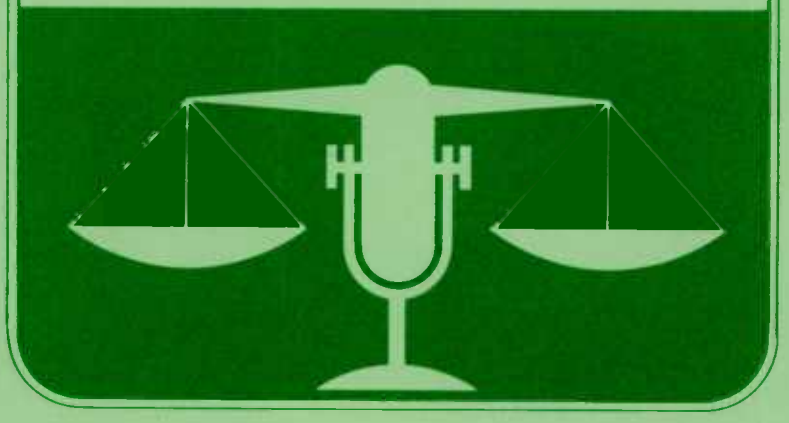
POLITICAL BROADCAST CATECHISM

Seventh Edition



NATIONAL ASSOCIATION OF BROADCASTERS / 1771 N STREET N.W., WASHINGTON, D.C. 20036

Political Broadcast Catechism

(Seventh Edition)

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Prepared for the Members of the
National Association of Broadcasters
by its
Legal Department

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TABLE OF CONTENTS

POLITICAL BROADCAST CATECHISM

Foreword

This Seventh Edition of the *Political Broadcast Catechism* represents an effort to consolidate into one document all of the material necessary to a broadcaster in making informed decisions in the area of political broadcasting. Because of the importance placed by the Federal Communications Commission on the broadcaster's responsible execution of his obligations in this area, this *Political Broadcast Catechism* was prepared to assist the radio and television broadcaster in achieving judicious solutions to the problems which may arise.

The complexity of political broadcasting which has steadily increased over the years perhaps reached its zenith on April 7, 1972 when the newly enacted Federal Election Campaign Act of 1971 became effective. Title I of that Act (known as the Campaign Communications Reform Act) amended Sections 312 and 315 of the Communications Act of 1934 to impose new requirements on licensees in the area of political broadcasting. These requirements can be categorized as follows: 1) rate practices (lowest unit charge); 2) certification; and 3) reasonable access. Each of these three subjects is discussed separately herein. Although the basic requirements of the new law are set forth fully in amended Sections 312 and 315, official regulations providing further interpretations of these statutory obligations have been issued by the Office of the Comptroller General of the United States and are contained in 37 F.R. 6156. In addition, the Commission has issued specific F.C.C. Guidelines to assist stations in implementation of the laws which are set forth in 37 F.R. 5796. Appropriate references to these latter two official source materials are included in the Q's and A's to follow.

The *Catechism* itself is divided into two sections which can be summarized as follows:

I. POLITICAL BROADCASTS UNDER SECTIONS 312 AND 315 OF THE COMMUNICATIONS ACT—the obligations of broadcast licensees under the Communications Act generally and as affected by the Campaign Communications Reform Act; the regulations of the FCC concerning political broadcasting; the FCC Guidelines and the regulations of the Office of the Comptroller General implementing the Campaign Communications Reform Act; FCC and court decisions in the political broadcast area.

II. THE FAIRNESS DOCTRINE—the obligations of broadcast licensees in the political broadcast area as affected by the fairness doctrine; the personal attack and political editorializing rules of the F.C.C.; the quasi-equal opportunities or "Zapple" doctrine; controversial issues in general; F.C.C. and court decisions in the area of the fairness doctrine as it applies to political broadcasts.

There is no attempt in this *Catechism* to set forth definitive conclusions on every aspect of political broadcasting. Rather the *Catechism* should be viewed as a basic reference tool for the broadcaster, a guide book which sets forth analyses of fundamental problem areas where reliable decisions have been reached. Use of the *Catechism's* Index will greatly facilitate the finding of answers to questions which might arise.

I. POLITICAL BROADCASTS UNDER SECTIONS 312 AND 315 OF THE COMMUNICATIONS ACT

A

The Communications Act and FCC Political Broadcast Rules and Regulations

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

A. Sections 312(a) and 315 are the principal provisions of the Communications Act relative to political broadcasting and are set forth at p. 42 of this *Catechism*.

In addition, the sponsorship identification requirements of Section 317 of the Act are also

pertinent to political broadcasts. That Section reads, in part, as follows:

> "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. . . .
>
> "(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, transcripts, 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."

2. Q. What Commission or other official rules and regulations implement Section 312(a) and 315 of the Communications Act?

A. F.C.C. Rules 73.120 (AM), 73.290 (FM), 73.590 (Non-commercial Educational FM) and 73.657 (TV) implement Section 315 of the Communications Act. These rules (set forth at p. 42 of this *Catechism)* contain identical provisions except that the rules as to Noncommercial Educational FM stations do not contain any discussion of the charges applicable to purchases of political broadcast time. In addition to the F.C.C. rules cited above, there are two other sources for official licensee guidance in the area of political broadcasting: 1) the Office of the Comptroller General of the United States has issued official regulations which provide interpretations of certain of those aspects of Sections 312(a) and 315 of the Communications Act which have been amended by the Campaign Communications Reform Act of 1971 (see 37 C.F.R. 6156); 2) the Commission itself has issued Guidelines on the "Use of Broadcast Facilities . . . by Candidates for Public Office" (see 37 C.F.R. 5796), which Guidelines specifically take into account the effect of the 1971 Act upon a licensee's Section 312(a) and 315 obligations. In some instances, it will be discovered that the F.C.C. rules cited above are inconsistent with amended Section 315 and the F.C.C. Guidelines; such inconsistencies should be resolved in favor of Section 315 and the Guidelines.

LOGGING

3. Q. What are the logging requirements for political broadcasts?

A. In addition to the usual program logging requirements as to the name of program sponsorship, etc., a log entry must be made for each announcement or program presenting a political candidate, showing the name and political affiliation of such candidate (Sections 73.112 [AM]; 73.282 [FM]; 73.582 [Non-commercial Educational FM]; and 73.670 [TV]). Of course, such an entry would not be required for an appearance by a candidate which is exempt under Section 315.

RECORD RETENTION

4. Q. Is the licensee required to keep a script or recording of political announcements or programs?

A. No, however, many stations keep recordings or scripts as a safety factor in the event the station should be drawn into any controversy which might subsequently arise pertaining to the political broadcast. See Q. and A. 146 for rare instance in which recording must be kept.

5. Q. What political broadcast records must be kept?

A. The FCC Rules (Section [d] of FCC Rules 73.120 [AM]; 73.290 [FM]; 73.590 [Noncommercial Educational FM]; 73.657 [TV]) require licensees to keep and allow public inspection of any request for political broadcast time made by or on behalf of candidate, together with an appropriate notation showing the disposition made of any such request and the charges made, if any, if the request is granted. Such records must be kept for two years. Additionally, the licensee must now retain for the same period an original of the certification and a copy of an authorization to certify as required for Federal candidates under the Campaign Communications Reform Act. (See Part I, Section J on "Certification").

Note: As in the case of other station public file information, the public's right is to view the political broadcast file during the station's normal business hours. Stations do not have to provide political broadcast file information by telephone or by mail unless they choose to do so. In the latter event, the furnishing of such information should be on a non-discriminatory basis.

6. Q. In addition to the political broadcast records which licensees are required to retain for a period of two years, will licensees ever be asked to provide further political broadcast information?

A. Yes. The Commission usually issues a Political Broadcast Questionnaire (F.C.C. Form 322) during election years which requests information in addition to that which the Rules require to be retained.

SPONSORSHIP IDENTIFICATION

7. Q. What Commission rules govern sponsorship announcements for political broadcasts?

A. Section 73.119 (a), (b), (c), (d), (e), and (f) of the Commission's rules provides as follows:*

> Sponsored programs, announcement of.—(a) When a standard broadcast station transmits any matter for which money, services, or other valuable consideration is either directly or indirectly paid or promised to, or charged or received by, such station, the station shall broadcast an announcement that such matter is sponsored, paid for, or furnished, either in whole or in part, and by whom or on whose behalf such consideration was supplied: *Provided, however*, that "service or other valuable consideration" shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification in a broadcast of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast.
>
> (b) The licensee of each standard broadcast station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program matter for broadcast, information to enable such licensee to make the announcement required by this section.
>
> (c) In any case where a report (concerning the providing or accepting of valuable consideration by any person for inclusion of any matter in a program intended for broadcasting) has been made to a standard broadcast station, as required by Section 508 of the Communications Act of 1934, as amended, of circumstances which would have required an announcement under this section had the consideration been received by such standard broadcast station, an appropriate announcement shall be made by such station.
>
> (d) In the case of any political program or any program involving the discussion of public controversial issues for which any records, transcriptions, talent, scripts, or other material or services of any kind are furnished, either directly or indirectly, to a station as an inducement to the broadcasting of such program, an announcement shall be made both at the beginning and conclusion of such program on which such material or services are used that such records, transcriptions, talent, scripts, or other material or services have been furnished to such station in connection with the broadcasting of such program: *Provided, however*, that only one such announcement need be made in the case of any such program of 5 minutes' duration or less, which announcement may be made either at the beginning or conclusion of the program.
>
> (e) The announcement required by this section shall fully and fairly disclose the true identity of the person or persons by whom or in whose behalf such payment is made or promised, or from whom or in whose behalf such services or other valuable consideration is received, or by whom the material or services referred to in paragraph (d) of this section are furnished. Where an agent or other person contracts or otherwise makes arrangements with a station on behalf of another, and such fact is known to the station, the announcement shall disclose the identity of the person or persons in whose behalf such agent is acting instead of the name of such agent.
>
> (f) In the case of any program, other than a program advertising commercial products or services, which is sponsored, paid for, or furnished, either in whole or in part, or for which material or services referred to in paragraph (d) of this section are furnished, by a corporation, committee, association, or other unincorporated group, the announcement required by this section shall disclose the name of such corporation, committee, association, or other unincorporated group. In each such case, the station shall require that a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association or other unincorporated group shall be made available for public inspection at the studios or general offices of one of the standard broadcast stations carrying the program in each community in which the program is broadcast.

8. Q. Is the announcement "this is a paid polit-

* The equivalent rules for FM and TV may be found under Sections 73.289 and 73.654. These rules are presently being revised and members will be advised of amendments which are finally adopted.

ical broadcast" sufficient to satisfy the above cited sponsorship identification rules?

A. No. In fact, this announcement is not required by the rules, but is often given so that stations may disassociate themselves from the political views expressed. What is required is the specific identification of the person or group sponsoring the broadcast. (See § 73.119(e) above.) Thus "paid for by the Committee for Political Action for Mr. X," would fulfill the requirement for a program sponsored by this organization.

9. Q. Do the following announcements satisfy the sponsor ID rules: "State Citizens for Smith" and "Authority of Smith Committee"?

A. No. In a **Public Notice** issued on October 2, 1970 (F.C.C. 55137), the Commission stressed that paid political announcements or programs must be announced in the statutory language of Section 317. Mere mention of the sponsor is not sufficient. The announcement must state that the broadcast matter is "paid for" by that sponsor. Thus, the above-mentioned announcements should read "Paid for by State Citizens for Smith" and "Paid for by Smith Committee."

10. Q. Is the announcement "Paid for by a lot of people who want to see Sam Grossman elected to the United States Senate" sufficient to satisfy sponsorship identification?

A. No. The language is too general. It does not convey to listeners and viewers that the announcement is sponsored by a specific entity, i.e., a committee, organization, association, etc. supporting Mr. Grossman's candidacy. In other words, the sponsor must be a specific person or entity. (Letter to *KOOL Radio-Television, Inc.* 26 F.C.C. 2d 42 [1970]).

11. Q. Are stations required to announce the names of the officers of organizations or groups which sponsor political programs or announcements?

A. No. While paragraph (f) of the Commission's sponsorship identification rules (see Q. and A. 7) requires stations to record the names of such officers, there is no requirement to announce those names. Some state and local jurisdictions do require the announcement of such information in political advertising, however, and it would be wise to check local law on this point.

12. Q. Must a station disclose that material used in newscasts or other programming has been supplied to the station by a candidate?

A. Yes, paragraph (d) of the Commission's sponsorship identification rules provides that such an announcement must be made in the case of any political or controversial discussion programming for which any records, transcriptions, talent, scripts, or other material or services have been provided as an inducement to the broadcasting of such programming. However, the Commission has recently ruled that with respect to the use of candidate-supplied material in *bona fide* newscasts, it will only apply the rule to audio tape or film furnished by the candidate. The rule will not be applied to printed matter such as news releases or advance copies of speeches. *(First Report,* Docket No. 19260, 24 RR 2d 1917 [1972]).

B

The "Legally Qualified" Candidate

13. Q. Who is a legally qualified candidate for public office?

A. In general, a candidate is legally qualified if he has publicly announced, meets the qualifications prescribed by the applicable laws to hold the office so that he can be voted for, and who, if elected, is eligible to serve in the office in question. Under the Campaign Communications Reform Act, as interpreted in the F.C.C.'s Guidelines, the public announcement requirement for the office of President is satisfied if he, or another person on his behalf, makes an expenditure for the use of a communications medium on behalf of his candidacy and submits the requisite certification. The Commission has emphasized that a minimal expenditure, e.g., a $5 newspaper ad, would not, in the absence of other facts to demonstrate the *bona fides* of his candidacy, entitle the candidate to equal opportunity under Section 315(a). (F.C.C. Guideline V.1).

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

A. Not always. The term "legally qualified candidate" may embrace persons not listed on the ballot if such persons are making a *bona fide* race for the office involved and the names of such persons, or their electors can, under applicable law, be written in by voters so as to result in their valid election. The Commission recognizes, however, that the mere fact that any name may be written in does not entitle all persons, who may publicly announce themselves

as candidates to demand time under Section 315. Broadcast stations may make suitable and reasonable requirements with respect to proof of the *bona fide* nature of any candidacy on the part of applicants for the use of facilities under Section 315. (F.C.C. Rules 73.120 [AM]; 73.290 [FM]; 73.590 [Noncommercial Educational FM]; 73.657 [TV]. Letter to *Socialist Labor Party*, 40 F.C.C. 239 [1951]; letter to *CBS, Inc.*, 40 F.C.C. 244 [1952]; *In re "Legally Qualified Candidate"*, 40 F.C.C. 233 [1941]).

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

A. A candidate requesting equal opportunity of a licensee, or a candidate complaining to the F.C.C. of a licensee's non-compliance with Section 315, has the burden of proving that he and his opponent are legally qualified candidates for the same public office (F.C.C. Rules 73.120 [AM]; 73.290 [FM]; 73.590 [Noncommercial Educational FM]; and 73.657 [TV]).

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

A. No. Section 315 does not permit any such subjective determination by the station with respect to a candidate's chances of nomination or election. (Letter to *CBS, Inc.*, 40 F.C.C. 244 [1952]).

17. Q. May a person be considered 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 election?

A. The answer depends on applicable state law. In some states persons may be voted for by the electorate whether or not they have gone through the procedures required for getting their names placed on the ballot itself. In such a state, the announcement of a person's candidacy—if determined to be *bona fide*—is sufficient to bring him within the purview of Section 315. In other states, however, candidates may not be "legally qualified" until they have fulfilled certain prescribed procedures. (Letter to *Senator Earle C. Clements*, 23 F.C.C. 2d 751 [1954]).

18. Q. May an incumbent, or even a non-incumbent political figure, be considered a legally qualified candidate for nomination as his party's candidate for President of the United States prior to the time he publicly announces that he is a candidate for that nomination or makes an expenditure for the use of a communications medium on behalf of his candidacy?

A. No. To be a legally qualified candidate, a person must as a prerequisite publicly announce his candidacy or make an expenditure for the use of a communications medium on behalf of his candidacy. The Commission, in the ruling cited below, recognized that incumbents may take preliminary steps of varying nature (e.g., frequent trips to the election state, with speeches, conferences with financial sources and potential delegates). However, the Commission emphasized that to attempt to make findings on whether or when the incumbent has become a candidate during the preliminary pre-announcement period would render Section 315 unworkable. The Commission further pointed out that similar illustrations could be made with respect to a non-incumbent political figure during the preliminary pre-announcement period. (Letter to *Senator Eugene McCarthy*, 11 F.C.C.2d 511 [1968], *aff'd*, 390 F.2d 471 [D.C. Cir. 1968]).

19. Q. Must a person prove his legal qualifications prior to the date set for nomination or the actual election?

A. Yes. However, once the date of nomination or election 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 opportunity", thus mooting the question of the rights, if any, the claimant might have been entitled to under Section 315 before the election. (Letter to *Socialist Workers' Party* 40 F.C.C. 281 [1956]; letter to *Lar Daly*, 40 F.C.C. 273 [1956], *appeal dismissed sub. nom. Daly* v. *U.S.* Case No. 11,946 [U.S.C.A. 7th Cir. 1957], *cert denied*, 355 U.S. 826 [1957]). In any event, all requests by political candidates for "equal opportunities" under Section 315 must be submitted within one week of the day on which the first prior use occurred. (Section [e] of F.C.C. Rules 73.120 [AM], 73.290 [FM]; 73.590 [Noncommercial Educational FM]; and 73.657 [TV]).

20. Q. Under the circumstances stated in the preceding question, is any post-election remedy available to the candidate under Section 315?

A. None, insofar as a candidate may desire retroactive "equal opportunity". 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".

21. Q. When a state attorney general or other appropriate state official having jurisdiction to decide a candidate's legal qualification has ruled that a candidate is not legally qualified under

local election laws, can a licensee be required to afford such person "equal opportunity" under Section 315?

A. In such instances, the ruling of the state attorney general or other official will prevail, absent a judicial determination. (Telegram to *Ralph Muncy*, 23 F.C.C.2d 766 [1956]; letter to *Socialist Workers' Party*, 40 F.C.C. 280 [1956]; *In re Lester Posner*, 15 F.C.C. 2d 807 [1968]).

C

What Constitutes a "Use" of Broadcast Facilities?

As a general rule, any *use* of broadcast facilities by a legally qualified candidate imposes an obligation on broadcast station licensees to afford equal opportunities to all other candidates for the same office. However, exemptions are provided in Section 315 for appearances by a legally qualified candidate on any—

(1) *bona fide* newscast,
(2) *bona fide* news interview,
(3) *bona fide* news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or
(4) on-the-spot coverage of *bona fide* news events (including, but not limited to, political conventions and activities incidental thereto).

It should be noted that the term "use" of broadcast facilities by a legally qualified candidate has three different meanings in the political broadcasting area which must be carefully distinguished. One meaning of the term involves a determination of "use" for purposes of invoking the no-censorship provisions of Section 315; this aspect of "use" is discussed in Section G "Limitations as to Use of Facilities by a Candidate", p. 12. A second meaning of the term requires a determination of a broadcast "use" which entitles a candidate to receive the lowest unit charge as provided in Section 315, as amended by the Campaign Communications Reform Act of 1971; this second aspect of "use" is analyzed in Section I., "What Rates May Be Charged Candidates", p. 15. The third meaning of the term "use" centers around a determination of what kind of broadcast "use" by a candidate entitles his opponent to equal opportunity under Section 315; it is this aspect of broadcast "use" which is the subject of this Section C, "What Constitutes a Use of Broadcast Facilities?"

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

A. Yes. Section 315 does not distinguish between types of uses. For example, a weekly report of a Congressman to his constituents via radio or television is a broadcast by a legally qualified candidate for public office as soon as he becomes a candidate for reelection. His opponent must, therefore, be given equal opportunity for time on the air.

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

A. Yes. Such an appearance, no matter how brief or perfunctory, is a "use" of a station's facilities within Section 315.

24. Q. A non-candidate reads a political script while the candidate is shown either on silent film, by a photograph over the screen, or sitting in the studio. Are the candidate's opponents entitled to equal opportunities?

A. Yes. The appearance of any candidate in any of these three situations constitutes a "use" of the station's facilities, thus entitling opposing candidates to equal opportunities (Letter to *Harry M. Plotkin*, 23 F.C.C. 2d 758 [1966]).

25. Q. A public service television announcement was taped featuring a singing group of about 100 people, many of whom were well known celebrities in various fields. No one's name was mentioned nor were any voices separately identifiable. One of the participants later became a legally qualified candidate for public office. In the PSA, he is visible in two video shots both of which were of a few seconds duration and at long range. Did these PSA's constitute a "use"?

A. No. Since the duration of the shots were too fleeting and the camera range too distant for the candidate to be readily identified in the group of 100 persons, his appearances were not a "use" within the meaning of Section 315(a) of the Communications Act. (Letter to *National Urban Coalition*, 23 F.C.C. 2d 123 [1970]). The NAB Legal Department believes this ruling to be highly significant because by stressing the words "readily identifiable" the Commission appears to have rejected an absolute standard whereby Section 315 rights would arise in every case where a candidate might possibly be identifiable.

EMPLOYEE CANDIDATES

26. Q. A television station employs an announcer who, "off camera" and unidentified, supplies the audio portion of required station identification announcements, public service announcements, and commercial announcements. In the event that this employee announced his candidacy for the city council, would his opponent be entitled to equal opportunity?

A. No. The employee's appearance for purposes of making commercial, non-commercial and station identification announcements would not constitute a "use" where the announcer himself was neither shown nor identified in any way. (Letter to *WNEP*, 40 F.C.C. 431 [1965]).

27. Q. If a person regularly employed as a station announcer, who by name or listener familiarity is identifiable, were to continue his on-air duties 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. (Letter to *KUGN*, 40 F.C.C. 293 [1958]; letter to *KTTV*, 40 F.C.C. 282 [1957]; letter to *Kenneth Spengler*, 40 F.C.C. 279 [1956]).

28. Q. May a candidate who has previously broadcast sports events, but who states that only people who knew him personally would be able to identify his voice, continue to broadcast commercial announcements without identification during the campaign without triggering Section 315?

A. Yes. The question as to whether the announcer's voice is in fact so well known that he is identifiable to the general public is a matter for the licensee's reasonable good faith judgment. (Letter to *A. W. Davis*, 17 F.C.C. 2d 613 [1969]).

29. Q. What alternatives are available to a station with a readily identifiable on-air employee who becomes a legally qualified candidate for public office?

A. There are three possible alternatives:

1. Remove the employee from the air during the duration of his candidacy.
2. Leave the employee on the air and be fully prepared to afford equal opportunity to any opposing candidate for all appearances of the employee-candidate for the seven days prior to the opponent's request. There is no obligation on the part of the station to inform opposing candidates of their rights to equal opportunities arising from the employee-candidate's on-air duties. Of course, equal opportunities under these circumstances would involve free time.
3. Seek a waiver from the employee-candidate's opponent(s) to the effect that the opponent(s) waives any equal opportunity rights he may acquire as a result of appearances by the employee-candidate during the normal course of his station duties. Such a waiver should be contingent upon the understanding that the employee-candidate would make no reference, directly or indirectly, to his candidacy during such appearances. The F.C.C. has recognized the validity of equal opportunities waivers (see Q. and A. 50 p. 11). It must be understood that opposing candidates are under no obligation whatsoever to agree to such waivers and their refusal to do so cannot be exploited.

EXEMPT AND NON-EXEMPT APPEARANCES

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

It should be noted that although a particular newstype program may be exempt from the operation of Section 315, the station, nevertheless, may be subject to the obligations of the fairness doctrine whenever such an exempt program involves the discussion of a controversial issue of public importance. (For a complete discussion of the fairness doctrine, see Part II, p. 32). However, if it is established that the candidate's broadcast appearance constitutes a non-exempt Section 315 "use", the station's only obligation (except in certain limited personal attack situations-see Q. and A. 164) is to comply with the requirements of equal opportunity; thus, the station has no general fairness doctrine obligations arising out of a non-exempt Section 315 "use" by a candidate; generally speaking, the obligations of Section 315 and of the fairness doctrine are mutually exclusive.

30. Q. If a station arranges for a debate between

the candidates of two parties or presents the candidates of two parties on a program with a press conference format or so-called forum program, is the station required to make equal opportunities available to other candidates?

A. It would appear that Section 315 would not require that opponents of legally qualified candidates who appear on such programs be afforded equal opportunities if such programs are kept within the confines of a *bona fide* news interview. The legislative history of the 1959 amendment to Section 315 which added these exemptions shows that Congress intended that for a program to be considered a *bona fide* news interview, it must be regularly scheduled. Also, the content, format, and participants must be determined by the station licensee or network—whichever originates the news interview—and the determination must be made in the exercise of *bona fide* news judgment. (Conf. Rep. No. 1069, 86th Cong., 1st Sess. [1959]).

31. Can a news interview program scheduled to begin only eleven weeks before the start of an election campaign qualify as an exempt program under Section 315 during that campaign?

A. No. Under the particular facts of this case the Commission said that it could not rule that the program was exempt. They emphasized that their "rulings favoring exemption have been limited to programs broadcast over a substantial period of time in the past". (Letter to *WIIC*, 33 F.C.C. 2d 629 [1972]).

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

A. No. The programs were regularly scheduled, *bona fide* news interviews and were of the type which Congress intended to exempt from the "equal opportunities" requirement of Section 315. (Letter to *Andrew J. Easter*, 40 F.C.C. 307 [1960]; letters to *Charles V. Falkenberg*, 40 F.C.C. 310 [1960], 40 F.C.C. 311 [1960]; letter to *Congressman Frank Kowalski*, 40 F.C.C. 355 [1962]).

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

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

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

A. No. Such an appearance would clearly fall within the exemption for *bona fide* newscasts under Section 315.

35. Q. Does an appearance on a program 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 provision, 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*, 40 F.C.C. 328 [1962]).

36. 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. Would his opponent be entitled to "equal opportunity"?

A. Yes. In light of the fact that the format and content of the program were determined by the sheriff and not by the station, the program was not of a type intended by Congress to be exempt from the "equal opportunities" requirement of Section 315. (Letter to *WCLG*, 40 F.C.C. 308, [1960]).

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

A. Yes. Broadcasts of such film clips containing appearances by a candidate constitute uses of the station's facilities. Such appearances do not attain exempt status when the film clips are broadcast as part of a program not subject to the equal opportunities provision for the reasons set forth in the preceding Q. and A. 35. (Letter to *Con-*

gressman Clem Miller, 40 F.C.C. 353 [1962]). Moreover, since the political clips were supplied by the candidate as an inducement to their broadcast, an appropriate sponsorship identification announcement would be required under the Commission's rules. (Section [d] of FCC rules 73.119[AM]; 73.289[FM]; 73.654[TV]).

38. Is coverage of a press conference held by a candidate for public office exempt from the equal opportunities requirement of Section 315 of the Act?

A. No, such press conferences are not exempt either as *bona fide* news interviews or as on-the-spot coverage of a *bona fide* news event. However, use of portions of such press conferences may be exempt where broadcast as part of a *bona fide* newscast. (Letter to *CBS, Inc.*, 40 F.C.C. 395 [1964]; letter to *Victor E. Ferrall*, 15 F.C.C. 2d 98 [1968]).

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

A. No. A 1956 ruling held that President Eisenhower's address on the Suez Crisis was exempt because the "equal time" provision is not applicable when the President uses the air lanes in reporting to the Nation on an international crisis. The Commission found that there was nothing in the legislative history of the 1959 amendment to change this holding and in this instance found that President Johnson's report on the replacement of the head of the Soviet Union and the explosion of a nuclear device by Communist China was a *bona fide* news event of an extraordinary nature within the exemption of Section 315. (Letter to *Dean Burch*, 40 F.C.C. 408 [1964]).

D

When Are Candidates Opposing Candidates?

40. Q. What public offices are included within the meaning of Section 315?

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

41. 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 afford equal opportunities to the candidates seeking the nomination of other parties for the same office?

A. No. The Commission has held that, while both primary elections or nominating conventions and general elections are comprehended within the terms of Section 315, the primary elections or conventions held by one party are to be considered separately from the primary elections or conventions of other parties, and, therefore, "equal opportunities" need only be afforded legally qualified candidates for nomination for the same office at the same party's primary or nominating convention. (Letter to *KWFT*, 40 F.C.C. 237 [1948]; letter to *Arnold Peterson*, 40 F.C.C. 240 [1952]; letter to *WCDL*, 40 F.C.C. 259 [1953]; letter to *Richard B. Kay*, 24 F.C.C. 2d 246 [1970]). Of course, these rulings do not affect a Federal candidate's right to reasonable access under the new provision of Section 312(a). See "Reasonable Access" Part I., Section K., p. 29).

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

A. The answer depends on state law as to when a candidate is deemed nominated. For example, if a state has a provision to the effect that all persons designated for uncontested offices in a primary election will be deemed nominated without balloting, the two candidates of opposing parties would become opposing candidates before the ballots were cast in a primary election. However, the F.C.C. has interpreted one such situation in New York and refused to grant "equal opportunities" since at the time the candidate used the station's facilities it was still possible under New York law to file petitions requesting the opportunity to write-in the name of an undesignated candidate and thus the candidates were not deemed nominated. (Letter to *Mrs. Eleanor Clark French*, 40 F.C.C. 417 [1964]; letter to *Martin R. Fine*, 24 F.C.C. 2d 464 [1970]).

E

Programs Within The Scope of Section 315

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

A. No. Section 315 applies *only* to legally qualified candidates. Candidate A has no legal right to demand time where B, not a candidate, has spoken against A or in behalf of another candidate. (*Felix* v. *Westinghouse Radio Stations*, 186 F.2d 1 [3d Cir. 1950], *cert. denied*, 341 U.S. 909 [1951].) However, if a political spokesman, other than a legally qualified candidate, should discuss controversial issues of public importance, then a broadcast licensee would be required to afford reasonable opportunity for the presentation of conflicting viewpoints. This obligation, though, arises under the "fairness doctrine" and is separate and distinct from the obligation to afford "equal opportunities" for political candidates. Also, the Commission's so-called "Zapple" doctrine may afford quasi-equal opportunities to supporters or spokesmen of a candidate. (See "Quasi-Equal Opportunities", Part II., Section C., p. 35).

44. 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*, 40 F.C.C. 267 [1965]).

F

What Constitutes Equal Opportunities?

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

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

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

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

47. Q. An announcer-candidate conducted a 45 minute interview program Monday through Friday. His opponent requested equal opportunity in the form of spot announcements equal to the total on-air time of the announcer-candidate. Was the opponent entitled to the spot announcements?

A. No. The opponent was technically entitled to the same amount of time in comparable time periods to those used by the announcer-candidate. The F.C.C. noted, however, that in such complex circumstances it will leave the working out of the mechanics of the problem to the parties subject to the rule of reason. (Letter to *RKO General, Inc.*, 25 F.C.C. 2d 117 [1970]).

48. Q. Must a station advise a candidate that time has been sold to other candidates?

A. No. If a candidate inquires, however, the facts must be given him. It should be noted again 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. (Section [d] of F.C.C. Rules 73.120 [AM]; 73.290 [FM]; 73.590 [Noncommercial educational FM]; 73.657 [TV]).

49. Q. A licensee offered broadcast time to all the candidates for a particular office for a joint appearance. If one candidate rejects the offer and other candidates accept and appear, would the first candidate be entitled to equal opportunity because of the appearances of those candidates who accepted the offer?

A. Yes, provided the request is made by the candidate within the one-week period specified by the Rules. The Commission has 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.'" (Letter to *Nicholas Zapple*, 40 F.C.C. 357, [1962]).

50. Q. A station intends to devote a block of time on a sustaining basis for use by candidates for various offices. May the licensee require candidates to agree to waive their subsequent rights to "equal opportunities" if they are unable, fail, or do not wish to appear on the particular program?

A. Yes. A licensee may make such an offer of free time contingent on all candidates agreeing to appear or to waive their right to equal opportunities. He may further ask the candidates who agree to appear on the program to waive any rights to equal opportunities if, for any reason, they are subsequently unwilling or unable to appear on the program. It would then be up to the candidates to determine whether to waive or make some other decision based on their rights under Section 315. Waivers given with full knowledge of the relevant facts concerning the broadcast (and assuming, of course, that the disclosed broadcast conditions were adhered to) would generally be binding.

If one or more of the candidates will not waive or wishes to attach some other conditions, the matter then becomes one for the licensee's judgment of what, in the circumstances, would best serve his area's needs. For example, in some circumstances, because of the importance of the race in his area, a licensee might decide that it would continue to be worthwhile to present the program, and then afford one candidate time at a later date. (Letter to *Kirkland, Ellis, Hodson, Chaffetz & Masters*, 5 F.C.C. 2d 479 [1966]).

51. Q. Under the circumstances stated in the preceeding question, may the licensee make a factual report to all candidates that a particular candidate has refused to sign a waiver, and that the offer of free time is withdrawn?

A. Yes. Withdrawal of the offer is not precluded by Section 315, but rather is a matter for the licensee's good faith, reasonable judgment. However, the Commission has stressed that any candidate who does not agree to the terms of the licensee's offer is exercising rights expressly bestowed upon him by the Congress. It would, therefore, be inappropriate for the licensee to impute blame to such a candidate, or to indicate that the candidate was acting improperly. What is involved are the perfectly proper judgments, both by the candidate as to his Section 315 rights and the licensee as to what will best serve his audience in the circumstances.

For similar reasons, a licensee could not properly use a threat to blame failure of the negotiations on a particular candidate as a means to dictate the format of the program. Any such dictation would constitute prohibited censorship over an important facet of "the material broadcast." (Letter to *Kirkland, Ellis, Hudson, Chaffetz and Masters*, 5 F.C.C. 2d 479 [1966].)

52. Q. Two out of four candidates of the same party in a primary election were given free time by a television station for a one-half hour face-to-face debate. The other two candidates were offered free time in comparable time segments to engage in a one-half hour debate or talk in separate 15 minute programs. The two candidates not in the original debate protested to the Commission and stated that all four should be included in the same debate. Was the equal opportunity requirement met by this station when it did not grant this demand?

A. The station fulfilled the requirements of the equal opportunity provision when it offered all candidates equal amounts of time free of charge in comparable time periods. Section 315 does not include the right to appear on the same program with other candidates since a station cannot compel political candidates to appear on the same program. (*In re Messrs. William F. Ryan and Paul O'Dwyer*, 14 F.C.C. 2d 633 [1968]; *In re Constitutional Party and Frank W. Gaydosh*, 14 F.C.C. 2d 255 [1968], Petition for Reconsideration, denied, 14 F.C.C. 2d 861 [1968]).

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 requires only that all candidates be afforded an equal opportunity to use the facilities of the station. (Letter to *Mrs. M. R. Oliver*, 40 F.C.C. 253 [1952]). Of course, a station may now wish to set some limits in order to insure its ability to provide reasonable access to Federal candidates.

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

A. No. The station cannot rely upon its policy if the latter conflicts with the "equal opportunity" requirement of Section 315. (Letter to *Stephens Broadcasting Co.*, 11 F.C.C. 61 [1945]).

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

A. Section 315 has reference only to the use of facilities by persons who are candidates for public office and not to the political parties which may have nominated such candidates. Accordingly, if broadcast time is made available for the use of a candidate for public office, the provisions of Section 315 require that equal opportunity be afforded each person who is a candidate for the same office, without regard to the number of nominations that any particular candidate may have. (Letter to *Thomas W. Wilson*, 40 F.C.C. 235 [1946].)

56. Q. If a person who is a candidate for both governor and state senator appears in a broadcast promoting his race for the governorship, is a senatorial opponent entitled to equal opportunities?

A. Yes. Any 315 use by the candidate would require that equal opportunity be accorded all legally qualified candidates who are opposing him for *either* office, even though his appearance was allegedly as a candidate for governor and was devoted to that contest. (Letter to *KATC*, 28 F.C.C. 2d 403 [1971]).

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

A. If candidates are permitted to appear, without cost to themselves, on non-exempt programs sponsored by commercial advertisers, opposing candidates are entitled to receive comparable time, also, at no cost. (Letter to *Senator Monroney*, 40 F.C.C. 251 [1952]).

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

A. Precedent cited in the preceding question is not applicable in circumstances where a political committee organization, such as a union, purchases time specifically on behalf of candidates. Thus, opposing candidates are not entitled to free time. (Telegram to *Thomas J. Dougherty*, 40 F.C.C. 426 [1954]).

59. Q. Where a candidate for office in a state or local election appears on a national network non-exempt program, is an opposing candidate for the same office entitled to equal opportunity 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 Monroney*, 40 F.C.C. 251 [1952]).

60. 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 mcrophone, it must permit a similar usage by other qualified candidates. (Letter to *D. L. Grace*, 40 F.C.C. 297 [1958]).

61. Q. May a station meet its "equal opportunity" obligation by insisting on a live appearance of the candidate?

A. No. Some candidates may prefer to participate by pre-recorded video tape or film. Requiring a live appearance would constitute censorship in violation of Section 315. (Letter to *WOR-TV*, 40 F.C.C. 376 [1962]).

G

Limitations as to Use of Facilities by a Candidate

62. Q. May a station delete material in a broadcast by a candidate because it believes the material contained therein is, or may be, libelous?

A. No. Any such action would entail censorship which is expressly prohibited by Section 315 of the Communications Act. (*Farmers Educa-*

tional and Cooperative Union of America v. *WDAY, Inc.*, 360 U.S. 525, [1959]).

63. Q. If a station has agreed to provide (or is obligated under the equal opportunity provision of Section 315 to provide) a candidate with broadcast time, can the station then refuse to carry the candidate's particular broadcast matter if it learns that the candidate's appearance will involve the expression of highly inflammatory or extremely unpopular points of view which other individuals claim will incite a violent social reacton.

A. No. The Commission has stated that even in a situation where a candidate's appearance involves the expression of opinions which can be characterized as highly offensive or inflammatory, such as blatant racial slurs, the no-censorship provision of Section 315 prohibits a station's refusal to carry the broadcasts. In the Commission's judgment, "[a] contrary conclusion would permit anyone to prevent a candidate from exercising his rights under Section 315 [simply] by threatening a violent reaction." As stated by the Commission, "the public interest is best served by permitting the expression of any views that do not involve 'a clear and present danger of serious substantive evil that rises far above public inconvenience, annoyance, or unrest'." (See Letter to *Mr. Lonnie King, Atlanta NAACP*, F.C.C. 72-711 [1872]).

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

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

65. Q. Candidate B made an agreement with a station that he would receive equal opportunity free because of the appearance of an opposing Candidate A. Candidate B desired to have some high school students sing and entertain on the program he would broadcast under his equal opportunity rights. During the program, he also wanted to have the keys to a car presented to the winner of the automobile by a member of a merchant's association. Does Section 315 prohibit the station from restricting the appearance of other persons with the complainant during the time allocated because of a prior appearance by an opposing candidate, and if any of these persons thus appearing utter libelous statements, does Section 315 guarantee immunity to the station from civil action based on these utterances?

A. Yes to both questions. The Commission held in this case that where a candidate's personal appearance, either vocal or visual, is the focus of the program presented, the program constitutes a Section 315 "use" and the station is prohibited from censoring the candidate's choice of program material. The Commission stressed that this general rule will be applied in circumstances where the candidate's personal appearance(s) is substantial in length and integrally involved in the program, and where the program is under the control and direction of the candidate. (*In re Gray Communications Systems, Inc.*, 14 F.C.C. 2d 766 [1968]; *Herald Publishing Company*, 14 F.C.C. 2d 767 [1968]; Petition for Reconsideration, denied. *In re Gray Communications System, Inc.*, 19 F.C.C. 2d 532, 534 [1969]).

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

A. No. The no censorship provision of Section 315 applies only to broadcasts which involve "uses" by legally qualified candidates. Therefore, since a station may censor the political speeches of persons other than legally qualified candidates, the licensee may be held liable for slanderous or libelous statements of a non-candidate if he does not require that the offensive statements be deleted. (*Felix* v. *Westinghouse Radio Stations*, 186 F. 2d 1 [3d Cir. 1950], *cert. denied*, 341 U.S. 909 [1950]).

67. Q. May a licensee require a candidate for public office to sign an indemnification agreement?

A. The Commission has ruled that in view of the decision in the *WDAY* case a requirement for indemnification serves no purpose and may be inhibiting in the candidate's use of the station. It cannot be determined at this time whether the ruling cited below applies only to indemnification as to a candidate's own statements or whether it applies to other aspects of the candidate's broadcast, e.g., statements by supporters who appear with the candidate and background music for which the station is not licensed. (Letter to *CBS, Inc.*, 35 F.C.C. 2d 112 [1972]).

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

A. The licensee should attempt to *persuade* the

candidate to delete it. However, if the candidate insists, the licensee, under the no censorship provisions of Section 315, must allow the candidate to go on the air with his material uncensored.

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

A. No. The candidate may use the time as he deems best. To deny a person time on the grounds 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.*, 40 F.C.C. 241 [1952]).

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

A. No. Other qualified candidates may use the facilities as they deem best in their own interest. (Letter to *Congressman Allen Oakley Hunter*, 40 F.C.C. 246 [1952]).

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

A. No. Section 315 expressly provides that licensees "shall have no power of censorship over the material broadcast under the provisions of this section." The licensee may request submission of an advance script to aid in its presentation of the program (e.g., suggestions as to the amount of time needed to deliver the script.) But any requirement of an advance script from a candidate violates Section 315. A licensee could not condition permission to broadcast upon receipt of an advance script, because "the Act bestows upon the candidate the right to choose the format and other similar aspects of "the material broadcast' with no right of 'censorship in the licensee.' " (Letter to *Nicholas Zapple*, 40 F.C.C. 357 [1962]; see also *Farmers Educational and Cooperative Union of America* v. *WDAY, Inc., supra.*)

H

Perod Within Which Request Must Be Made

72. 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 first prior use, giving rise to the right of equal opportunities occurred. If the person was not a candidate at the time of such first prior use, his request must be made within one week of the first subsequent use after he became a candidate. (Section [e] of F.C.C. Rules 73.120 [AM]; 73.290 [FM]; 73.590 [Noncommercial Educational FM]; 73.657 [TV]).

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

A. No. A legally qualified candidate announcing his candidacy for the above nomination would be entitled to "equal opportunity" only for the broadcast of "Your Senator Reports" which was aired during the week preceding the opponent's announcement of his candidacy. (Letter to *Senator Joseph C. Clark*, 40 F.C.C. 332 [1962]).

74. Q. A, B, and C were all legally qualified candidates for the same public office as of August 29. A approached the station licensee for purchase of broadcast time and appeared on September 1. On September 5, B requested equal opportunity to respond to A's use, and C made a similar request on September 10, claiming his request to be timely made within 7 days of B's request. The licensee granted B's request but not C's. C appealed to the Commission to compel the licensee to afford him equal time. Must the licensee grant the request?

A. The licensee properly refused C's request, that request being made more than 7 days after A's first prior use. There of course is no validity to the claim that the request was within 7 days of B's request for time.

75. Q. Under the same facts as above, D became a legally qualified candidate for the same public office on September 10. On September 15, B appeared on the licensee's station in compliance with his earlier request. The next day, September 16, D requested equal opportunity to respond to B, which request was promptly rejected by the licensee who contended that D's request was made more than 7 days after A's first prior use. Must the licensee grant D's request?

A. The licensee was incorrect in refusing D's request. D, who became a legal candidate after A's first prior use, may properly request equal time within 7 days of a subsequent use, which in this case was B's appearance on September 15.

76. Q. Four days prior to an announced broadcast use by a political candidate, one of the candidates opponents for the same office requested time based on that specific future use. The station denied the request because the opponent had not asked for equal opportunity within 1 week after the day on which the prior use occurred. Had the opposing candidate complied with the 7-day rule with his request made prior to the broadcast?

A. Yes. The Commission has always considered as valid and appropriate an equal opportunity request made prior to a Section 315 broadcast *if the request is based on a specific future use which was known or announced prior to the actual broadcast.* (Letter to *Socialist Workers Party*, 15 F.C.C. 2d 96 [1968]). A blanket request as to "all future appearances of candidate X" would probably lack the specificity to be treated as a valid request for equal opportunities.

77. Q. Candidate B demanded equal opportunity based on appearances by his political opponent, Candidate A. The station granted Candidate B's request, but put restrictions on the content of his program which were ultimately determined by the Commission to be unreasonable. Between the time of the original complaint to the Commission and prior to its ruling, opponent Candidate A appeared on additional programs, but Candidate B didn't request equal opportunity within 7 days of each appearance. Was the station correct in refusing to grant equal opportunity based on these appearances because Candidate B didn't comply with the 7-day rule?

A. No. Candidate B was within his rights in refusing to appear on the program on which the licensee placed restrictions subsequently adjudged unreasonable. He was entitled to use of the facilities as he had proposed. The filing of the complaint apprised the station that if Candidate B prevailed he would be entitled to the time requested. Thus, after consideration of all the circumstances of the case, the Commission decided that Candidate B was entitled to "equal opportunity" based on all the appearances of his opponent. (Letter to *Gray Communications System, Inc.*, 14 F.C.C. 2d 766 [1968]; letter to *Herald Publishing Co.*, 14 F.C.C. 2d 767 [1968]; petition for reconsideration, denied, *In the Matter of Gray Communications, Inc.*, 19 F.C.C. 2d 532 [1969]).

I

What Rates May be Charged Candidates?

As indicated in the Foreword, Section 315 has been amended by the Campaign Communications Reform Act so as to affect the rate practices applicable to certain political broadcasts. Section 315(b) now requires that the charges made for the use of a broadcasting station by any person who is a legally qualified candidate for any public office cannot, during the forty-five (45) days preceding a primary election and during the sixty (60) days preceding a general or special election,* exceed the lowest unit charge of the station for the same class and amount of time for the same period. At any other time the charges made for a use by a legally qualified candidate are to be those which would be made for a comparable use of the station by other users. Thus, the effect of this amendment is to create two classes of charges applicable to political broadcasting—lowest unit charge and comparable use charge. In order to avoid confusion we will discuss each of these classes separately.

* The 45 and 60 day periods include election day. (Letter to *Glenn J. Sedam, Jr.*, *FCC* Report No. 10869, Aug. 17, 1972.

LOWEST UNIT CHARGE

78. Q. What is the meaning of the term "lowest unit charge"?

A. The term "lowest unit charge" refers to the full statutory phrase "lowest unit charge of the station for the same class and amount of time for the same period." The term "class" refers to rate categories such as fixed-position spots, preemptible spots, run-of-schedule and special-rate packages. The term "amount of time" refers to the unit of time purchased, such as 30 seconds, 60 seconds, 5 minutes or 1 hour. The term "same period" refers to the period of the broadcast day such as prime time, drive time, class A, class B or other classifications established by the station. The term "lowest unit charge" also provides the candidate with the benefit of all discounts, frequency and otherwise, offered to the most favored commercial advertiser for the same class and amount of time for the same period, without regard to the frequency of use by the candidate. (F.C.C. Guideline VI. 1).

79. Q. To whom does the lowest unit charge provision of Section 315(b)(1) apply?

A. The lowest unit charge provision applies to all persons who meet the requirements of a "legally qualified candidate", as discussed in Section I. B of this *Catechism* on p. 4. Thus, any legally qualified candidate for any public office, federal, state or local, is eligible to receive the lowest unit charge. (F.C.C. Guideline V. 2).

80. Q. When does the lowest unit charge provision apply?

A. Two circumstances must coexist in order to trigger application of the lowest unit charge. First, the actual use of broadcast time must occur within the 45 days before a primary or primary run-off election or within the 60 days before a general or special election; *and* second, the use *must* involve a personal appearance by the candidate through his voice or image. If the broadcast use does not include *both* of these elements, the lowest unit charge provision does not apply.

81. Q. Assuming that a candidate's broadcast falls within the 45 or 60 day period, how long must a candidate appear in the particular program or spot announcement, in order to qualify the broadcast matter for lowest unit charge treatment?

A. The determination as to whether the lowest unit charge applies to a particular purchase of broadcast time by or on behalf of a candidate generally does not depend upon the particular length of a candidate's appearance in the broadcast. In the case of *spot announcements*, the Commission has specifically ruled that the same standards which establish whether a candidate's appearance is sufficient to constitute a "use" under the equal opportunity provisions of Section 315 also should be applied to determine whether a spot announcement is a broadcast "use" eligible for lowest unit charge treatment; thus, any appearance by the candidate in a spot announcement in which he is identified or identifiable through his voice or image qualifies the spot announcement for lowest unit charge. (Letter to *Charles F. Dykas*, Report No. 10796, July 19, 1972). The Commission has given no ruling as to the situation of a candidate's appearances in broadcast *programs*, but it seems clear that an appearance by a candidate in a program which is sufficient to invoke the no-censorship provisions of Section 315 will also serve to qualify the program for lowest unit charge treatment; thus, where a candidate's appearance, either visual or vocal, in a program is substantial in length, integrally involved in the program, exists as the focus of the program, and is part of a program under the direction and control of the candidate, the lowest unit charge will apply. Conversely, when a candidate's appearance is only an incidental inclusion in a program on which another person is the central figure, the lowest unit charge will not apply. (*In re Gray Communitions*, 14 F.C.C. 2d 532 [1969]).

82. Q. Does the lowest unit charge provision apply to political broadcasts by groups, organizations or persons other than candidates?

A. No. As stated in Q.'s and A.'s 81 and 82, the lowest unit charge provision applies only to broadcast appearances by candidates for public office. If a group presents a political broadcast which contains no identified or identifiable appearance by a legally qualified candidate for public office, the lowest unit charge does not apply. (F.C.C. Guideline VI. 14).

83. Q. May a station with both "national" and "local" rates charge a candidate falling within the purview of Section 315 (b)(1) its lowest rate charge based on its "national" rates?

A. No. The calculation of the lowest unit charge must be based on its "local" rates (if they are lower than its "national" rates) regardless of whether a candidate is running for municipal, county, state, or national office. ("National" and "local" are not viewed as different "classes" of service under the provisions of Section 315[b][1]. (F.C.C. Guidelines VI. 17).

84. Q. In computing the lowest unit charge under the provisions of Section 315(b)(1), is the calculation based on the rate card of the station or on the rates actually charged by the station if they differ from those on the rate card?

A. The calculation is based on whatever will give the lowest unit rate for the same class and amount of time during the same period of the day. If use of the rate card gives the lowest unit rate, the rate card is the basis used. If use of the actual charges gives the lowest unit rate, actual charges are used in determining rates for candidates. (F.C.C. Guideline VI. 18).

85. Q. A station has over a period of years had a spot announcement contract with a particular commercial advertiser and has renewed the contract from time to time with unchanged rates set at the time the contract was entered into although the rates of the station to other advertisers have increased. May the station, in determining the lowest unit charge, disregard the rates given to the advertiser with the rate protection agreement and focus solely on the current rates generally offered to advertisers?

A. No. The station must compute the charge to the candidate on the basis of whatever rates give the lowest unit charge for the same class and amount of time for the same period. Since the advertiser with the long standing contract is

being given the lowest station rate, his rates must be taken into account in computing the lowest unit charge. (F.C.C. Guideline VI. 10).

86. Q. What would be some concrete examples of the way in which frequency discounts are included in a determination of the lowest unit charge?

A. Set forth below are four examples of the manner in which discounts are taken into account in determining the lowest unit charge.

(a) A licensee sells one fixed-position, 1-minute spot in prime time to commercial advertisers for $15. It sells 500 such spots for $5,000. It must sell one such spot to a candidate for not more than $10.

(b) A licensee sells one immediately preemptible 30-second spot in drive time to commercial advertisers for $10. It sells 100 such spots for $750. It must sell one such spot to a candidate for not more than $7.50.

(c) A licensee's best rate per spot for run-of-schedule, 1-minute spots is 1,000 for $1,000. Its rate for one such run-of-schedule spot is $4. It must sell one such spot to a candidate for not more than $1.

(d) A licensee has provided a long-standing advertising client with a special $2,500-500 time rate for 30-second spot announcements in drive time. It must sell one such spot to a candidate for not more than $5.

87. Q. Are bonus spots to be counted in arriving at a determination of "lowest unit charge"?

A. Yes. Bonus spots are included within the lowest unit charge determination and, therefore, may serve to reduce further the rate at which a candidate may buy time. Thus, for example, if a station gives 10 bonus spots to every purchaser of a $2,000 package which normally includes 1000-60 second spots in drive time, the candidate may buy one such spot for $1.98 ($2,000 divided by 1010 spots).

88. Q. If a station sells advertising to certain non-profit organizations to advertise their quasi-commercial ventures (e.g., the sale of Christmas trees to raise money), and the station has a policy of giving to such organizations public service announcements at least equal in number to the commercial announcements purchased, must the PSA's be taken into account in determining "lowest unit charge"?

A. No. In this particular type of situation, where a station policy provides PSA's equal to the commercial announcements purchased to promote a non-profit organization's quasi-commercial venture, the PSA's are not to be treated like bonus spots and, therefore, do not affect the determination of lowest unit charge (Letter to *KGWA*, 34 F.C.C. 2d 1103 [1972]).

89. Q. Are trade outs, barter transactions, or per inquiry arrangements to be used in computing the lowest unit charge?

A. No. Although stations engage in trade outs, barter and per inquiry advertising arrangements in dealing with advertisers, only transactions involving sale of time for monetary consideration are to be used as the basis for calculating the lowest unit charge. (F.C.C. Guideline VI. 21).

90. Q. Does the fact that a station may provide advertising time without charge to certain parties serve to commit the station to a zero rate as its lowest unit charge?

A. No. The lowest unit charge provision is not applicable to situations when an advertiser is not charged an amount for *any* of his announcements. (Letter to *KRSN*, June 29, 1972. The situation discussed here is not to be confused with the situation of bonus spots. See Q. and A. 87).

91. Q. If a station is obligated to run during the 45 or 60 day statutory period a "make good" spot which was part of a low rate arrangement that is no longer in effect, as might be the case where a station has changed from its summer to its higher fall rates, must that no longer existent rate arrangement of which the "make good" was once a part be included in computing the lowest unit charge?

A. No. "Make good" spots are not to be counted in arriving at a determination of lowest unit charge.

92. Q. If a station offers a special package plan which reflects a selection, for example, of 30 second spot announcements distributed over different time periods, must the station sell the candidate one such spot at the applicable lowest unit charge?

A. No. In the situation of a package plan which reflects a distribution of spot announcements over desirable and less desirable time periods of the day, the candidate must buy one run of the package in order to receive the lowest unit charge per spot as based on the package rate. In other words, if a station sells a package of 1500 spot announcements for $1,500 which includes a daily distribution of 1 spot announcement in morning drive time, 1 spot announcement in the afternoon, and 1 spot announcement in evening drive time, the candidate must buy at least 1 spot in the morning, 1 in the afternoon, and 1 in the evening in order to be eligible for the lowest unit charge of $1.00 per spot announcement. He cannot "cherry-pick" by demanding only drive time spots at the lowest unit charge for the package.

93. Q. Does the provision for lowest unit charge apply to both time charges *and* other charges by a station in connection with political broadcasts?

A. No. The provision applies only to charges for purchase of time. It does not cover additional charges customarily made by a station for other services, which may be termed production oriented, such as charges for use of a television studio, audio- or video-taping, or line charges and remote technical crew charges when the broadcast is to be picked up outside the station. Moreover, the provision does not apply to additional charges that might be incurred if a candidate sought to purchase full sponsorship of an existing program for which there is an established program charge in addition to a time charge. (F.C.C. Guideline VI. 15).

94. Q. If a candidate purchases time from a station through an agency, may the station include the agency commission in the lowest unit charge?

A. Yes. However, if a candidate purchases time directly from a station without the use of an agency, the lowest unit charge must exclude the amount usually paid for agency commission. For example, if a 1-minute spot announcement costs $100 and an agency is allowed $15, a candidate placing a spot through an agency must pay $100. But if a candidate places the spot directly, without the use of an agency, he pays $85. Although a candidate who purchases time directly from the station without use of an agency can be charged for any production costs incurred by the station in preparing his spots or programs, he cannot be charged for any station services which are provided free of charge to commercial advertisers who do not use an agency. See Q. and A. 93. (F.C.C. Guideline VI. 16).

95. Q. Must commissions to sales representatives be deducted from the lowest unit charge?

A. No. Sales representatives are customarily viewed as agents of the station and not of the advertiser or advertising agency. Commissions to sales representatives are, therefore, similar to the compensation paid to employees or salesmen of the station and are to be viewed as the station's own cost of doing business. (Letter to *Eugene T. Smith*, 34 F.C.C. 2d 622 [1972]).

96. Q. If two or more candidates together purchase spot announcements in which they jointly appear, is each candidate entitled to share the single lowest unit charge for the spot announcement or is each candidate required to pay the entire lowest unit charge?

A. The lowest unit charge is a time charge and not a charge based upon the number of candidates sharing the broadcast use. Thus, if two or more candidates are buying time for a joint use, they are together entitled to share the applicable lowest unit charge.

97. Q. By statute a State provides that broadcast stations may carry legal notices at rates fixed by the statute. This rate is quite low so that for a particular broadcast station in that State the lowest unit charge for such notices for the same class and amount of time for the same period is less than the lowest unit charge based on "normal" rates. Must the lowest unit charge for candidates to be calculated on the basis of the statutory rate for legal notices?

A. No. Since the rates for legal notices are set by statute rather than by the station, they are not used for calculation of the lowest unit charge for candidates. (F.C.C. Guideline VI. 20).

98. Q. May the lowest unit charge vary with the day of the week on which a candidate uses a station?

A. Yes. For example, a television station might charge commercial advertisers more for 1-minute, fixed-position spots between 7:00–7:30 p.m. on Sunday than it does for such spots on Monday through Friday; and the charges on Monday through Friday might exceed the charges for such spots on Saturday. In computing the lowest unit charge which must not be exceeded in selling time to candidates, stations, in addition to taking into account the class and amount of time for the same period of the day, may take into account the day of the week, if rates of the station vary with the day of the week. In the example given above, the station would not be required to sell time to a candidate for use on Sunday between 7:00–7:30 p.m. at rates not exceeding the lowest unit charge for Saturday night. If a station does not vary its charges to commercial advertisers with the day of the week, it may not do so with candidates for public office. (F.C.C. Guideline VI. 2).

99. Q. What is the base period for determining lowest unit charge?

A. Lowest unit charge is determined by the cost of any matter for the "same class and amount of time for the same period" broadcast during either the 60 or 45 day statutory period involved. Exceptions have been recognized by the Commission for rate changes made during the statutory period because of seasonality and audience surveys, as discussed in the following two Q.'s and A.'s.

100. Q. A general election is to be held on November 2. As required by Section 315(b), the lowest unit charge must be made to candidates during the preceding 60 days, commencing September 3. Pursuant to normal practices, a station

on September 20 changes from its summer rates to its higher fall rates. Is the lowest unit charge during the entire 60-day period preceding the election based on summer rates?

A. No. From September 3 to September 20, the lowest unit charge is based on the summer rates. On and after September 20, the fall rates are used as the basis for computation of the lowest unit charge. (F.C.C. Guideline VI. 3).

101. Q. For a particular community, ARB and Nielsen television market reports are issued six times a year. Upon receipt of these reports it is the normal business practice of a television station in the community to reexamine its rates and revise some of them. During the 60-day period preceding a general election, such a rate revision occurs which results in increased rates for adjacencies to program A shown in prime time, and a decrease in rates for adjacencies to program B in prime time. What is the basis for calculation of the lowest unit charge for adjacencies of the two programs during the 60-day period?

A. Candidates using adjacencies to either program A or program B prior to the rate change are entitled to be charged not more than the lowest unit rate for such adjacencies prior to the rate change, and those using adjacencies to either program after the rate change are entitled to be charged not more than the lowest unit charge after the rate change. Thus, the lowest unit rate for candidates for adjacencies to program A prior to the rate change is lower than the lowest unit rate after the rate change. As to adjacencies to program B, the lowest unit rate prior to the rate change is higher than the lowest unit rate after the rate change. (F.C.C. Guideline VI. 4).

Note: Although in Q.'s and A.'s 100 and 101 the charges to opposing candidates may differ, no discrimination has resulted under the law since both candidates are receiving the lowest unit charge at the time of use. Of course, this non-discriminatory difference in charges only pertains where rate changes occur during the statutory period as a result of seasonality or audience surveys. (F.C.C. Guideline VI. 5).

102. Q. Do the lowest unit charge provisions apply to purchases of time on the networks?

A. Yes. Although the Campaign Communications Reform Act does not specifically refer to networks, the provisions are intended to apply to purchase of network time. A network is in a real sense selling time on behalf of station licensees and the Commission interprets new Section 315(b)(1) as applying to the combination of licensees in the network as well as to the individual licensees. Thus, charges to legally qualified candidates purchasing network time may not exceed the lowest unit charge for the same class and amount of time for the same period of the broadcast day on a network. Candidates are entitled to be charged not more than the lowest unit rate regardless of the number of times they use the network. (F.C.C. Guideline VI. 5).

103. Q. If a candidate makes a contract with a station for lowest unit charge based upon the station's other rate arrangements existing at the time of the contract, and later, at the time when the candidate's spots are actually to be run, low viewer ratings have resulted in a reduced spot rate for the time period or program during which the candidate's spots are to be shown, is the candidate entitled to a rate adjustment based on the fact that the spot rates have dropped even lower since the time of his original contract with the station?

A. Yes. Unlike the regular commercial advertiser who contracts for a fixed and immutable spot rate for the run of his contract, the candidate buying time for a use which is to occur during the 45 or 60 day statutory period is entitled to the full benefit of any lowering of rates which will result in a new and reduced lowest unit charge. It must be kept in mind that it is the rate which prevails at the date of the candidate's actual broadcast use which governs the determination of lowest unit charge. If the price of a spot on the date of use is lower than the price for which the candidate contracted in advance, the candidate is entitled to the lower price and is to be given a rebate (if the spot has previously been paid for) or an adjustment (if the spot has not yet been paid for). (F.C.C. Guideline VI. 5).

104. Q. Are stations permitted to charge less than the lowest unit charge during the 45 or 60 day period before an election?

A. Yes. Section 315(b)(1) provides that charges made by stations shall not *exceed* the lowest unit charge for the same class and amount of time for the same period. Stations are free to charge less than the lowest unit charge. However, if they do, they must give the same low rate to other candidates for all offices purchasing the same class and amount of time for the same period. (F.C.C. Guideline VI. 22).

EQUAL OPPORTUNITIES AND LOWEST UNIT CHARGE

The questions and answers presented above have focused solely upon the manner in which a station arrives at a determination of the lowest unit charge in a situation where there has been no request for "equal opportunity" under Section 315(a). When a station is faced with a request for "equal opportunity" the determination of the lowest unit charge may become more complicated. In

the questions and answers to follow, this second aspect of the lowest unit charge will be discussed. In order to present this subject comprehensively, a discussion of the phrase "charges made for comparable use", as used in the Campaign Communications Reform Act, must be considered as well.

105. Q. Under what circumstances does the "charges made for comparable use" provision of Section 315(b)(2) apply?

A. Unlike the lowest unit charge provision, the provision in the law for "charges made for comparable use" has no restrictions and applies to all broadcast uses by legally qualified candidates for public office which occur outside the 45 or 60 day statutory period; thus, a candidate's broadcast appearances which relate to a forthcoming election more than 45 or 60 days away or to a forthcoming nomination for election by a convention or caucus of a political party held to nominate a candidate would both receive charges based upon a comparable use. (F.C.C. Guideline V. 3; VI. 25).

106. Q. If Candidate A purchases time for broadcast appearances to occur prior to the 45 or 60 day statutory period and pays for the time on the basis of "comparable use", what would opponent Candidate B pay for spot announcements purchased on the basis of an "equal opportunity" request and broadcast during the 45 or 60 day statutory period during which the lowest unit charge applies?

A. Ordinarily, when a candidate makes a request for "equal opportunity", he is entitled to the same amount of time upon the same rate terms as his opponent received. However, the Campaign Communications Reform Act may (in certain instances) change this result insofar as the rates are concerned. Thus, if, as in the example offered, Candidate B's broadcasts are to take place during the time in which the lowest unit charge applies, Candidate B will be charged on the basis of the lowest unit charge prevailing at the time of his broadcast use. Although the Commission's rules provide that ". . . no licensee shall make any discrimination between candidates in charges . . ." (Section [c][2] of F.C.C. Rules 73.120 [AM], 73.290 [FM], 73.590 [Noncommercial Educational FM], and 73.657 [TV]), the difference in rates charged Candidates A and B does not amount to discrimination under the Commission's rules since the difference is a result of rates set by statute. (F.C.C. Guideline VI. 7).

107. Q. If during the 60 day statutory period preceding a general election, the rates of a station, pursuant to normal business practices, change from summer to higher fall rates, and the lowest unit charge is less before the rate change than after the rate change, what rates would be charged to Candidate A who buys time for broadcast during the statutory period but *prior* to the rate increase and to opponent Candidate B who makes an "equal opportunity" request for a broadcast use also to take place during the statutory period but *after* the rate increase?

A. Although in situations not involving "equal opportunity" the lowest unit charge for candidates using the station prior to the seasonal rate change is based on summer rates, and for those using the station after the change is based on fall rates, the situation is different in cases involving "equal opportunity". The candidate in such a situation is entitled to be charged the same lower summer rate as the candidate to whom he is responding. Therefore, in the example offered, Candidate B must be charged the same rate as Candidate A. (F.C.C. Guideline VI. 8).

108. Q. If during the 45 day statutory period preceding a primary election, the rates of a station, pursuant to normal business practices, change from spring rates to lower summer rates, and the lowest unit charge is lower after the rate change than before the rate change, what rates would be charged to Candidate A who buys time for broadcast during the statutory period but *prior* to the rate decrease and to opponent Candidate B who makes an "equal opportunities" request for a broadcast use also to take place during the statutory period but *after* the rate decrease?

A. Again, if no "equal opportunity" were involved, the lowest unit charge for candidates using the station prior to the seasonal rate change would be based on spring rates, and for those using the station after the rate change would be based on summer rates. However, even where "equal opportunity" is involved in the fact situation here the same result is obtained. Candidate A is to be charged based on the spring rates and Candidate B is to be charged based on the summer rates. The result obtained is thus directly the opposite of that in Q. and A. 10. The reason for the result lies in the fact that Section 315(b)(1) of the law states that, during the statutory period, the charges made for the use of any broadcasting station by a candidate shall *not exceed* the lowest unit charge (for the same class and amount of time for the same period). If Candidate B were charged the same rate for his broadcast time as Candidate A, the charge would be based on the higher spring rates, would *exceed* the summer lowest unit charge prevailing at the time of Candidate B's use. The law thus serves to set a ceiling on the rate which Candidate B can be charged.

Note: The answers to Q's and A's 107 and 108 would also be applicable to rate changes based on

audience surveys. The conclusion to be drawn from these Q.'s and A.'s can be stated as follows: If a candidate buys time for a broadcast use to occur during the statutory period, and his opponent makes an "equal opportunity" request for a broadcast use also to take place during the statutory period, both candidates will be charged the same rate based upon the lowest unit charge prevailing at the time of the first candidate's broadcast use unless at the time of the opponent's broadcast use, the station's rates have decreased as a result of seasonality or audience surveys thus creating a more favorable lowest unit charge; the opponent candidate then by law has the benefit of that new more favorable lowest unit charge.

109. Q. During the 60-day period preceding a general election, the rates of a station, pursuant to normal business practices, change from summer to higher fall rates. The lowest unit charges are therefore less before the rate change than afterwards. Candidate A purchases 50 fixed-position, 1-minute spots in prime time to be aired before the rate change. Pursuant to Section 315(a), Candidate B requests "equal opportunity" to respond to Candidate A in fixed-position, 1-minute spots in prime time to be aired after the seasonal rate change. Candidate B requests 100 such spots. At what rate is Candidate B charged?

A. Candidate B is entitled to 50 such spots at the rate charged Candidate A to satisfy the "equal opportunity" requirement. For the remaining 50 spots he may be charged not more than the lowest unit rate based on the higher fall rates. It should be noted that the sale to Candidate B of 50 spots at the low summer rates to satisfy the "equal opportunity" requirement does not affect the rates to be charged him or other candidates using the station after the change to the higher fall rates on other than an "equal opportunity" basis. (F.C.C. Guideline VI. 9).

110. Q. A candidate contracts with a station for use of its facilities during a period 60 days prior to a general election. The contract specifies no set rate to be charged, but instead, provides that the rate to be charged will not exceed the lowest unit charge being made on the date(s) contracted for. May such contracts be entered into by stations?

A. Yes. There is nothing in the new law concerning the type of contract a station may enter into with a candidate. (However, a contract providing that regardless of the lowest unit charge being made on the date of use by the candidate the candidate must pay a higher rate specified in the contract would be contrary to the public policy established by the new law.) In spite of the fact that the station may leave the rate term open, without additional language in the contract, it may be impossible to satisfy the requirements of the law with regard to certification. See Q. and A. 143, p. 27. (F.C.C. Guideline VI. 13).

111. Q. A person is a legally qualified candidate for nomination for the presidency. He is running in the primary election of a State in the eastern part of the United States. During the period of 45 days before that primary election he wishes to purchase time on stations in that State and on stations in each of three western States. The situation with regard to each of the western States is as follows: (1) in State A, a presidential primary election has already been held in the State; (2) in State B, the delegates to the national nominating convention have already been selected by a State convention; (3) in State C, a presidential primary election is yet to be held in the State, the person is running in that primary, but that primary will occur more than 45 days after the proposed use of the stations in State C. On what stations is the candidate entitled to the lowest unit charge?

A. He is entitled to the lowest unit charge only on the stations in the eastern State where he is running in the primary election. In the western States he would be entitled to rates on a "comparable use" basis under the provisions of Section 315(b)(2). The intent of the lowest unit charge provision is that it is to apply only in situations where an election is being held in the service area of the station on which time is being purchased. If the person in this case subsequently receives the nomination of his party at its national convention, then under the provisions of Section 315(b)(1) he would be entitled to the lowest unit charge in stations in all of the 50 States during the 60-day period preceding the presidential election. (F.C.C. Guideline VI. 19).

112. Q. Candidate A purchases through an advertising agency spot announcements to be broadcast during the statutory period and pays $100 based upon a computation of lowest unit charge which included, as the law permits, the 15% agency commission, thus, netting the station $85. Candidate B, requesting "equal opportunity" for a broadcast use also to occur during the statutory period, makes his purchase of time directly from the station without the benefit of an agency. Does "equal opportunity" demand that Candidate B also be charged the same $100 lowest unit charge received by A which would include the 15% agency commission?

A. No. Candidate B would pay only $85 since as to him the lowest unit charge does not include an agency commission. The result obtained is thus directly contrary to that achieved in a situation involving "equal opportunity" wholly outside

the statutory period, when the lowest unit charge does not apply. (See Q. and A. 127, p. 24). The reason why Candidate B is insulated from payment of a rate equivalent to that paid by Candidate A is that the Campaign Communications Reform Act specifices that the charges made to a candidate during the statutory period may not *exceed* the lowest unit charge (for the same class and amount of time for the same period). In this regard, the Commission has ruled that if a Candidate uses an advertising agency, the lowest unit charge as to him always includes the combined sum of the agency commission and the time charge; for a candidate not using an agency, the lowest unit charge is limited solely to the time charge. (See Q. and A. 94, p. 18). If Candidate B were thus charged Candidate A's lowest unit charge, the charge to Candidate B would *exceed* the particular lowest unit charge normally applicable to B. (F.C.C. Guideline VI. 16).

CHARGES MADE FOR COMPARABLE USE

The questions and answers in the immediately preceding section have focused exclusively upon the manner in which a station arrives at a determination of the rates which candidates are to be charged when the broadcast use of a candidate requesting "equal opportunity" falls within the statutory period during which the lowest unit charge applies. In the questions and answers to follow, the matter of the rates to be charged candidates will be discussed from the perspective of the broadcast use of a candidate requesting "equal opportunity" which falls *outside* the statutory period when the lowest unit charge applies. The discussion to follow merely represents a restatement of the familiar and long-standing "equal opportunities" requirements which prevailed in the situation of *all* broadcast appearances by legally qualified candidates prior to enactment of the Campaign Communications Reform Act and which now pertain only in the situation of broadcast uses by candidates which occur outside the 45 or 60 day statutory period.

113. Q. May a station charge premium rates for political broadcasts which occur outside the 45 or 60 day statutory period?

A. No. Section 315(b)(2) provides that the charges made for the use of a station by a candidate outside the statutory period "shall not exceed the charges made for comparable use of such station for other purposes."

114. Q. Does the above requirement apply to political broadcasts by persons other than legally qualified candidates?

A. Yes. In the past this requirement has applied only to candidates for public office. At one time the Commission ruled that a station may adopt whatever policy it desires for political broadcasts by spokesmen for a candidate, or by organizations or persons who are not candidates for office, consistent with its obligation to operate in the public interest. (Letter to *Congressman Diggs, Jr.*, 40 F.C.C. 265 [1955]). However, today such a discriminatory policy against political broadcasts by persons other than candidates to the extent that such persons would be subjected to *higher* rates than commercial advertisers probably would be unacceptable. The thrust of the Campaign Communications Reform Act taken together with current F.C.C. attitudes towards political broadcasting suggests that a station should not establish premium rates for political broadcasts by persons other than candidates. Instead, a station's charges to such individuals should be based on charges made for a comparable use.

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

A. No. 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. (Letter to *Waldo E. Spence*, 40 F.C.C. 392 [1964]).

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

A. This question cannot be answered categorically. To determine the maximum rates which could be charged under Section 315, the Commission would have to know the criteria a station uses in classifying "local" versus "national" advertisers before it could determine what are "comparable charges." In making this determination, the Commission does not prescribe rates but merely requires equality of treatment as between Section 315 broadcasts and commercial advertising. (Letter to *Congressman Simpson*, 40 F.C.C. 286 [1957]).

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

A. Yes. 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 nondiscriminatory basis. (Letter to *Waldo E. Spence*, 40 F.C.C. 392 [1964]).

118. May a station refuse to sell time at discount

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

A. Prior to passage of the Campaign Communications Reform Act, it was clear that the language of Section 315(a) which specified that "[n]o obligation is hereby imposed upon any licensee to allow the use of its station by any [legally qualified candidate for public office]", taken together with the applicable F.C.C. Rules, permitted stations to refuse to sell time to a group of candidates on a pooled basis, even though such may be the station's practice with respect to commercial advertisers. (Letter to *WKBT-WKBH*, 40 F.C.C. 263 [1954]). The new law, however, may change the answer to this question insofar as a pooled broadcast involving a federal candidate is concerned. Thus, new Section 312(a)(7) requires stations to provide Federal candidates with "reasonable access". If a Federal candidate's use of a broadcast station is confined to his appearances only through pooled broadcasts, the station may need to consider whether refusing to permit the broadcast of such pooled arrangements, and refusing to give the associated discount rate, would constitute a denial of "reasonable access" to the Federal candidate and a refusal to charge in accordance with a "comparable use" (or lowest unit charge if the broadcast use were to take place within the 45 or 60 day statutory period). (For a further discussion of "reasonable access", see Part I., Section K., p. 29).

119. 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.

120. 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. (F.C.C. Letter to *Senator Monroney*, 40 F.C.C. 252 [1952]).

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

A. He is entitled to be charged the same rate as his opponent, since the provisions of Section 315 run to candidates themselves and they are entitled to be treated equally with their individual opponents. (*F.C.C. Report and Order*, Docket 11092, 40 F.C.C. 1075 [1954]).

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

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

123. Q. A station carries "run of schedule" spots (ROS) at its convenience and discretion, without any guarantee of placement, and makes such spots available to commercial advertisers at a reduced rate under a package agreement. On the basis that equal opportunities could not be guaranteed to opponents, could the station refuse to sell ROS spots to political candidates?

A. No. ROS spots are discount privileges which should be made available to candidates to the extent available to commercial advertisers.

The Commission has stressed that Section 315 requires that "equal opportunities" be afforded rival candidates. Therefore, where one candidate purchases ROS spots, "equal opportunities" does not require that opposing candidates be permitted to purchase, at ROS rates, the same time periods actually obtained by the first candidate on a chance basis. Equal opportunities are satisfied by affording the other candidates an equivalent number of ROS spots at ROS rates or comparable time periods to those of the first candidate at the prescribed rates for such time periods. Such candidates, after being fully informed of the nature of these ROS spots, could then determine whether they wished to purchase them, with their uncertain times of presentation, or to purchase spots at fixed times with the higher rates charged for such spots. If ROS spots are chosen, the licensee must, of course, act in good faith and scrupulously follow normal procedures in the allotment of the ROS spots. (Letter to *Triangle Publications, Inc.*, 23 F.C.C. 2d 760 [1967]).

124. Q. A licensee informed the Commission that

it sold both preemptible and nonpreemptible spot announcements to commercial advertisers on time available basis and the purchase orders specify the times of their broadcast. However, nonpreemptible spot purchasers can select any time previously scheduled for preemptible time spots in addition to other available times. If the preemptible spots were subsequently preempted no charge was made for them. The licensee did not sell preemptible spots to candidates because it reasoned that if one candidate for public office purchased preemptible spot announcements and they were actually used by him, equal opportunity would require that his opponent be permitted to buy spots at preemptible spot prices and have them broadcast when scheduled regardless of whether or not a purchaser of nonpreemptible spots requested that availability. Could the licensee refuse to sell preemptible spot announcements to political candidates?

A. No. If the licensee sells both preemptible and nonpreemptible spot announcements to commercial advertisers it must make them both available to political candidates at the same rates charged commercial advertisers. However, Section 315(b) of the Communications Act does not require the sale of nonpreemptible spots at preemptible spot rates. If one political candidate buys preemptible spots and they are broadcast, his opponents are entitled to buy preemptible or nonpreemptible spots. If the opponents desire to make certain that their spots will be broadcast, nonpreemptible spots at nonpreemptible rates should be made available to them. But if the opponents buy preemptible spots and they are preempted by nonpreemptible spots, these opponents are then entitled to buy a number of spots equal to those broadcast by the first candidate, but now they must pay the higher nonpreemptible rates. (Letter to *WHDH, Inc.*, 23 F.C.C. 2d 763 [1967]).

125. 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*, 40 F.C.C. 288 [1957]).

126. Q. A political candidate purchased time through an advertising public relations agency which he heads. Since he shares in the profit, would the 15-percent agency commission be a "rebate" and thereby become a violation of Section 315?

A. No. There is no Commission rule or regulation which would prevent or forbid a political candidate from using the services of his own advertising agency. (Letter to *Jason L. Shrinsky*, 23 F.C.C. 2d 770 [1966]).

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

A. No. The law requires that each candidate be afforded time upon equal terms. Here, following its customary practice, the station has accepted A's time purchase through a recognized agency. The fact that the station receives only $85 has no bearing on the fact that the cost to A was $100. B is entitled to the same terms, no more, no less. It should be noted that the result obtained here is directly the opposite of that achieved in a situation when the "lowest unit charge" applies. (See Q. and A. 112, p. 21).

128. Q. A licensee adopted and has consistently maintained a policy whereby agency commissions were not paid in connection with political advertising placed by recognized advertising agencies on behalf of a candidate for local office. It adopted and has consistently maintained a similar policy with respect to agency commission in connection with local commercial advertising. The station's most recent local retail rate card indicates that its established policy is "all rates net to station." Therefore, a candidate who utilized an advertising agency would pay the same station rate as one who did not, but the advertising agency would charge its client-candidate the station rate plus 15-percent agency commission. Is this policy consistent with the mandates of Section 315 of the Act and the rules?

A. Yes. Because the station's rate policy is applicable to both commercial and political advertising, such policy does not contravene Section 315 of the Act nor the Rules. (*In re KSEE*, 23 F.C.C. 2d 762 [1968]).

129. Q. A station adopted and maintained a policy under which commissions were not paid to advertising agencies in connection with political advertising although it did pay such commissions in connection with commercial advertising. Further,

in the case of commercial advertisers who did not use advertising agencies, the station performed those functions which the advertising agency would normally perform, but in the case of political advertisers, the station performed no such services. An agency which had placed political advertising over the station in a recent election made a demand of the station for payment of the agency commission. Was the station's policy consistent with Section 315 of the Communications Act?

A. No. The Commission has held that such a policy violated both Section 315(b) of the Act and Section (c) of F.C.C. Rule 73.120 (AM)*; that the benefits accruing to a candidate from the use of an advertising agency were neither remote, intangible nor insubstantial; and that while under the station's policy, a commercial advertiser would, in addition to broadcast time, receive the services of an advertising agency merely by paying the station's established card rate, the political advertiser, in return for payment of the same card rate, would receive only broadcast time. The Commission held that such a resultant inequality in treatment vis-a-vis commercial advertisers is clearly prohibited by the Act and the Rules. (Letter to *Marcus Cohn, Esq.*, 40 FCC 388 [1964]).

130. Q. A station increased its advertising rates 30 percent on August 1. Some legally qualified candidates had purchased time before the rate change for use in the month of August. If their opposing legally qualified candidates request "equal opportunities" based on the use of this time, can they be charged the increased rate for time?

A. No. The rate charged these opposing candidates must be the rate charged their political opponents. Therefore, they should pay the rate in effect before the price change.

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

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

* See Section (c) of corresponding FCC Rules 73.290 (FM); 73.590 (Noncommercial Educational FM); 73.657 (TV).

J

Certification

The Campaign Communications Reform Act serves to amend Section 315 by adding new subsections (c) and (d) on "certification". New Section 315(c) states that "[n]o station licensee may make any charge for the use of such station by or on behalf of any legally qualified candidate for Federal elective office (or for nomination to such office) unless such candidate (or a person specifically authorized by such candidate in writing to do so) certifies to such licensee in writing that the payment of such charge will not violate" the candidate's permissible limit of campaign spending under the provisions of Section 104(a) of the Campaign Communications Reform Act. New Section 315(d) establishes essentially the same certification and authorization requirements as in Section 315(c) for use in state and local elections if the particular state has by law adopted campaign spending limitations applicable to state and local elections. In the questions and answers to follow, for purposes of simplication the discussion will be confined to the situation of the Federal candidate.

132. Q. When must a station obtain "certification"?

A. Whenever a station agrees to a purchase of broadcast time which is to be used by any legally qualified candidate for Federal public (elective) office or by some individual or entity other than the Federal candidate but on the candidate's behalf, the station must obtain the requisite "certification" before it makes any charges to the candidate buying time or to any other individual or entity buying time on behalf of the candidate.

133. Q. What is the purpose of "certification"?

A. The purpose of "certification" is to ensure that

a Federal candidates campaign expenditures do not exceed the campaign spending limitations imposed on him by law.* Thus, it is important that a Federal candidate at all times be able to document any and all of his campaign expenditures and be able to state unequivocally that a particular expenditure will not put him in violation of his spending limitation.

134. **Q.** What form should the "certification" take?

A. The certification should be in writing and should contain the following elements:

1. Station's call sign
2. Station's community of license
3. Name of the candidate
4. Candidate's political affiliation
5. Elective office sought
6. Date of election in connection with which time is being purchased
7. Dates of proposed use or uses of the station
8. Duration of each broadcast and time each broadcast is to be made on each date
9. The rate to be charged
10. The total charges involved
11. A statement of certification that the total charges paid for the use of the time purchased, including any agent's commission allowed the agent by the station, will not violate the candidates permissible limit of campaign spending under the provision of Section 104(a) of the Federal Election Campaign Act of 1971 as determined by the Comptroller General of the United States for the race involved. (For state races under Section 315(d) appropriate language concerning any spending limits imposed by the state law should be used).
12. Signature of the candidate or of the person specifically authorized by the candidate in writing to make certification in the candidate's behalf. (Facsimile signatures are acceptable. See Letter to *Glenn J. Sedam, Jr.*, 35 F.C.C. 2d 500 [1972]).

It is not necessary that the certification be contained in a separate writing; its elements may be incorporated into any standard contract or start order. For example, the NAB's standard agreement form for political broadcasts (see p. 41) is designed 1) to satisfy the requisite certification requirements, 2) to serve as an actual agreement (contract) for the sale of political broadcast time, and 3) to fulfill the Commission's record retention requirements in connection with requests for political broadcast time (F.C.C. Guideline VII. 1).

135. **Q.** Must a station obtain any additional "papers" from a Federal candidate in connection with a purchase of political broadcast time?

A. Yes. If the candidate himself is not signing the certification, then the person signing the certification must additionally provide the station with a copy of a statement signed by the candidate, specifically authorizing that person to certify in the candidate's behalf. The "authorization" must set forth the following information:

1. The name and address of the person certifying on behalf of the candidate.
2. The name of the candidate.
3. A statement authorizing the person to certify on the candidate's behalf.
4. The election in which the candidate is participating.
5. Any restrictions or limitations imposed by the candidate in connection with purchases of time in his behalf.
6. The candidate's signature together with the date. (Facsimile signatures are acceptable. See letter to *Glenn J. Sedam*, Jr., 35 F.C.C. 2d 500 [1972]).

136. **Q.** Must the station retain the certification and authorization obtained in connection with a purchase of political broadcast time?

A. Yes. The station must keep an *original* of the certification as signed by the candidate or the authorized purchaser. A *copy* of the same certification should be retained by the candidate or his authorized purchaser. In connection with any required authorization, the station need only retain a *copy* of the original. Both the original certification and any associated authorization to certify should be placed in the station's public file attached to the request for political broadcast time from which they originated. As is the case with the Commission's Rule on retention of all requests for political broadcast time, the certification and authorization to certify must be retained for two years. See Q. and A. 5, p. 2. (F.C.C. Guideline VII. 1).

137. **Q.** If a station gives free time for use by or on behalf of a candidate must it obtain a certification from the candidate or a properly authorized person?

A. No. The sections only require the station licensee to obtain a certification if a charge is being made for the broadcast time, for if time is given free, use of a station by or on behalf of a candidate under those circumstances cannot bring the candidate into violation of the spending limitation. (F.C.C. Guideline VII. 2).

* Expenditures by or on behalf of any legally qualified candidate for the office of Vice President are deemed to be spent by the candidate for the office of President with whom he is running. (Regulations of the Comptroller General § 4.4).

138. Q. Must a station obtain certification and authorization only in connection with purchases of broadcast time which constitute a "use" by the candidate i.e. in which the candidate is identified or identifiable by voice or image?

A. No. Unlike the provisions for "equal opportunity" and for lowest unit charge, both of which require an appearance by the candidate himself, the statutory requirements of certification and authorization apply to any purchase of broadcast time which involves a use *on behalf of* the candidacy of any legally qualified candidate for nomination or election to Federal elective office. A "use" is deemed to be "on behalf of" the candidacy of a legally qualified Federal candidate if the "use" (1) involves the candidate's participation by voice or image or advocates his candidacy; or (2) identifies the candidate, directly or by implication, or advocates his candidacy. However, a "use" is not "on behalf of a Federal candidate's candidacy" merely because it contains references to the candidate; it must be shown that the person making the reference intended to further the candidacy of the candidate. (Regulations of the Comptroller General §4.4; Letter *from the Director of the General Accounting Office of Federal Elections to Glaser and Fletcher, Attorneys at Law*, 24 RR 2d 2144 [1972]).

139. Q. Must a station obtain certification and authorization only when a purchase of time will involve a broadcast use within the 45 or 60 day statutory period?

A. No. Unlike the provision for lowest unit charge which applies only to the 45 or 60 day statutory period, the requirements of certification and authorization apply to any purchase of broadcast time which will involve a use on behalf of a Federal candidate's candidacy, *irrespective of when the broadcast use is to occur.* Therefore, once an individual has become a legally qualified candidate for nomination or election to Federal elective office, any expenditures for a broadcast use on behalf of his candidacy must be covered by the requisite certification (and authorization). (See Letter *from the Director of the General Accounting Office, Office of Federal Elections, to Glaser and Fletcher, Attorneys at Law*, 24 RR 2d 2144 [1972]).

140. Q. Is it necessary for a station to secure a certification or authorization for each unit of broadcast time purchased?

A. No. One certification or authorization is adequate for each use *or* for a series of uses of a station for which a candidate or his authorized purchaser contracts, provided the certification is specifically addressed to the total charges involved in the one or more broadcast uses which are purchased. (F.C.C. Guidelines VII.1).

141. Q. Is it necessary for a station to know in fact whether a particular purchase of broadcast time will put a candidate in violation of his particular statutory spending limitation?

A. No. The station is not responsible for any violation by the candidate of his applicable spending limitation. The station also need not be concerned as to whether the candidate or his authorized purchaser has falsely certified that payment for use of the station will not violate the candidate's limit of campaign spending. The station's sole responsibility is to obtain the requisite certification or authorization before any charges for the use of broadcast time are made.

142. Q. If a station fails to receive from the candidate the necessary certification or authorization to certifiy, can the station proceed to broadcast the purchased spot announcements or programs relying upon a promise from the candidate, or from someone buying time in his behalf, that the certification or authorization will be forthcoming?

A. No. If a station does not receive the necessary certification or authorization before any charges are made, the spot announcements or programs by law cannot be broadcast.

143. Q. If a station has made a contract with a Federal candidate, or with an individual buying time on that candidate's behalf, for a broadcast use to occur within the statutory period when the lowest unit charge applies, may the station leave open the rate term in anticipation of a possible change of rates at the time of the candidate's broadcast use which would affect the determination of lowest unit charge?

A. No. Although there is no specific language in the Campaign Communications Reform Act which specifies the type of contract a station must enter into with a Federal candidate, it is clear that the requirements of certification and authorization will limit a station's decision to leave open in the contract the amount to be charged the candidate, whether the amount is a yet to be determined lowest unit charge or a charge made for comparable use. Although it can be argued that the law specifies that a station must obtain certification and authorization before it makes a *charge* to the candidate (or to his authorized purchaser) and thus, if a rate term is left open there can be no *charge* to the candidate until the actual rate is determined, from both a practical and a legal standpoint a station should establish an applicable charge and also obtain certification *at the time it agrees with the candidate or his authorized purchaser to a sale of broadcast time.* The reasons for this conclusion are as follows: 1) although the actual charge may have to be recalculated at

a later time, the candidate or his authorized purchaser has committed himself to payment of some charge at the time of his contract with the station, and certification or authorization should be required whenever it is clear a charge for broadcast time has been incurred; 2) a station can guard against any possible violation of the law's certification requirement by obtaining a certification or authorization at the time of the agreement; 3) many stations require payment in advance in connection with purchases of political broadcast time and, thus, will need to arrive at an applicable charge and obtain certification at the time of their agreement to sell time.

144. Q. In the event that the charge calculated by a station and specified in its agreement with the candidate (or with his authorized purchaser) has changed at the time of the actual broadcast use by the candidate, as for example, when there has been a rate change which affects the determination of lowest unit charge, must the station obtain a new or amended certification?

A. Yes. Since the purpose of certification is to enable the candidate (or his authorized purchaser) to state that his payment to the station of the total charges involved in the purchase of time will not violate the candidate's spending limitation, if a subsequent rate change occurs, the station's total charges will necessarily change and the candidate (or his authorized purchaser) must then supply an additional or amended certification as to those new total charges.

145. Q. What certification procedures should a station follow when it agrees to a sale of broadcast time which is to be used on behalf of the candidacy of two or more candidates, at least one of which is a Federal candidate?

A. In most instances, stations will be dealing with time purchases which involve just one candidate. However, when a station accepts a request for purchase of time which is by or on behalf of two or more candidates, at least one of whom is a *Federal* candidate, the mechanics of preparing the required certification(s) become complicated. The complexities of the requirements which pertain are discussed below together with the NAB Legal Department's recommendations for handling this situation when using a standard agreement form such as the one provided by NAB (see p. 41). First of all, it should be remembered that the purpose of requiring a *Federal* candidate or his supporter or agent to sign a certification is to insure that the candidate does not exceed the campaign spending limitations imposed on him by law. Thus, where a paid announcement or program is by or on behalf of two or more candidates, at least one of whom is a *Federal* candidate, the *Federal* candidate(s) involved must have agreed upon an allocation of the total time charges which is to be applied to his spending limitation. To accomplish this division of total time charges, the F.C.C. Guidelines require that each *Federal* candidate participating or promoted in a spot or program must certify as to what percent of the total charges is allocated to him*. Obviously, when the time is purchased by or on behalf of a single *Federal* candidate, the allocation of the total charges to that single candidate is 100%, as discussed above. But in the case of joint uses of the time, the allocation of total charges varies according to the agreement between the candidates. The certification form at the bottom of the NAB Agreement Form is designed to serve all of these allocation purposes. The NAB Legal Department recommends that in the case of such purchases of time in which *Federal* candidates participate or are promoted, the procedures described below should be followed in order to minimize the burden of complying with the F.C.C. Guidelines.

a. Use one NAB Agreement Form as a master form and fill in all information but the certification and the data as to the individual candidates, i.e., name, party affiliation, office sought, election, and date thereof. Insert a reference to the attached forms for that candidate data.
b. Using a separate form for each candidate, (1) Fill in the above-mentioned candidate data for each Federal, state or local candidate who appears or is promoted in the spot or announcement, and (2) obtain the required certification for each *Federal* candidate, including the agreed allocation percent of the total charges.
c. All of the forms should then be clipped together and placed in the public file. It should be remembered that if a *Federal* candidate is not making certification personally, his supporter or agent must also give the station a copy of the candidate's authorization to certify as to his spending limitation. The authorization should be attached to the appropriate forms.

If prior to broadcast, changes take place which affect the total charges applicable to the original certification, an amended certification is required. See Q. and A. 144, p. 28. (Regulations of the Comptroller General §4.6; F.C.C. Guidelines VII. 1).

146. Q. What obligations are imposed on a station by the Campaign Communications Reform Act if an individual wants to buy time for a broadcast use opposing or urging the defeat of a

* It should be clear that stations must determine initially whether a time purchase involves two or more candidates, at least one of whom is a *Federal* candidate.

Federal candidate, or derogating his stand on campaign issues?

A. Such a purchased use of broadcast time is not viewed as an expenditure on behalf of the candidacy of any other Federal candidate and thus does not require certification or authorization from the opponents of the particular Federal candidate who is being opposed in the broadcast use. However, if it is clear that a particular Federal candidate has directly or indirectly authorized such use or if the circumstances of such use taken as a whole suggest that consent to the broadcast may reasonably be imputed to a particular Federal candidate, then the station should obtain certification or authorization from the particular candidate in question. (See Letter *from the Director of the General Accounting Office, Office of Federal Elections, to Glaser and Fletcher, Attorneys at Law*, 24 RR 2d 2144 [1972]).

Even if it is initially determined that the broadcast use is not directly or indirectly authorized by any other Federal candidate, there are additional obligations on the station. The station then must 1) determine the identity and organizational affiliation, if any, of the person making the expenditure; 2) require the person to state in writing whether or not he is authorized by any Federal candidate to make such a purchase, or whether any Federal candidate has given his consent to it; 3) take reasonable precautions to verify accurately the person's identity and affiliation and the accuracy of the written statement. Any reasonable doubt as to whether authorization or consent to the purchase may be imputed to a Federal candidate should be resolved by the station in favor of requiring certification or authorization from the Federal candidate in question before making any charge for the purchase of time.

Once the station has complied with the requirement above and is satisfied the broadcast use is not authorized or consented to by any other Federal candidate, the station may run the spot or program provided that at some point during the broadcast an announcement is given containing the following (which must be conspicuously displayed if the announcement is by visual means):

1. The name and address of the person making the purchase, and in the case of an organization, the name of the individual authorizing the expenditure.

2. A statement that the use is not authorized, directly or indirectly, by any Federal candidate and that no Federal candidate is responsible for any activities of the person making the expenditure.

In addition, the station must keep for two years a complete record of the transaction, including a copy of the script of the announcement or program and the original written statement of disclaimer. These materials need not be kept in the station's public file, but should be made available for audit and inspection by any supervisory officer of the Office of the Comptroller General (or by any authorized representative of that officer). (Regulations of the Comptroller General §4.5).

Caveat: Stations should remember that this entire *Catechism* section on certification is applicable to all purchases of time for broadcast uses on behalf of the candidacy of state and local candidates for elective office in states which, pursuant to Section 104(d) of the Campaign Communications Reform Act, pass their own laws establishing overall campaign spending limitations for such state and local candidates.

K

Reasonable Access

The Campaign Communications Reform Act adds to Section 312(a) of the Communications Act a new subsection (7) which specifies that a station license may be revoked "[f]or willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy". In the questions and answers to follow the short hand term "reasonable access" will be used to refer to the full statutory Section 312(a)(7).

147. Q. To what candidates do the provisions of reasonable access apply?

A. The provisions apply only to legally qualified candidates for Federal elective office.

148. Q. What are the access rights of state and local candidates?

A. As to the right to access by candidates for other than Federal elective office, a station must govern its conduct by established interpretations of Section 315 of the Communications Act prior to amendments. One such interpretation of Section 315 is the Commission's historic policy regarding sale of time to candidates for office: The station in its own good-faith judgment in serving the public interest may determine which political

races are of greatest interest and significance to its service area, and therefore may refuse to sell time to candidates for less important offices, provided it treats all candidates for such offices equally. (F.C.C. Guidelines VIII. 1).

149. Q. For purposes of reasonable access, who is a legally qualified candidate for Federal elective office?

A. The definition of "a legally qualified candidate" for Federal elective office is the same for purposes of reasonable access as for purposes of equal opportunity or "lowest unit charge". See Part I.B of this Catechism, p. 4. (F.C.C. Guideline VII. 2).

150. Q. How is a station to comply with the requirement of Section 312(a)(7) that he give reasonable access to his station to, or permit the purchase of reasonable amounts of time by, candidates for Federal elective office?

A. The best answer to this question is contained in the text of F.C.C. Guideline VIII. 3, which is quoted in full below:

"Each licensee, under the provisions of Sections 307 and 309 of the Communications Act, is required to serve the public interest, convenience, or necessity. In its Report and Statement of Policy Re: Commission En Banc Programming Inquiry (1960), the Commission stated that political broadcasts constitute one of the major elements in meeting that standard. (See *Farmers Educational and Cooperative Union of America, North Dakota Division* v. *WDAY, Inc.*, 360 U.S. 525 (1959), and *Red Lion Broadcasting Co., Inc.* v. *F.C.C.*, 395 U.S. 367, 393-94 [1969]). The foregoing broad standard has been applied over the years to the overall programming of licensees. New Section 312(a)(7) [reasonable access] adds to that broad standard specific language concerning reasonable access.

Congress clearly did not intend, to take the extreme case, that during the closing days of a campaign stations should be required to accommodate requests for political time to the exclusion of all or most other types of programming or advertising. Important as an informed electorate is in our society, there are other elements in the public interest standard, and the public is entitled to other kinds of programming than political. It was not intended that all or most time be preempted for political broadcasts. The foregoing appears to be the only definite statement that may be made about the new section, since no all-embracing standard can be set. The test of whether a licensee has met the requirement of the new section is one of reasonableness. The Commission will not substitute its judgment for that of the licensee, but, rather, it will determine in any case that may arise whether the licensee can be said to have acted reasonably and in good faith in fulfilling his obligations under this section.

We are aware of the fact that a myriad of situations can arise that will present difficult problems. One conceivable method of trying to act reasonably and in good faith might be for licensees, prior to an election campaign for Federal offices, to meet with candidates in an effort to work out the problem of reasonable access for them on their stations. Such conferences might cover, among other things, the subjects of the amount of time that the station proposes to sell or give candidates, the amount and types of its other programming, the 7-day rule, and the amount of advertising it proposes to sell to commercial advertisers."

151. Q. Does the provision for reasonable access apply only during the 45 or 60 day statutory period as is the case with lowest unit charge?

A. No. Reasonable access is a right of the Federal candidate which accrues at the moment he becomes a legally qualified candidate for elective office.

152. Q. Does the provision for reasonable access apply to persons or groups requesting access to or purchase of time on a station for themselves as spokesmen on behalf of a candidate?

A. No. The provision applies only to requests for "use" of a station by a Federal candidate. The standard of what constitutes a "use" of a station for purposes of administering reasonable access is the same as the standard concerning "equal opportunities" and "lowest unit charge" i.e. the use must involve an identified or identifiable appearance by the candidate through his voice or image. See Q.'s and A.'s 24 (p. 6) and 81 (p. 16). (F.C.C. Guideline VIII. 4).

153. Q. What right of access should be afforded by a station to individuals who are merely spokesmen or supporters of candidates?

A. Such individuals have no right of access under Section 312(a)(7). The station thus must govern its conduct by the "public interest, convenience, or necessity" standard of Sections 307 and 309 of the Communications Act discussed in Q. and A. 150. See also Letter to *Nicholas Zapple*, 23 F.C.C. 2d 707 (1970). (F.C.C. Guideline VIII. 4.).

154. Q. Does the "reasonable access" provision require commercial stations to give free time to legally qualified candidates for Federal elective office?

A. No, but the station cannot refuse to give free time and also to permit the purchase of reasonable amounts of time. If the purchase of reasonable amounts of time is not permitted, then the

station is required to give reasonable amounts of free time (F.C.C. Guideline VIII. 5).

155. Q. If a commercial station gives reasonable amounts of free time to candidates for Federal elective office, must it also permit purchase of reasonable amounts of time?

A. No. A commercial station is required either to provide reasonable amounts of free time or permit purchase of reasonable amounts of time. It is not required to do both. (F.C.C. Guideline VIII. 6).

156. Q. If Candidate A has spent the maximum amount of funds permitted him under the limitation set by the Campaign Communications Reform Act and requests "equal opportunity" under the provisions of Section 315(a) to respond to a a broadcast by Candidate B, paid for by Candidate B, which occurred after Candidate A had reached his spending limit, must the station provide free time to Candidate A?

A. No. Candidate A cannot furnish the necessary certification that purchase of time on the station would not result in a violation of the spending limitation. (F.C.C. Guideline VIII. 7).

157. Q. Some stations have in the past had the policy of not selling short political spot announcements (e.g., 10 seconds, 1 minute) on the ground that they did not contribute to an informed electorate. In light of the enactment of Section 312 (a)(7), may stations have such policies, or must they sell reasonable numbers of short spots to legally qualified candidates for Federal office if requested?

A. The best answer to this question is contained in the text of F.C.C. Guideline VIII. 8 which is quoted in full below.

"We have, prior to the enactment of Section 312(a)(7), when stations were (under the provisions of Section 315) not required to allow use of their facilities by particular candidates for public office, ruled that licensees may have such policies. In so ruling, we have cautioned that licensees have the public interest consideration of making their facilities available to candidates, but have left to the good-faith judgment of the licensee the determination of how the facilities were to be used to serve the public interest. As complaints arose, we looked to the reasonableness of that judgment in a particular fact pattern. (31 F.C.C. 2d 782 [1971]). Section 312(a)(7) now imposes on the overall obligation to operate in the public interest the additional specific requirement that reasonable access and purchase of reasonable amounts of time be afforded candidates for Federal office. We shall, under this new section, apply the same test of reasonableness of the judgment of the licensee. Thus whether a refusal to sell short political spots would or would not violate the provisions of the new section would depend on the circumstances in which the refusal occurred. The same would apply to similar situations, e.g., in cases where a station has a policy of not placing political spots on news programs."

158. Q. Does Section 312(a)(7) on reasonable access apply to noncommercial educational stations, and other nonprofit stations, as well as to commercial stations?

A. Yes. There are no provisions in the Campaign Communications Reform Act exempting such stations, nor is there anything in the legislative history of the Act that would indicate that such an exemption was intended. Both types of stations would be required to give reasonable access to legally qualified candidates for Federal elective office. (F.C.C. Guideline VIII. 9).

159. Q. May noncommercial educational stations and nonprofit stations charge for broadcast time by or on behalf of legally qualified candidates for Federal elective office?

A. Under the provisions of the Commission rules, noncommercial educational stations operating on channels reserved for noncommercial educational use are not permitted to levy charges for time—for political broadcasts or otherwise. Some such stations presently are providing political programming without charge, and it appears that as a practical matter the new provision will not greatly alter their practices. On the other hand, those stations that do not engage in such programming will be required under the new law to provide reasonable access to candidates without charge. Noncommercial educational stations that are operating on unreserved channels, and nonprofit stations that are not educational, e.g., those offering religious broadcasting, may charge for political broadcast time (if their charters or articles of incorporation permit them to make time charges) although it is their policy normally not to charge for any time. If they do charge, notice must be given to the Commission of this change in operation. The lowest unit charge provisions of Section 315(b) cannot apply to such stations since they have no rates on which to base such a charge. However, any charges made must be reasonable when viewed in the light of charges made by commercial stations in the same broadcast service licensed to serve the same community. If the charges made by nonprofit stations are unduly high, it is conceivable that they might be construed as an attempt to circumvent the reasonable access provision of Section 312(a)(7). Noncommercial educational stations and nonprofit stations, whether giving free time for political broadcasts or charging for such time, may make necessary charges for production-oriented services, and for other things of the type mentioned in Q. and A. 93 (F.C.C. Guideline VIII. 10).

II. THE FAIRNESS DOCTRINE AND POLITICAL BROADCASTS

Any discussion of political broadcasting must involve consideration of the "fairness doctrine". Essentially, the "fairness doctrine" states that when a licensee permits his facilites to be used to air a controversial issue of public importance, he must afford reasonable opportunity for the presentation of contrasting points of view. The treatment of the "fairness doctrine" in this publication will be confined to a narrow examination of four aspects of the "fairness doctrine" which relate to political broadcasts. The four aspects will be taken up in the following headings: 1) personal attack; 2) political editorializing; 3) quasi-equal opportunities ("Zapple" doctrine); and 4) controversial issues in general. There is no attempt in the following questions and answers to present a comprehensive or definitive view on the current status of the "fairness doctrine". The doctrine is often difficult to apply and is in a constant state of development. Since one goal of this *Catechism* is to provide stations with a reliable reference tool in the area of political broadcasts, it was decided that completeness should be sacrificed in the interest of certainty. Therefore, the discussion presented in the sections below represents an exploration of only those areas of the "fairness doctrine" affecting political broadcasting where reliable and final decisions have been reached.

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

> The fairness doctrine itself deals with the broader question of affording reasonable opportunity for the presentation of contrasting viewpoints on controversial issues of public importance. Generally speaking, it does not apply with the precision of the "equal opportunities" requirement. Rather, the licensee in applying the fairness doctrine, is called upon to make reasonable judgments in good faith on the facts of each situation—as to whether a controversial issue of public importance is involved, as to what viewpoints have been or should be presented, as to the format and spokesmen to present the viewpoints, and all the other facets of such programming. In passing on any complaint in this area, the Commission's role is not to substitute its judgment for that of the licensee as to any of the above programming decisions, but rather to determine whether the licensee can be said to have acted reasonably and in good faith. There is thus room for considerably more discretion on the part of the licensee under the fairness doctrine than under the "equal opportunities" requirement. (See "Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance." F.C.C. 64-611 [July 6, 1964]).

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

A

Personal Attack

160. Q. What do the Commission's rules regarding personal attacks provide?

A. The Commission's Rules regarding personal attacks, which became effective August 14, 1967, provide as follows:*

> (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 1 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

* Sections (a) and (b) of the following F.C.C. Rules: 73.123 (AM); 73.300 (FM); 73.598 (Noncommercial Educational FM); and 73.679 (TV). The validity of the personal attack rules was upheld by the U. S. Supreme Court in the case of *Red Lion Broadcasting Co.* v. *FCC*, 395 U. S. 367 (1969).

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 not be applicable (i) to attacks on foreign groups or foreign public figures; (ii) to personal attacks which are made by legally qualified candidates, their authorized spokesmen, or those associated with them in the campaign, on other such candidates, their authorized spokesmen, or persons associated with the candidates in the campaign; and (iii) to *bona fide* newscasts, *bona fide* news interviews, and on-the-spot coverage of a *bona fide* news event (including commentary or analysis contained in the foregoing programs, but the provisions of paragraph (a) shall be applicable to editorials of the licensee).

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 F.R. 10415. The categories listed in (iii) are the same as those specified in Section 315(a) of the Act.

161. Q. Do the personal attack rules apply to all personal attacks made over a station's facilities?

A. No. Since the personal attack rules are an outgrowth of the "fairness doctrine", they apply only in situations where the "fairness doctrine" applies. Thus, the rules apply only to personal attacks which are made during a *discussion of a controversial issue of public importance.* Other types of personal attacks would not invoke the "fairness doctrine". Of course, "the use of broadcast facilities for the airing of mere private disputes and attacks would raise serious public interest issues," as well as the libel and slander implications which surround *any* personal attack. (Docket No. 16574, 8 F.C.C. 2d 721 [1967]).

162. Q. What constitutes a personal attack under the Commission's rules?

A. An attack upon the honesty, character, integrity, or like personal qualities of an identified person or group. Mere mention or reference to an individual or group in the course of a broadcast does not constitute a personal attack. (Letter to *Lar Daly*, 40 F.C.C. 494 [1960]; petition for reconsideration, denied, 40 F.C.C. 496 [1960]).

163. Q. Are personal attacks made in the course of a political broadcast usually subject to the personal attack rules?

A. No, not usually. The personal attack rules exempt attacks by legally qualified candidates, their authorized spokesmen, or those associated with them in the campaign, on other such candidates, their authorized spokesmen, or persons associated with the candidate in the campaign. Thus, the personal attack principle would seldom apply to attacks made during political broadcasts. However, this does not mean that in specific factual situations, licensees might not be subject to the general obligations of the "fairness doctrine" (see Note following subsection (b) of the rules).

164. Q. During the course of a political broadcast a candidate made a personal attack upon individuals who are neither candidates, their authorized spokesmen nor persons associated with candiddates in their campaigns. Under Section 315 of the Communications Act the station carrying the broadcast is prohibited from censoring the candidate's remarks; in light of the principle established by the U. S. Supreme Court that stations are not liable for civil damages resulting from defamatory remarks broadcast by political candidates (*Farmers Educational and Cooperative Union of America* v. *WDAY, Inc.*, 360 U.S. 525 [1959]), is the station protected as well from any obligation to comply with the personal attack rules?

A. No. The Commission has ruled that the obligations of the personal attack rules are in no way comparable to the possible liability for large sums of money which may result from civil action based on the broadcast of defamatory remarks. Thus, a station cannot avoid its responsibility to comply with the personal attack rules simply because the candidate cannot be prohibited by the station from making a personal attack. (Letter to *WSAZ-TV*, 13 F.C.C. 2d 869 [1968]).

165. Q. Are personal attacks made in the course of a news broadcast subject to the Commission's personal attack rules?

A. No. Although news programming may involve application of the "fairness doctrine", the personal attack rules specifically exempt attacks made during *bona fide* newscasts, *bona fide* news interviews, and on-the-spot coverage of a *bona fide* news event (including commentary or analysis contained in any of the foregoing types of news broadcasts).

166. Q. Do the exemptions in the personal attack rules for *bona fide* newscasts, news interviews and on-the-spot coverage of *bona fide* news events encompass (1) editorials carried in such news coverage, or (2) news documentaries?

A. The exemptions do not encompass either of these two types of programming. The rules specifically provide that editorials contained in news-

casts, news interviews or on-the-spot coverage are not exempted. Furthermore, the Commission made it clear in revising the personal attack rules to include these exemptions that news documentaries were not to be exempted. (Docket No. 16574, 9 F.C.C. 2d 539, 540; [1967]).

167. Q. If a station broadcasts a non-exempt personal attack upon a candidate, must the station permit the candidate to reply personally?

A. No. The Commission stated in its action adopting the rules that "the licensee may impose reasonable limitations on the reply, such as requiring the appearance of a spokesman for the candidate to avoid any Section 315 'equal opportunities' cycle." (8 F.C.C. 2d 721 [1967]). The candidate should, of course, be given a substantial voice in the selection of the spokesman to respond to the attack (*Times Mirror Broadcasting Co.*, 40 F.C.C. 531 [1962]).

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

A. The Commission has stated that if a "fairness doctrine" has any validity, its fulfillment cannot be predicated upon the ability to pay. (Letter to *Cullman Broadcasting Co., Inc.*, 40 F.C.C. 576 [1963]). However, this does not mean that the licensee may not inquire whether the attacked individual is willing to pay to appear, but the person entitled to make a response cannot be denied time because he refuses to pay for it. The licensee is also free to obtain a sponsor for the program in which the reply is broadcast, but having presented a personal attack, the licensee cannot bar the individual's response simply because sponsorship is not forthcoming. (Letter to *KBHC et al.*, 1 F.C.C. 2d [1965]).

169. Q. Is the truth or falsity of a personal attack relevant to the broadcaster's obligations under the "fairness doctrine" and the personal attack rules?

A. No. The Commission has stated that the truth or falsity of an attack is not a matter for its determination and that in circumstances where the attack is based upon allegations "the licensee cannot aver that the attack is true and, therefore, there is no need to let the public hear the other side." (Letter to *WHN*, 11 F.C.C. 2d 678 [1968]). It must be assumed, however, that if the attack were based not on allegations but rather on the determination of a judicial body, e.g., conviction of a crime, the Commission would not require the licensee to comply with the personal attack rules.

170. Q. What must a licensee do if a personal attack, subject to the rules, is made over his station?

A. The licensee is required, within one week of the attack, to 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

Political Editorializing

171. Q. What do the Commission's rules regarding political editorializing provide?

A. The Commission's rules* regarding political editorializing, which became effective August 14, 1967, provide as follows:

> (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) 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 the election, the licensee shall comply with the provisions of this paragraph 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.

172. Q. Do the political editorializing rules apply to editorials endorsing or opposing ballot items which do not involve candidates, e.g., a municipal bond issue?

A. No. Subsection (c) applies only to editorials

* Section (c) of the following F.C.C. Rules: 73.123 (AM); 73.300 (FM); 73.598 (Noncommercial Educational FM); 73.679 (TV). The validity of the political editorializing rules was upheld by the U. S. Supreme Court in the case of *Red Lion Broadcasting Co.* v. *FCC*, 395 U. S. 367 (1969).

endorsing, or opposing political candidates. Of course, any editorial endorsing or opposing such a ballot item would invoke the "fairness doctrine" and the obligations it imposes upon licensees.

173. Q. What must a licensee do when he broadcasts a political editorial to which the rules apply?

A. The licensee must, within 24 hours after the broadcast, send to the other candidate(s) or the candidate(s) opposed (1) notification of the date and time of the editorial; (2) a script or tape of the editorial; and (3) an offer of a reasonable opportunity for a candidate or one of his spokesmen to respond over the station's facilities. If the editorial is to be broadcast within 72 hours of election day, the licensee must provide the above enumerated information far enough in advance of the actual broadcast to enable the candidate(s) to have a reasonable opportunity to prepare a response and to present it in timely fashion following the station's editorial.

174. Q. If a station broadcasts a political editorial endorsing, or opposing, a candidate, must the station permit the other candidate(s) to reply personally?

A. No. As pointed out in Question 167 above, the Commission has stated that "the licensee may impose reasonable limitations on the reply, such as requiring the appearance of a spokesman for the candidate to avoid any Section 315 'equal opportunities' cycle".

175. Q. A station, in complying with its obligations under the political editorializing rules, has provided the spokesman for Candidate A with an opportunity to reply to a station editorial which endorsed opponent Candidate B. The station, in accordance with its usual practice of providing introductions to editorial reply in order to enable its audience to place the reply in perspective, has introduced the editorial reply for Candidate A by saying "This station has endorsed the candidacy of Candidate B for Mayor. Replying on behalf of Candidate A for Mayor, here is Joe Jones". Does such a statement by the station operate as a further endorsement of Candidate B for which Candidate A is entitled to an additional right of editorial reply?

A. Yes. The Commission has frequently stated that in the field of political editorializing, a station "is under an obligation to adhere scrupulously to the requirements of fairness." In the situation offered here, the station's introduction of the editorial reply by a reference to the stations earlier editorial endorsement of Candidate A serves as a further endorsement of Candidate A. Unless Candidate B has agreed to such an introductory reference either expressly or by implication (i.e., the editorial reply itself refers to the earlier station editorial), it must be presumed that such an editorial introduction on the station's part unfairly gives added publicity to Candidate B and thus imposes additional fairness doctrine responsibilities on the station so as to give Candidate A or his spokesman a further opportunity for reply. (Letter to *Clarence F. Massart*, 10 F.C.C. 2d 968 [1967]; letter to *George E. Cooley*, 10 F.C.C. 2d [1967]; letter to *WCBS*, 20 F.C.C. 2d [1969]).

C

Quasi-Equal Opportunities

176. Q. What is the quasi-equal opportunities (Zapple) doctrine?

A. Quasi-equal opportunities, also referred to as the political party corollary to the fairness doctrine or the "Zapple" doctrine, is a doctrine established by the Commission in 1970 which specifies that when a station sells time to supporters or spokesmen of a candidate during an election campaign who urge the candidate's election, discuss the campaign issues, or criticize an opponent, then the licensee must afford comparable time to the spokesmen for an opponent. (Letter to *Nicholas Zapple*, 23 F.C.C. 2d 707 [1970]; *First Report*, Docket No. 19260, 24 RR 2d 1917 [1972]).

177. Q. Does quasi-equal opportunities apply outside campaign periods?

A. No. Since the doctrine is based on the equal opportunity requirement of Section 315, it applies only in a situation where there exist legally qualified candidates for public office. Thus, only in the case where supporters or spokesmen of one legally qualified candidate have bought time for a broadcast use in support of their candidate does a station become obligated to make time available on request to spokesmen or supporters of the opposing legally qualified candidate(s).

178. Q. If supporters of a candidate request time from a station based upon the quasi-equal opportunities doctrine, must the station provide them with free time in the event they are unable to pay for time?

A. No. As stated in the preceding question, quasi-equal opportunities is premised upon Section 315

of the Communications Act. Section 315 does not afford political candidates an inherent right of access on an unpaid basis,* therefore, the same conclusion applies in the case of political broadcasts involving quasi-equal opportunities, i.e., a supporter of a candidate who seeks broadcast time must pay for his time if the supporter of the opposing candidate paid. If the time was provided by the station without charge to supporters of the first candidate, then anyone asking for quasi-equal opportunities should also receive time free of charge.

179. Q. If a legally qualified candidate appears to some significant extent in a broadcast with his supporters, may supporters of the opposing candidate demand quasi-equal opportunities?

A. No. If a broadcast use involves an identified or identifiable appearance by the candidate, then only the equal opportunity requirements of Section 315 apply. In other words, quasi-equal opportunities and equal opportunities are mutually exclusive.

180. Q. Does quasi-equal opportunities apply to all parties and all candidates?

A. No. Although the doctrine takes into account the policies of Section 315, it also represents an embodiment of certain elements of the fairness doctrine. Specifically, the Commission has said quasi-equal opportunities exists as a "particularization of what the public interest calls for in certain political broadcast situations in the light of Congressional policies set forth in Section 315 (a)". Thus, in administering quasi-equal opportunities under the public interest standard, the station should proceed to make reasonable good faith judgments as to the significance of particular parties or candidates in his community. On this basis, a station need not provide fringe candidates or minor parties with broadcast time under quasi-equal opportunities. (*First Report*, Docket No. 19260, 24 RR 2d 1917 [1972]).

181. Q. If a supporter of a candidate appears in a *bona fide* news broadcast, must the station grant the supporter of an opposing candidate a request for time based upon quasi-equal opportunities?

A. No. The Commission has said that if the provisions of Section 315 which exempt from equal opportunities appearances by candidates in *bona fide* newscasts, news interviews, news documentaries, and on-the-spot coverage of *bona fide* news events, are to have any meaning, appearances by supporters of candidates in such news broadcasts must also be exempt from application of quasi-equal opportunities. The specific news broadcast exemptions in Section 315 were designed to protect stations from having to grant equal opportunities to fringe candidates whenever a major candidate was covered in a news broadcast. Thus, in order to carry forward the statutory goal of insulating stations from having to provide broadcast time to fringe political campaigns, quasi-equal opportunities necessarily requires an exemption for appearances by supporters of candidates in news broadcasts. (*First Report*, Docket No. 19260, 24 RR 2d 1917 [1972]).

* Section 315 is not to be confused with section 312 (a) (7) which provides for reasonable access.

D

Controversial Issues in General

182. Q. What obligation does a licensee have in the "fairness doctrine" area?

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

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

> The licensee, in applying the fairness doctrine, is called upon to make reasonable judgments in good faith on the facts of each situation—*as to whether a controversial issue of public importance is involved*, as to what viewpoints have been or should be presented, as to the format and spokesman to present the viewpoints, and all the other facets of such programming . . . in passing on any complaint in this area, *the Commission's role is not to substitute its judgment for that of the licensee as to any of the above programming decisions, but rather to determine whether the licensee can be said to have acted reasonably and in good faith.*

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

A. While an answer to this question would great-

ly simplify the "fairness doctrine," the unfortunate fact is that there is no answer that can be applied to every situation. A determination should be made by the licensee by its taking into account the factors surrounding the particular case. Such things as public sentiment, previous debate, editorial comment, and other facts which indicate a difference of opinion regarding the issue in question should help the licensee to make a good faith determination as to whether the "fairness doctrine" applies.

184. **Q.** Does the mere fact that a particular subject is "newsworthy" establish that subject as a controversial issue of public importance to which the fairness doctrine would apply?

A. No. "Newsworthiness" and "controversial issue of public importance" are not synonymous terms. A licensee in its editorial judgment may elect to give broadcast coverage to a story which, although it embraces a matter of dispute or controversy, does not rise to the level of an issue of *public* importance. To permit any other conclusion, would deluge the broadcast media with fairness doctrine complaints premised upon the redress of mere private disputes. Such a situation would both interfere with the licensees primary duty to operate in the *public* interest and would inhibit the "robust *public* debate" which the fairness doctrine was designed to promote. (*Dorothy Healey* v. *FCC*, ___ F.2d ___, Case No. 24630 [2d Cir., March 3, 1972]).

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

A. No. The keystone of the fairness doctrine and of the public interest is the right of the public to be informed—to have presented to it the "conflicting views of public importance." Where a licensee permits the use of its facilities for the expression of views on controversial local, regional or national issues of public importance, he must afford reasonable opportunities for the presentation of contrasting views by spokesmen for other responsible groups. (Letter to *Cullman Broadcasting Co., Inc.*, 40 F.C.C. 576 [1963]).

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

A. The fairness doctrine is to be applied in such a situation. The "equal opportunities" provision of Section 315 applies only to uses by candidates and not to those speaking in behalf of or against candidates. When spot announcements do not contemplate the appearance of a candidate, the "equal opportunities" provision of Section 315 would not be applicable. The "fairness doctrine," however, is applicable. (Letter to *Lawrence M. C. Smith*, 40 F.C.C. 549 [1963]).

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

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

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

A. No. The licensee is given wide discretion in choosing the methods by which discussion of controversial issues is presented. The Commission concluded that any rigid requirement in this respect would seriously limit the ability of the licensee to serve the public interest. "Forum and roundtable discussions, while often excellent techniques of presenting a fair cross section of differing viewpoints on a given issue, are not the only appropriate devices for . . . discussion, and in some circumstances may not be particularly appropriate or advantageous." (*Report on Editorializing by Broadcast Licensees*, 25 R.R. 1901 [1960]).

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

A. The licensee's overall performance is considered. Thus, where complaint is made, the licensee is afforded the opportunity to set out all the programs, irrespective of the programming format, which he has devoted to the particular controversial issue during the appropriate time period. Regular news programs and in some cases even entertainment programs may contain discussion of one side of a controversial issue. (Letter to *Cullman Broadcasting Co.*, 40 F.C.C. 576 [1963], letter to *Hon. Oren Harris*, 40 F.C.C. 582 [1963]).

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

A. Yes. As the Editorializing Report makes clear, the licensee, except in cases of personal attack, has considerable discretion as to the techniques or formats to be employed and the spokesman for each point of view. In the good faith exercise of his best judgment, he may, in a particular case, decide upon a local rather than a regional or national spokesman—or upon a spokesman for the group which also is willing to pay for the broadcast time. Thus, with the exception of broadcasts involving quasi-equal opportunities political editoralizing, or personal attacks, there is no single group or persons entitled as a matter of right to present a viewpoint differing from that previously expressed on the station. (Letter to *Cullman Broadcasting Co., Inc.*, 40 F.C.C. 576 [1963]).

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

A. The Commission has stated that if a "fairness doctrine" has any validity, its fulfillment cannot be predicated upon the ability to pay although the licensee may explore the possibility of payment for the time used to respond. Thus, where the licensee has chosen to broadcast a sponsored program which for the first time presents one side of a controversial issue, he cannot reject a presentation otherwise suitable—and thus leave the public uninformed—on the grounds that he cannot obtain paid sponsorship for that presentation. (Letter to *Cullman Broadcasting Co., Inc.*, 40 F.C.C. 576 [1963]). However, except in cases of personal attack, a licensee has wide latitude as to how this obligation is to be discharged. Therefore, since no particular person or group is entitled to answer as a matter of right, the question is often academic.

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

A. The licensee of every station carrying the particular program in question. The licensee may not delegate his responsibilities to others, and particularly to an advocate of one particular viewpoint. (*Report on "Living Should Be Fun" Inquiry*, 23 RR 1599 [1962]).

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

A. Yes. The Commission has stated that ". . . licensee's obligations to serve the public interest cannot be met merely through the adoption of a general policy of not refusing to broadcast opposing views where a demand is made of the station for broadcast time. (He has a duty) generally to encourage and implement the broadcast of all sides of controversial public issues over his facilities." (Letter to *Tri State Broadcasting Co., Inc.*, 40 F.C.C. 508 [1962]).

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

A. Since compliance with the "fairness doctrine" is left to each individual broadcaster, and since so many cases depend on their own particular facts, no one policy can be uniformly recommended. However, the Commission has written to one broadcaster stating that the following policy indicates that the broadcaster is fulfilling the obligations set forth in the *Report on Editorializing by Broadcast Licensees*, 25 RR 1901 (1949):

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

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

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

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

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

III. FCC HANDLING OF COMPLAINTS AND INQUIRIES CONCERNING POLITICAL BROADCASTS

The Commission will give prompt attention to all inquiries and complaints involving political broadcasts. However, the Commission encourages prior good faith negotiations between licensees and candidates seeking broadcast time or having relative questions. In the past, such negotiations have often led to a disposition of the request or questions in a manner which is agreeable to all parties. Thus, a complaint relative to political broadcasting should only be filed with the Commission after such a good faith effort has been made by the parties concerned. In this way, resort to the Commission might be obviated in many instances and time—which is of such great importance in political campaigns—might be saved. If a complaint is filed, a complete statement of facts should be furnished to the Commission as quickly as possible by both the complainant and the licensee and each should send to the other a copy of all communications directed to the Commission, including the initial complaint and response thereto.

In general, the Commission limits its interpretative rulings or advisory opinions to situations where the critical facts are explicitly stated without the possibility that subsequent events will alter them. It prefers to issue such rulings or opinions where the specific facts of a particular case in controversy are before it for decision. (Letter to *Pierson, Ball & Dowd,* 40 F.C.C. 295 [1958]).

IV. POLITICAL BROADCAST AGREEMENT FORM

The following suggested agreement form, as prepared by the NAB Legal Department, is designed to fulfill three needs in the political broadcast area: 1) to satisfy the certification requirements of the Campaign Communication Reform Act of 1971; 2) to serve as an actual agreement (contract) for the sale of political broadcast time, and 3) to satisfy the Commission's record retention requirements. A station is, of course, free to use any other type of political agreement form or forms so long as the pertinent Commission regulations and statutory requirements as to certification are satisfied. Irregardless of what kind of form a station uses, the identity of the person(s) who will be using the broadcast time should be clearly indicated, since the provisions of Section 315 apply only when the candidate himself appears in the broadcast.

Additional copies may be obtained upon request from NAB at a cost of $1.50 per pad of 100 forms.

NAB FORM PB-6

AGREEMENT FORM FOR POLITICAL BROADCASTS

STATION and LOCATION _____ 19____

I, _____ (being) (on behalf of) _____,
a legally qualified candidate of the _____ political party for the office of _____
in the _____ election to be held on _____, do hereby request station time as follows:

LENGTH OF BROADCAST	HOUR	DAYS	TIMES PER WEEK	TOTAL NO. WEEKS	RATE

DATE OF FIRST BROADCAST	DATE OF LAST BROADCAST

Total Charges: _____

The broadcast time will be used by _____.
I represent that the advance payment for the above-described broadcast time has been furnished by _____ and you are authorized to so describe that sponsor in your log and to announce the program as paid for by such person or entity. The entity furnishing the payment, if other than an individual person, is: ( ) a corporation; ( ) a committee; ( ) an association; or ( ) other unincorporated group. The names and offices of the chief executive officers of the entity are: _____

_____.

It is my understanding that: If the time is to be used by the candidate himself within 45 days of a primary or primary runoff election, or within 60 days of a general or special election, the above charges represent the lowest unit charge of the station for the same class and amount of time for the same period; where the use is by a person or entity other than the candidate or is by the candidate but outside the aforementioned 45 or 60 day periods, the above charges do not exceed the charges made for comparable use of such station by other users.

It is agreed that use of the station for the above-stated purposes will be governed by the Communications Act of 1934, as amended, and the FCC's rules and regulations, particularly those provisions reprinted on the back hereof, which I have read and understand. I further agree to indemnify and hold harmless the station for any damages or liability that may ensue from the performance of the above-stated broadcasts. For the above-stated broadcasts I also agree to prepare a script or transcription, which will be delivered to the station at least _____ before the time of the scheduled broadcasts; (*note:* this last statement is not applicable if the candidate is personally using the time).

Date: _____ _____
(Candidate, Supporter or Agent)

Accepted / Rejected by _____ Title _____

This application, whether accepted or rejected, will be available for public inspection for a period of two years in accordance with FCC regulations (AM, Section 73.120; FM, Section 73.290; TV, Section 73.657).

CERTIFICATION

The following certification must be made with respect to all time purchases by or on behalf of federal candidates (also for state and local candidates in any state which has enacted campaign spending limitations pursuant to section 104(c) of the Federal Election Campaign Act of 1971):

I hereby certify that ____% of the total charges paid for the use of the time purchased above, including any agent's commission allowed the agent by the station, will not violate the above-named candidate's permissible limit of campaign spending under the provisions of Section 104(a) of the Federal Election Campaign Act of 1971. If I am not the above-named candidate, I further certify that I have given the station a written statement signed by the above-named candidate authorizing me to make the foregoing certification in his behalf.

Date: _____ _____
(Candidate, Supporter or Agent)

LAWS AND REGULATIONS GOVERNING POLITICAL BROADCASTS

From the Communications Act of 1934, as amended by the Federal Election Campaign Act of 1971 (Campaign Communications Reform Act):

Section 312. (a) The Commission may revoke any station license or construction permit—

* * *

(7) for willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy.

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

(1) bona fide newscast,
(2) bona fide news interview,
(3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or
(4) on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto),

shall not be deemed to be use of a broadcasting station within the meaning of this subsection. Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

(b) The charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election, to such office shall not exceed—

(1) during the forty-five days preceding the date of a primary or primary runoff election and during the sixty days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period; and

(2) at any other time, the charges made for comparable use of such station by other users thereof.

(c) No station licensee may make any charge for the use of such station by or on behalf of any legally qualified candidate for Federal elective office (or for nomination to such office) unless such candidate (or a person specifically authorized by such candidate in writing to do so) certifies to such licensee in writing that the payment of such charge will not violate any limitation specified in paragraph (1), (2), or (3) of section 104(a) of the Campaign Communications Reform Act, whichever paragraph is applicable.

(d) If a State by law and expressly—

(1) has provided that a primary or other election for any office of such State or of a political subdivision thereof is subject to this subsection,

(2) has specified a limitation upon total expenditures for the use of broadcasting stations on behalf of the candidacy of each legally qualified candidate in such election,

(3) has provided in any such law an unequivocal expression of intent to be bound by the provisions of this subsection, and

(4) has stipulated that the amount of such limitation shall not exceed the amount which would be determined for such election under section 104(a)(1)(B) or 104(a)(2)(B) (whichever is applicable) of the Campaign Communications Reform Act had such election been an election for a Federal elective office or nomination thereto,

then no station licensee may make any charge for the use of such station by or on behalf of any legally qualified candidate in such election unless such candidate (or a person specifically authorized by such candidate in writing to do so) certifies to such licensee in writing that the payment of such charge will not violate such State limitation.

(e) Whoever willfully and knowingly violates the provisions of subsection (c) or (d) of this section shall be punished by a fine of not to exceed $5,000 or imprisonment for a period not to exceed five years, or both. The provisions of sections 501 through 503 of this Act shall not apply to violations of either such subsection.

(f)(1) For the purposes of this section:

(A) The term "broadcasting station" includes a community antenna television system.

(B) The terms "licensee" and "station licensee" when used with respect to a community antenna television system, mean the operator of such system.

(C) The term "Federal elective office" means the office of President of the United States, or of Senator or Representative in, or Resident Commissioner or Delegate to, the Congress of the United States.

(2) For purposes of subsections (c) and (d), the term "legally qualified candidate" means any person who (A) meets the qualifications prescribed by the applicable laws to hold the office for which he is a candidate and (B) is eligible under applicable State law to be voted for by the electorate directly or by means of delegates or electors.

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

From the Rules of the Commission Governing Radio Broadcast Services. (The foregoing Sections of the Communications Act govern any inconsistences between the following rules and those Sections):

Section 73.120. Broacasts 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 by other method, and

(i) has been duly nominated by a political party which is commonly known and regarded as such, or

(ii) makes a substantial showing that he is a bona fide candidate for nomination or office, as the case may be.

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

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

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

(e) Time of request. A request for equal opportunities must be submitted to the licensee within 1 week of the day on which the first prior use, giving rise to the right to equal opportunities, occurred: *Provided, however,* That where a person was not a candidate at the time of such first prior use, he shall submit his request within 1 week of the first subsequent use after he has become a legally qualified candidate for the office in question.

(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. (Corresponding rules—FM, 73.290; TV, 73.657)

Section 73.112 Program Log:

(a) the following entries shall be made in the program log: * * *

(1)(v) An entry for each program presenting a political candidate, showing the name and political affiliation of such candidate. * * *

(2)(iii) An entry showing that the appropriate announcement(s) (sponsorship, furnishing material or services, etc.) have been made as required by Section 317 of the Communications Act and § 73.119. A check mark will suffice but shall be made in such a way as to indicate the matter to which it relates. * * *

(4)(ii) An entry for each announcement presenting a political candidate, showing the name and political affiliation of such candidate.

(Corresponding Rules—FM, 73.282; TV, 73.670)

INDEX

Political Broadcasts

Subjects listed in this heading relate to specific political broadcast questions in this "Catechism" and are referenced by question number. For general subject headings, see the Table of Contents.

D

E

F

I

L

M

N

O

P

Q

R

S

T

U

W

Z