 236.)

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

A. Yes. Provided again that the procedures adopted are applied without discrimination as between candidates for the same office and no censorship is attempted. (Letter to H. A. Rosenberg, Louisville, Ky., July 9, 1962, 11 R.R. 236.)

VIII. What rates can be charged candidates for programs under section 315?

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

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

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

500-4-f EQUAL TIME (Cont.)

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

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

A. No. Under 3.120, 3.290 and 3.657 of the Commission's rules a station may not charge a candidate more than the rate the station would charge if the candidate were a commercial advertiser whose advertising was directed to promoting its business within the same area as that within which persons may vote for the particular office for which such person is a candidate.

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

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

500-4-f EQUAL TIME (Cont.)

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

A. Yes. Under 3.120, 3.290 and 3.657 of the Commission's rules political candidates are entitled to the same discounts that would be accorded persons other than candidates for public office under the conditions specified, as well as to such special discounts for programs coming within section 315 as the station may choose to give on a non-discriminatory basis.

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

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

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

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

500-4-f EQUAL TIME (Cont.)

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

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

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

A. He is entitled to be charged the same rate as his opponent since the provisions of section 315 run to the candidates themselves and they are entitled to be treated equally with their individual opponents. (Report and Order, Docket 11092, 11 R.R. 1501.) (Cf. Question and Answer 60; and telegram of WWIN, May 3, 1962.)

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

500-4-f EQUAL TIME (Cont.)

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

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

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

IX. Period within which request must be made.

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

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

500-4-f EQUAL TIME (Cont.)

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

A. No. A legally qualified candidate announcing his candidacy for the above nomination would be required to request "equal opportunities" concerning a particular broadcast of "Your Senator Reports" not later than one week after the date of such broadcast. Thus, any of the incumbent's opponents for the nomination who first announced his candidacy on a particular day, would not be in a position to request "equal opportunities" with respect to any showing of "Your Senator Reports" which was broadcast more than one week prior to the date of such announcement. (Letter to Senator Joseph S. Clark, April 16, 1962.)

X. Issuance of interpretations of section 315 by the Commission.

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

A. Section 5(d) of the Administrative Procedure Act, Title 5, U.S. C.A., provides that "The agency is authorized in its sound discretion, with like effect as in the case of other orders, to issue a declaratory order to terminate a controversy or remove uncertainty." However, agencies are not required to issue such orders merely because a request is made

500-4-f EQUAL TIME (Cont.)

therefor. The grant of authority to agencies to issue declaratory orders is limited, and such orders are authorized only with respect to matters which are required by statue to be determined "on the record after opportunity for an agency hearing." See Attorney General's Manual on the Administrative Procedure Act, pp. 59, 60; also, in re Goodman, 12 FCC 678, 4 Pike and Fischer R.R. 98. In general, the Commission limits its interpretive rulings or advisory opinions to situations where the critical facts are explicitly stated without the possiblity that subsequent events will alter them. It prefers to issue such rulings or opinions where the specific facts of a particular case in controversy are before it for decision. (Letter to Pierson, Ball & Dowd, June 18, 1958.)

500-4-g EQUAL TIME--CIGARETTES

CIGARETTE ADVERTISING -- The Commission ruled in 1967 that if you carry cigarette advertising, you must provide a degree of equal time to responsible organizations (as The American Cancer Society) who oppose the individual's use of tobacco. Our policy is to offer 1/4 to 1/3 of the paid time to those organizations who oppose cigarette smoking. For example, if American Tobacoo company buys 24 minutes per week on your station, you must offer 6 to 8 announcements per week to opposing organizations. Commission language is vague on this point, but the 1/4 to 1/3 rule will apply at all McLendon stations. The Commission's decision was based on the provisions of the Fairness Doctrine. You do not have to give equal time. But you must give some time. We decided that the 1/4 - 1/3 rule would satisfy commission requirements.

500-4-h LIBEL AND SLANDER

The risk of suits for damages for libel or slander can be considerably reduced if the Managing Director, Program Manager and other program personnel have a working knowledge of the law of defamation (including libel and slander).

(1) General Law of Defamation. Defamation is causing harm to a person, firm, group or corporation by publishing information or opinion tending to diminish the respect, goodwill or confidence held by others or to excite adverse or derogatory feelings against him.

Examples: That a man attempted suicide,refused to pay a just debt, or is immoral or unchaste,a coward, a drunkard, a hypocrite, a scoundrel, a liar, a crook, a scandal-monger, an anarchist or communist, a skunk, a bastard, an eunuch, or that he has done a thing which is insulting, dishonorable or constitutes a crime, or has a loathsome disease, is unfit for his business, trade or profession, or public office.

Ridicule: Ridicule may be a form of defamation. Defamation has included heaping ironical praise on a person, printing his picture in a manner to create humor at his expense such as a picture giving an impression of obscene and ludicrous deformity. The same humor may be harmless where the audience understands the humorous intent, yet defamatory when broadcast to an uninformed audience.

Knowledge: The broadcaster need not know that a statement is defamatory for defamation to result. For example, the apparently innocent statement that "Mr. Jones spent the weekend at 213 East Street" could be defamatory if the address were that of a house of ill repute.

500-4-h LIBEL AND SLANDER (Cont.)

Extent of Harm: Defamation may exist where the person's reputation is injured before only a small minority although the general public continues to hold him in high esteem.

Persons Defamed: Not only a natural person, but any corporation, firm or association may be defamed by language which casts aspersion upon its honesty, credit, efficiency, etc., and a charitable group may be defamed by attacks which tend to decrease contributions or support of the group.

Good Intentions: Generally are no defense.

(2) Defenses to Defamation Suits. Such suits may be defended on the following grounds:

(a) That the facts stated are true. Truth is always a defense, provided it can be proved.

(b) That the statement is privileged. Absolute immunity extends to statements made in the course of judicial, legislative or administrative proceedings (e.g., witnesses or counsel in court, or before the FCC in regular proceedings); or made with the consent of the plaintiff. A qualified privilege to broadcast defamatory material is available under the "fair comment" rule and in case of reports of proceedings of public interest, as described below.

(c) That the statement was made by a candidate for political office, which the licensee is prohibited

500-4-h LIBEL AND SLANDER (Cont.)

from censoring by Section 315 of the Communications Act. The U.S. Supreme Court recently held that the licensee is granted an immunity from liability for libelous material broadcast in accordance with the statute. Farmers Educational and Cooperative Union v. WDAY, Inc., 360 U.S. 18 R.R. 2135 (1959).

(d) Where state "due care" statutes are applicable, that the licensee used "due care" in case of broadcasts by political candidates. The Supreme Court case cited above may make this defense unnecessary.

(3) Fair Comment. The privilege of fair comment and criticism extends only to editorial expressions of views as to matters of public concern, such as (a) the administration of public affairs, (b) the conduct of officers and candidates, (c) the work done by contractors who are paid from public funds, and (d) the management of public institutions such as schools. This privilege does not permit misstatement of facts.

(4) Reports of Official Proceedings. The privilege of reporting extends to factually correct statements of events or statements made in court, in the legislature, in municipal councils, in Congressional investigations, etc. To be privileged, the report must be fair and accurate. This privilege does not permit misstatement of facts, nor a one-sided presentation.

(5) State "Due Care" Statutes. NAB has been endeavoring to get the states to enact statutes to protect the broadcaster against

500-4-h LIBEL AND SLANDER (Cont.)

liability for defamation when he can show he has exercised due care to prevent the defamatory broadcast particularly in case of political broadcasts where the broadcaster is prohibited by the Communications Act from censorship. Such "due care" statutes have been enacted in Florida, Georgia, Michigan, Ohio, Pennsylvania and West Virginia. It is important to note, however, that even where these statutes are in effect, the broadcaster must use due care to prevent the libelous statement before he can utilize the protection of the statute. In addition, these statutes generally give the broadcaster a defense only in case of statements by political candidates, not statements by supporters of such candidates. Proof of the exercise of "due care" by the broadcaster must include a showing that:

(a) Scripts were required to be submitted prior broadcast.

(b) Scripts were reviewed by a qualified person with a view to eliminating libelous or slanderous statements.

(c) Possibly libelous or slanderous material was deleted from the script when detected. Where censorship was prohibited by the Communications Act, as in case of broadcast by political candidates the broadcaster made a bona fide attempt to have the possibly libelous or slanderous material deleted.

500-4-h LIBEL AND SLANDER (Cont.)

The Station Manager is responsible for exercise of "due care" in states which have statutes of this type, as well as in all states, and for keeping records sufficient to prove that due care has been exercised.

(6) State Retraction Statutes. Almost all states have statutes which provide for mitigation of damages (i.e., reduction of damages) where prompt retraction of libelous or slanderous statements are made. The Station Manager is responsible for notifying local counsel where any claim of libel or slander is made, and counsel must determine whether or not retraction should be made.

(7) Special State Statutes. Certain states have statutes which make it a misdemeanor punishable by fine or imprisonment for a newspaper or broadcast station to publish the facts as to certain matters, even though the facts are correctly reported. Such matters may include, depending on particular state law:

(a) Information concerning juvenile delinquents. For the protection of the child, state statutes may penalize the publication of his name, or the judge may have discretion to withhold the name.

(b) Information concerning illegitimate children. For the protection of the child and/or the parents, state statutes may penalize the publication of the name of child, father, or mother.

(c) Information concerning domestic relations proceedings. State statutes may authorize the domestic relations judge

500-4-h LIBEL AND SLANDER (Cont.)

to withhold information from the public concerning divorce, separation, and other types of domestic relations proceedings. Where this is the case, broadcast of proscribed information about the proceeding or persons involved may subject the station to a charge of contempt of court.

The local counsel is responsible for advising all stations of the law applicable to these matters in the states in which the stations operate. The Station Manager is responsible for insuring that his staff complies with applicable law. Violation of such statutes may result in claims for violation of right of privacy.

Right of Privacy. Even though a statement or a picture may not be defamatory (constitute libel or slander), it may result in a suit for damages for invasion of a person's right of privacy. The right of privacy is an individual's right to be free from unwarranted publicity and to control the usage of his name or likeness for commercial purposes such as radio or TV broadcasts. The right is of recent origin in the law and is recognized by statute in a few states and by court decisions in a few others. It must be assumed by company stations, however, that such a right would or might be recognized in their state.

(1) Who is Protected. Only a natural person may have a right of privacy. A corporation, product, building or event cannot have such a right.

(2) Extent of Protection. The use of a person's name or likeness for advertising or commercial purposes generally is protected, except where the person's consent in writing has been obtained. The publication of private information about a person which,

500-4-h LIBEL AND SLANDER (Cont.)

even though true, violates the ordinary decencies or holds the subject up to unwarranted pity, scorn or ridicule generally is protected, except where the persons's consent in writing is obtained. Apart from the matter of good taste, therefore, it is sound policy to avoid broadcasting descriptions or pictures of deformed, ill, drunken or mentally deranged persons; dramatizations or pictures that might revive the memory of a forgotten scandal after it ceased to be news; or pictures or dramatizations that unduly play up a person's involvement in an embarrassing or scandalous situation; or use in fictional form of the biographical events in a living, identifiable person's life, whether his name is used or not.

(3) Privilege of Fair News Coverage. If a person by his actions becomes news or involved in a newsworthy event, his right of privacy does not protect him against fair news coverage, including the use of his name and picture. Thus, a person in public life who is a government official or a candidate for office; a participant in a crime or riot; a person injured in an accident; or a participant in public sports event -- all are not afforded protection against proper news coverage of their activities in that particular connection. However, singling out a person who is in the audience at a sports or other public event for a photograph or television shot might be considered as an invasion of his right of privacy.

500-4-i LOTTERY

The Commission, in a series of recent rulings, has more clearly delineated the responsibilities of broadcast licensees in assuring that contests or schemes advertised over their stations are not illegal lotteries in violation of the U. S. Criminal Code.

The Commission has now made it clear that a licensee's ignorance of the true nature of a contest which may be an illegal lottery is no excuse. Indeed, it has made it clear that substantial fines would be assessed in situations where the licensee may have had no actual knowledge that a lottery is being conducted, but where the Commission feels that the licensee has a responsibility to inquire further.

It is, therefore, imperative that you adopt the following procedures with respect to <u>any</u> contest or game which involves the award of a prize:

1. You must first inquire of the sponsor or agency whether the prize is to be awarded on the basis of chance. Only if the prize is to be awarded clearly on the basis of skill may you cease your inquiry at this point.
2. If the prize is to be awarded by chance, you must inquire whether a purchase of any kind is required in order to participate, or whether one may participate by purchasing something.
3. If the element of "chance" is involved and if participation requires a purchase, the scheme is an illegal lottery, and should not be carried over your station.
4. If it is possible to participate <u>either</u> by making a purchase <u>or</u> without making a purchase — for example, by

500-4-i LOTTERY (Cont.)

submitting a facsimile entry blank or free bottle tops -- you must ascertain whether it is about as easy to participate without a purchase as with one.

5. If it is not as easy to participate without a purchase, the scheme is a lottery and should be avoided. If free participation is comparable to participation by purchase, you may carry the promotion, on the basis of the assurance of the agency or sponsor to that effect. Your copy should contain express language to the effect that "No purchase is required to participate."

6. Ordinarily, oral assurance will be sufficient. However, in the case of the bottle top promotions which are now so popular, written assurance should be provided by the agency or sponsor to the effect that free bottle tops will be readily available at all locations where the game may be played by purchase, and the copy should so indicate. This is because the Commission is now aware of several instances in which, although the representation was made that free bottle tops would be available, they were not as readily available as through purchase. If written assurance has been given, you need not have your personnel check locations or otherwise police the conduct of the promotion. However, if, even after written assurance, you learn that bottle tops are not readily available, you should call this matter to the attention of the sponsor or agency, and cease carrying the promotion.

500-4-j SPONSOR IDENTIFICATION

When any organization, business or individual sponsors a program or announcement that is broadcast over your station, you are required to identify that sponsor on the air, regardless of whether the station receives consideration of value.

Section 73.119 of the Commission's Rules requires that when a commercial spot or program is broadcast and no specific product or service is involved, the station must have in its files, for public inspection, the names of the chief executive officer and the directors of the organization which bought the time.

This section was originally designed primarily to cover broadcasts by organizations which were involved in controversial issues.

However, the rules as written, also embrace programs which do not necessarily deal with such issues. (For example, commercial religious sponsors would be included, as well as other non-religious groups whose messages are non-controversial.)

Therefore, it is very important that you bear in mind that even though a commercial program or spot may not be selling a product or service, you are required to get from the sponsor a list of the names of its chief executive officer and directors and have that information in your files, available for public inspection.

The following are illustrative interpretations of Section 317 and the Commission's Rules.

Free Records

In view of the attention which has been given to the problem of free records, they are treated herein as a special category. It should be noted, however, that the same principles apply to records as to other property or services furnished for us on or in connection with a broadcast.

500-4-j SPONSOR IDENTIFICATION (Cont.)

A record distributor furnishes copies of records to a broacast station or a disc jockey for broadcast purposes. No announcement is required unless the supplier furnished more copies of a particular recording than are needed for broadcast purposes. Thus, should the record supplier furnish 50 or 100 copies of the same release, with an agreement by the station, express or implied, that the record will be used on a broadcast, an announcement would be required because consideration beyond the matter used on the broadcast was received.

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An announcement would be required for the same reason if the payment to the station or disc jockey were in the form of cash or other property, including stock.

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Several distributors supply a new station, or a station which has changed its program format (e.g. from "rock and roll" to "popular" music) with a substantial number of different releases.

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A question has been raised with respect to a situation where a distributor furnishes to a station free of charge an entire music library with the understanding, express or implied, that only its records would be played on the station. To the extent that such an arrangement may run afoul of the antitrust laws or may constitute an abdication by the station of its licensee responsibility, an announcement under sec. 317 would not cure it.

500-4-j SPONSOR IDENTIFICATION (Cont.)

No announcement is required under section 317 where the records are furnished for broadcast purposes only; nor should the public interest require an announcement in these circumstances. The station would have received the same material over a period of time had it previously been on the air or followed this program format.

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Records are furnished to a station or disc jockey in consideration for the special plugging of the record supplier or performing talent beyond an identification reasonably related to the use of the record on the program. If the disc jockey were to state: "This is my favorite new record, and sure to become a hit; so don't overlook it," and it is understood that some such statement will be made in return for the record and this is not the type of statement which would have been made absent such an understanding, and the supplying of the record free of charge, an announcement would be required since it does not appear that in those circumstances the identification is reasonably related to the use of the record on that program. On the other hand, if a disc jockey, in playing a record, states: "Listen to this latest release of performer 'X', a new singing sensation," and such matter is customarily interpolated in the disc jockey's program format and would be included whether or not the particular record had been purchased by the station or furnished to it free of charge, it would appear that the identification by the disc jockey is reasonably related to the use of the record on that particular program and there would be no announcement required.

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500-4-j SPONSOR IDENTIFICATION (Cont.)

Where payment in any form other than the matter used on or in connection with the broadcast is made to the station or to anyone engaged in the selection of program matter.

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A department store owner pays an employee of a producer to cause to be mentioned on a program the name of the department store. An announcement is required.

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An airline pays a station to insert in a program a mention of the airline. An announcement is required.

- - -

A perfume manufacturer gives five dozen bottles to the producer of a giveaway show, the remainder to be retained by the producer. An announcement is required since those bottles of perfume retained by the producer constitute payment for identification.

- - -

An automobile dealer furnishes a station with a new car, not for broadcast use, in return for broadcast mentions. An announcement is required; the car constituting payment for the mentions.

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A Cadillac is given to an announcer for his own use in return for a mention on the air of a product of the donor. An announcement is required since there has been a payment for a broadcast mention.

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Where service or property is furnished free for use on or in connection with a program, but where there is neither payment in consideration for broadcast exposure of the service or property, nor an agreement for

500-4-j SPONSOR IDENTIFICATION (Cont.)

identification of such service or property, nor an agreement for identification of such service or property beyond its mere use on the program.

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Free books or theater tickets are furnished to a book or dramatic critic of a station. The books or plays are reviewed on the air. No announcement is required. On the other hand, if 40 tickets are given to the station with the understanding, express or implied, that the play would be reviewed on the air, an announcement would be required because there has been a payment beyond the furnishing of a property or service for use on or in connection with a broadcast.

News releases are furnished to a station by government, business, labor and civic organizations, and private persons, with respect to their activities, and editorial comment therefrom is used on a program. No announcement is required.

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A government department furnishes air transportation to radio newscasters so they may accompany a foreign dignitary on his travels throughout the country. No announcement is required.

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A municipality provides street signs and disposal containers for use as props on a program. No announcement is required.

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A hotel permits a program to originate on its premises. No announcement is required. If, however, in return for the use of the premises, the producer agrees to mention the hotel in a manner not

500-4-j SPONSOR IDENTIFICATION (Cont.)

reasonably related to the use made of the hotel on that particular program, an announcement would be required.

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A refrigerator is furnished for use as part of the backdrop in a kitchen scene of a dramatic show. No announcement is required.

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A Coca-Cola distributor furnishes a Coca-Cola dispenser for use as a prop in a drug store scene. No announcement is required.

- - -

An automobile manufacturer furnishes his identifiable current model car for use in a mystery program, and it is used by a detective to chase a villain. No announcement is required. If it is understood, however, that the producer may keep the car for his personal use, an announcement would be required. Similarly, announcement would be required if the car is loaned in exchange for a mention on the program beyond that reasonably related to its use, such as the villain saying: "If you hadn't had that speedy Chrysler, you never would have caught me."

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A private zoo furnishes animals for use on a children's program. No announcement is required.

- - -

A university makes one of its professors available to give lectures in an educational program series. No announcement is required.

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A well-known performer appears as a guest artist on a program at union scale because the performer likes the show, although the performer normally commands a much higher fee. No announcement is required.

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500-4-j SPONSOR IDENTIFICATION (Cont.)

An athletic event promoter permits broadcast coverage of the event. No announcement is required in absence of other payment by the promoter or agreement to identify in a manner not reasonably related to the broadcast of the event.

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Where service or property is furnished free for use on or in connection with a program, with the agreement, express or implied, that there will be an identification beyond mere use of the service or property on the program. Of course, in all these cases, if there is payment to the station or production personnel in consideration for the exposure, an announcement is required.

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A refrigerator is furnished by X with the understanding that it will be used in a kitchen scene on a dramatic show and that the brand name will be mentioned. During the course of the program the actress says: "Donald go get the meat from my new X refrigerator." An announcement is required because the identification by brand name is not reasonably related to the particular use of such refrigerator in this dramatic program.

(a) A refrigerator is furnished by X for use as a prize on a giveaway show, with the understanding that a brand identification will be made at the time of the award. In the presentation, the master of ceremonies briefly mentions the brand name of the refrigerator, its cubic content, and such other features as serve to indicate the magnitude of the prize. No announcement is required because such identification is

500-4-j SPONSOR IDENTIFICATION (Cont.)

reasonably related to the use of the refrigerator on a give-away show in which the costly or special nature of the prizes is an important feature of this type of program.

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(b) In addition to the identification given in (a) above, the master of ceremonies says: "All you ladies sitting there at home should have one of these refrigerators in your kitchen," or, "Ladies, you ought to go out and get one of these refrigerators." An announcement is required because each of these statements is a sales "pitch" not reasonably related to the giving away of the refrigerator on this type of program.

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The significance of the distinction between the identification in (a) and that in (b) is, that in (a) it is no more than the natural identification which a broadcaster would give to a refrigerator as a prize if he had purchased the refrigerator himself and had no understanding whatever with the manufacturer as to any identification. That is to say, in situation (a), had the broadcaster purchased the refrigerator he would have felt it necessary, in view of the nature of the show, adequately to describe the magnitude of the prize which was being given to the winner. On the other hand, the broadcaster would not, where he had purchased the refrigerator, have made the type of identification in situation (b), thus providing a free sales "pitch" for the manufacturer.

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500-4-j SPONSOR IDENTIFICATION (Cont.)

(a) An airplane manufacturer furnishes free transportation to a cast on its new jet model to a remote site, and the arrival of the cast at the site is shown as part of the program. The name of the manufacturer is identifiable on the fuselage of the plane in the shots taken. No announcement is required because in this instance such identification is reasonably related to the use of the service on the program.

(b) Same situation as in (a), except that after the cameraman has made the foregoing shots he takes an extra close-up on the identification insignia. An announcement is required because close-up is not reasonably related to the use of the service on the program.

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(a) A station produces a public service documentary showing development of irrigation projects. Brand X tractors are furnished for use on the program. The tractors are shown in a manner not resulting in identification of the brand of tractors except as may be recognized from the shape or appearance of the tractors. No announcement is required since the identification is reasonably related to the use of the tractors on the program.

(b) Same situation as in (a), except that the brand name of the tractor is visible as it appears normally on the tractor. No announcement is required for the same reason.

(c) Same situation as in (b), except that a close-up showing the brand name in a manner not required in the nature of the program

500-4-j SPONSOR IDENTIFICATION (Cont.)

is included in the program, or an actor states: "This is the best tractor on the market." An announcement is required as this identification is beyond that which is reasonably related to the use of the tractor on the program.

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(a) A bus company prepares a scenic travel film which it furnishes free to broadcast stations. No mention is made in the film of the company of its buses. No announcement is required because there is no payment other than the matter furnished for broadcast and there is no mention of the bus company.

(b) Same situation as in (a), except that a bus, clearly identifiable as that of the bus company which supplied the film, is shown fleetingly in highway views in a manner reasonably related to that travel program. No announcement is required.

(c) Same situation as in (a), except that the bus, clearly identifiable as that of the bus company which supplied the film, is shown to an extent disproportionate to the subject matter of the film. An announcement is required, because in this case by the use of the film the broadcaster has impliedly agreed to broadcast an identification beyond that reasonably related to the subject matter of the film.

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(a) A manufacturer furnishes a grand piano for use on a concert program. The manufacturer insists that enlarged insignia

500-4-j SPONSOR IDENTIFICATION (Cont.)

of its brand name be affixed over normal insignia on the piano. An announcement is required if an enlarged brand name is shown.

(b) Conversely, if the piano furnished has normal insignia and during the course of the televised concert the broadcast includes occasional close-ups of the pianist's hands, no announcement is required even though all or part of the insignia appears in these close-ups. Here the identification of the brand name is reasonably related to the use of the piano by the pianist on the program. However, if undue attention is given the insignia rather than the pianist's hands, an announcement would be required.

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(a) An automobile manufacturer or dealer furnishes to a producer of television programs a number of automobiles with the understanding that the producer will use them, or some of them, in some of his programs which call for the use of automobiles; and that the automobiles may be used for other business purposes in connection with the production of the programs, such as transporting executive personnel to business meetings in connection with the production of the programs. There is no understanding that there will be any identification on the television programs beyond an identification which is reasonably related to the use of the automobiles on the programs. No other consideration is involved. Under such uses, no announcement is required.

500-4-j SPONSOR IDENTIFICATION (Cont.)

(b) If, in addition to the facts stated in (a), it is understood between the producer and the supplier that one or more of the automobiles may be, and they are, used for other purposes not related to the production of the program, an announcement is required.

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(a) A hotel permits a program to originate from its premises and furnishes hotel services, such as room and board, for cast, production and technical staff, and also furnishes other elements for use in connection with the programs to be broadcast, such as electricity and cable connections, free of charge, and with no other consideration. There is no understanding that there will be an identification of the hotel on the program beyond that reasonably related to the use made of the hotel on the program. No announcement is required.

(b) If the hotel pays money or furnishes free or at a nominal charge any services or items which are not for use on or in connection with the program (e.g. furnishing free or at a nominal charge room and board for the producer for any period of time not related to the production of the program at the hotel site), an announcement is required.

Nature of the Announcement

A station broadcasts spot announcements which solicit mail orders from listeners. The sponsor is merely referred to in the announcements and in the mail order address as "Flower Seeds" or "Real Estate" or "the Record Man." Such a reference to the sponsor of the announcements is insufficient

500-4-j SPONSOR IDENTIFICATION (Cont.)

to constitute compliance with the Commission's sponsorship identification Rules because it is limited to a description of the product or service being advertised. The announcement requirement contemplates the explicit identification of the name of the manufacturer or seller of goods, or the generally known trade or brand name of the goods sold. (See Commission Notice entitled "Sponsor Identification on Broadcast Station," FCC 50-1207, 6 R.R. 835).

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A station broadcasts "Teaser" announcements utilizing catch words, slogans, symbols, etc., designed to arouse the curiosity of the public by telling it that something is "coming soon." The sponsor of the announcement is not named therein, nor is any generally known trade or brand name given, but it is the intention of the station and the advertiser to inaugurate at a later date a series of conventional spot announcements at the conclusion of the "teaser" campaign. Announcements of this type do not comply with the Commission's sponsorship identification rules. All commercial matter must contain an explicit identification of the advertiser or the generally known trade or brand name of the goods being advertised. (See Memorandum Opinion and Order In the Matter of Amendment of Section 3.119 (e) of the Commission's Rules, FCC 59-939, 18 R.R. 1860.)

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A station carries an announcement (or program) on behalf of a candidate for public office or on behalf of the proponents or opponents of a bond issue (or any other public controversial issue). At the conclusion thereof, the station broadcasts a "disclaimer" or states that