A CONGRESSIONAL HISTORY OF POLITICAL BROADCASTING REGULATIONS IN THE UNITED STATES

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ABSTRACT

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Since 1927 there has been federal regulation governing political broadcasting in this country. These regulations, now identified as Section 315 of the Communications Act of 1934, are highly controversial and in recent years Congress has come under increasing pressure to deal with problems they have caused.

The rapid growth of television and its subsequent value to the national political campaign has, for the most part, been a major reason for this increased concern. The "equal opportunities" portion of this section requires that if a legally qualified candidate for a elected office is given time on radio or television all other legally qualified candidates for that office must be afforded "equal opportunities" in the use of the broadcasting facility. As a result of this regulation, broadcasters are not disposed to give away free broadcast time to the major parties because it would result in their being required to do the same with the numerous splinter groups. Because of this, the

major political parties in this country must purchase the vast majority of their air time. Today, this expenditure is the single greatest expense of the national and many local political campaigns. At the same time the high cost of the time has made it virtually impossible for the smaller, less affluent political parties to gain nationwide exposure by way of the broadcast media.

Attempts to alter Section 315 have been frequent and varied. A few have been successful. All have been interesting and some deserve closer study.

This, then, is the purpose of this thesis; to provide a detailed Congressional history of the development of the present law. In this way one may gain an understanding of the purposes and ideas behind Section 315, as well as a clearer insight as to the present day problems which it poses.

For the most part the thesis will trace the chronological history of the actions of Congress in dealing with political broadcasting regulation. The sources of material have been the U.S. Congressional Record, various Senate and House documents, Pike and Fischer Radio Regulations, and other pertinent public documents as well as important books dealing with the subject. Five chapters make up the body of the thesis and they deal with the following: first, Section

18 of the Federal Radio Act of 1927, and attempts at amendment; second, its transfer to the Communications Act of 1934 as Section 315, attempts at amendment, and the end of rate discrimination among political candidates in 1952; third, the question of censorship and liability under Section 315; fourth, the 1959 amendment dealing with equal time requirement and its relation to news broadcasts; and fifth, the 1960 joint resolution to permit the "Great Debates" between John Kennedy and Richard Nixon, and its effect on the congressional mood and actions since that time.

In each of these cases I have studied closely the congressional debate and comments. In some cases I have included important actions by agencies outside the Congress. Federal Communications Commission decisions which have influenced congressional activity such as the Lar Daly Decision of 1959 have been included. In the same vein I have included references to court cases, when I felt they were warranted.

The questions surrounding section 315 and its "equal opportunities" requirement are extremely complex and touch basic concepts of our political way of life. Alteration of this regulation would involve conflicts of basic freedom, and rights which throughout our history, have been strictly protected. This thesis, I hope, will aid the reader in understanding these conflicts, as it has the author, and at the

same time present an interesting history of Congress in action in dealing with this section of our law governing broadcasting in the United States.

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INTRODUCTION

Since 1948 a revolution in political campaigning has been taking place in this country. It was that year in Philadelphia that television first poked its long lens into the field of politics. From that day to this, television's role in political campaigns at all levels has grown rapidly, and there is no reason to believe it will not continue.

Broadcasting was not completely unique to politics at that time. Radio had been there for two and a half decades and correspondingly so had government regulation of political broadcasting. In the Federal Radio Act of 1927, Section 18 stated the now well-known doctrine of "equal time" for all "legally qualified candidates." Through the years up to the present day, this idea, now expressed in Section 315 of the Communication Act of 1934, has been the basic philosophy in dealing with political broadcasts.

However, with the recent expansion of the use of television in political campaigning, this philosophy of equal time for all has come under numerous attacks from citizens in various walks of life. The main complaint raised is that stations cannot give free time to the major candidates without being obligated to give equal facilities to all minority candidates who may request them. As a result, recent

national political campaigns have shown an extremely rapid rise in broadcasting expenses.

According to Federal Communication Commission figures for the past three presidential elections, this fact is all too obvious. In 1956 the total approximate cost to all political parties for radio and television time was 7.8 million dollars. By 1960 this figure had risen by 45% to 14.2 million dollars, which was 56% of the total campaign cost for that year.[1] Four years later, during the Johnson-Goldwater campaign, the media time expenditures had sky-rocketed to 24 million dollars, over three times that of 1956. The total cost for both primaries and for general elections that year was a whopping 35 million dollars.[2] Figures like these make it clear that broadcasting has become by far the greatest single expense of any major political campaign held in our country today.

It was these facts that prompted Newton Minow, former Federal Communications Commission head to state in a recent book:

> The most valued asset of representative government is access to public office for the most skilled, best equipped and most dedicated men and women the society produces. Television's soaring costs have created a monumental danger that a dollar-wall will be stretched across ready access to the public air waves. This wall can create obstacles to the most able candidates, while helping the election of the most obligated candidates. Such an event would be a catastrophe.[3]

Mr. Minow is not alone in his concern in this area. Many others, including broadcasters, political figures, and

private citizens, have increasingly begun to debate the relative worth of and reason for Section 315 over the past number of years. A high point in this controversy was experienced by all in the 1960 presidential campaign when as an experiment, Congress, by joint resolution, temporarily suspended Section 315 to permit debates between the Republican and Democratic presidential candidates. However, the suspension was only temporary and studies of its results are still being examined and debated.

Aside from the main requirement of equal time for political candidates, Section 315 also contains a controversial portion dealing with censorship and liability. Over the years much confusion and misunderstanding had arisen from this question. As originally passed, Section 315 denies the broadcaster the right to censor any political speeches which he allows over his facilities. Controversy developed, however, over whether or not the broadcaster could be held liable for statements made within these speeches. A basic question in dealing with this problem was one of state rights, in that: could the Federal government, through the Federal Communications Commission, override the individual state libel laws and hold that the broadcasters are not liable for statements over which they have no control by law? Although repeated legislative attempts to correct this problem failed, a recent Supreme Court ruling has cleared up the legal question.

The interesting aspects of the controversies over Section 315 today are that they are not new. They have existed from the act's inception, yet it has been mainly since the development of the powerful and expensive role of television in politics that they have seemed so urgent and important. It is, therefore, necessary to take an extensive look into the legislative history of this action dealing with political broadcasting regulation and attempt to get an exact idea of what the men who wrote it had in mind at the time. It is important to realize that without a keen insight into the original thinking behind a certain piece of legislation, a comprehensive and rational evaluation of its present day merits is impossible.

The purpose then of this thesis will be to study closely the legislative development of Section 315; to trace its development from Section 18 of the Federal Radio Act of 1927, through its transfer to Section 315 of the Communications Act of 1934 and its subsequent amendment in 1953, 1959, and 1960; and to study important unsuccessful attempts at amendment. At the same time, the paper will look closely at the Federal Communications Commission decisions and court cases and their impact on legislative action.

My hope is that the study will provide a clearer understanding of the underlying political and social philosophy involved; will enable the reader to perceive the basic philosophical conflicts which have arisen over Section 315,

and will open his eyes to the legislative trends and changes made necessary by the growth and increased importance of the broadcast media in our political life. And finally, it will aid the reader in understanding and forecasting possible future legislative action in the field of political broadcasting.

Congress most certainly will soon be facing basic decisions regarding Section 315. A study of their past actions can provide a more complete insight into their concerns and problems. This look into the legislative history of Section 315 then, I hope, will aid in the understanding of those events to come and the congressional decisions which will shape the future of political broadcasting and as a direct result the future of political campaigning in the United States.

FOOTNOTES - INTRODUCTION

1. Federal Communications Commission, 27th Annual Report (Washington: U.S. Government Printing Office, 1961), p. 44.

2. Federal Communications Commission, 31st Annual Report (Washington: U.S. Government Printing Office, 1965), p. 88.

3. Newton N. Minow, Equal Time: The Private Broadcaster and the Public Interest, Lawrence Laurent (ed.) (New York: Atheneum Press, 1964), p. 33.

CHAPTER I

THE BEGINNING OF POLITICAL BROADCASTING REGULATION 1910 - 1933

Prior to 1927, regulation of radio communication in the United States was limited, and legislation dealing specifically with the political use of radio was nonexistent. Section 3, however, of the Interstate Commerce Act of 1888, read that it was unlawful for a common carrier to "make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."[1]

In 1910, the Mann-Elkins Act amended this so as to make its provisions, including Section 3 above, applicable to the transmission of messages in interstate commerce by wire or wireless. The following year the Interstate Commerce Commission decided, after a series of hearings, that Section 3 among others of the 1888 act as amended were applicable to the communication companies.[2]

Although this section does not mention broadcasting, candidates for political office, or political parties, one can hardly ignore the fact that the principle of fair play set forth here is similar to the "equal opportunities" principle which was to follow.

The 1924 presidential campaign was the source of a number of complaints directed towards radio's handling of political events. The Radio Corporation of America was accused of censoring speeches of political orators, a charge which was promptly denied. The New Republic Magazine, November 19, 1924, pointed out inequalities in the amount of radio time available to each party. In Congress, Representative Emanuel Celler complained that the American Telephone and Telegraph Company asked him to pay $10.00 a minute for air time and that he had "no knowledge that candidates of the opposing party were asked to pay the same amount for the same use."[3]

From the industry itself came the call of David Sarnoff for responsible broadcasting practices as well as legislative safeguards:

> . . . where a broadcasting station performs a function of public service, or as a common carrier, and charges for the service it renders at that station, it should open its doors to all who may have a legitimate right to use it, and that type of station should be subject to Government regulations both as to rates, character of service, and license . . . so powerful an instrument for good should be kept free from partisan manipulations.[4]

Section 18 of the Federal Radio Act of 1927

These criticisms were closely related and in 1927 became the focus of Section 18 of the Federal Radio Act of that year. This act, the first major piece of broadcasting regulation, was born in the House of Representatives as House Bill number 9971 on March 3, 1926.[5] The real development of Section 18 dealing with equal time and political speeches began with an amendment introduced in the Senate when H.R. 9971 was presented to that body for consideration.

As it appeared before the Senate, Section 4 of H.R. 9971 read in part as follows:

> . . . If any licensee shall permit a broadcasting station to be used as aforesaid, or by a candidate or candidates for any public office, or for the discussion of any question affecting the public, he shall make no discrimination as to the use of such broadcasting station, and with respect to said matters the licensee shall be deemed a common carrier in interstate commerce: Provided, That such licensee shall have no power to censor the material broadcast.[6]

On Tuesday, June 30, 1926, Senator Dill, who had reported the bill out of the Committee on Interstate Commerce seven weeks earlier, began discussion on an amendment that he was planning to propose for Section 4 at the proper time. Senator Heflin had brought up the subject with the statement that he felt that ". . . the conditions ought to be absolutely fair; if a Republican has a speech he wants to broadcast, let him do it and say what he pleases, and let a Democrat do likewise."[7]

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Senator Dill replied that in committee this proposal to treat broadcasters as common carriers when they were dealing with political broadcasts or debatable issues had ". . . caused more objection to the bill than probably all the other provisions combined . . . we finally agreed to it in order, I think, to get the bill out of the committee. After we got it out we realized that the 'common carrier' phrase was an unwise phrase, to say the least, at this time . . ."[8]

Following this exchange, Senator Dill read the amendment which he was prepared to put formally before the Senate. The Dill Amendment struck out of H.R. 9971 the above quoted part of Section 4 and replaced it with the following:

> . . . If any licensee shall permit a broadcasting station to be used by a candidate or candidates for any public office, he shall afford equal opportunities to all candidates for such office in the use of such broadcasting station: Provided, That such licensee shall have no power to censor the material broadcast under the provisions of this paragraph and shall not be liable to criminal or civil action by reason of any uncensored utterances thus broadcast.[9]

Earlier, in the House, Representative Johnson had introduced an amendment which was similar in principle; it read ". . . equal facilities and rate, without discrimination, shall be accorded to all political parties and all candidates for office, and to both the proponents and opponents of all political questions or issues."[10] However, that amendment had not come to a vote because a point of order that it was not pertinent to the section to which it had been attached, was sustained by the House Chairman.[11]

After Senator Dill read his proposed amendment, Senator Davis asked that remarks on the bill as before the Senate be read into the record. These remarks expressed his support for such an amendment and were in part as follows:

> . . . the broadcasting field holds untold potentialities in a political and propaganda way; its future use in this respect will undoubtedly be extensive and effective.
> . . . There are no provisions in this bill or in the existing radio law providing for the regulation of rates or services or requiring equal treatment to citizens . . . there is nothing to prevent a broadcasting station from permitting one party or one candidate or the advocate of a measure or a program or the opponent thereof to employ its service and refuse to accord the same right to the opposing side.[12]

The following day, Wednesday, July 1, 1926, Senator Dill formally presented his amendment for the consideration of the Senate. The debate that followed immediately after the Chief Clerk's reading questioned the intent and possible effect the amendment would have on political broadcasting activities. First, in reply as to why the common carrier wording was deleted, Senator Dill stated: ". . . That was put in . . . after considerable discussion, and there has been a rather general agreement among the members of the committee that it was an unwise phrase to use because of the present state of development."[13]

Here we get an idea of the committee's concern for radio and its proper and healthy development. The Senators were afraid that if a station were treated as a common carrier in dealing with candidates as well as public questions, it would be constantly swamped with obligations to

broadcast political and public question programs. As a result, radio programming and scheduling development as well as growth would be greatly impaired.

By far the greatest portion of the debate centered around the clarification of the "equal time" provision. It was Senator Cummins contention that it was the station's duty to provide, without discrimination, the service that was asked of it by politicians; in other words that it should be a common carrier. He concluded his comments thus, provoking a debate on the point in the following manner:

> Mr. Cummins. The amendment which is now proposed is one, in my judgement of pure form and will lead to some misinterpretation and misunderstanding, for whenever we say that the service must be rendered without discrimination we have made that agency a common carrier.
>
> Mr. Dill. There is the difference that under the common carrier provision a radio station is compelled to take any kind of broadcasting that anybody wants to offer, which would mean that it would take anybody who came in order of the person presenting himself and would be compelled to broadcast for an hour's time speeches of any kind they wanted to broadcast. This provision simply says that if a radio station permits one candidate for a public office to address the listener it must allow all candidates for that public office to do so, and to that extent there must be no discrimination.
>
> Mr. Cummins. I think there is something in the statement of the Senator from Washington that the broadcasting station is made a common carrier as to all candidates for office.
>
> Mr. Dill. If it permits one candidate--but it need not permit any candidate. In otherwords, a station may refuse to allow any candidate to broadcast; but if it allows one candidate for governor to broadcast, then all candidates for governor must have an equal right; but it is not required to allow any candidate

> to broadcast . . . It can regulate, but it can not discriminate under this provision . . .
>
> Mr. Cummins. Of course, the Senator understands that the effect of the amendment now offered is to deny to all candidates the use of the broadcasting station.
>
> Mr. Dill. Unless it permits one candidate to use it.
>
> Mr. Cummins. But the Senator knows that if it permits one there will be enough others to insist upon the use of the service to take up all the time of the broadcasting stations.
>
> Mr. Dill. I will say to the Senator that at present they are not required to allow anybody to speak over the radio. Under the House bill they can allow one man to speak and forbid everybody else to speak. I felt that was not the proper thing. If a station permitted a candidate for Congress to broadcast, then other candidates for Congress should have an equal right.
>
> Mr. Cummins. My own view of it is that this must become a common carrier service. I think that all the rules we apply to common carriers must finally apply to this particular agency . . . I am not going to develop that though, because it would delay the consideration of the bill; it is obvious to me that if we are going to allow it to be used for political purposes at all, it will become a common carrier as to political service, and the Senator is simply providing a situation in which broadcasting will be denied to political candidates.
>
> Mr. Dill. It is now if the broadcasters see fit to deny it. I think it would be better to deny it altogether than to allow the candidate of one party to broadcast and the candidate of the other party not to be able to secure the same right.[14]

It is important to note here that debate over the "equal time" concept centered around the premise that it was not strong enough. As Senator Cummins pointed out, he was in favor of making radio a common carrier in this respect. Senator Dill, on the other hand, was firm in his idea that

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broadcasters would not be able to operate and grow if bound by common carrier regulations. In this sense, Senator Dill's amendment was a softening, more lenient restriction placed on the young broadcasting industry.

However, although he had the broadcasters' welfare in mind, he was also very firm in his belief that if one candidate was allowed or given time then all other candidates had an "equal right." In other words, Senator Dill felt that if one candidate was given the freedom to speak over radio, then all candidates should have equal freedom. In this respect the Senator was attempting to preserve the candidates' basic right to free speech and equality of opportunity and at the same time preserve in part the broadcasters' right to determine his own programming policies. He clearly demonstrated this when, referring to broadcasting, he said they "can regulate, but . . . not discriminate."

In this respect Senator Dill was very concerned that the American public be allowed to hear over radio all political voices or none. At the same time he believed that it was the right of all candidates regardless of party affiliation or basic beliefs to be treated fairly and not discriminated against or censored by broadcasters. This basic philosophy of protection of all political ideas, popular or unpopular, is fundamental in our society. Justice Douglas puts it into better words by saying:

> Full and free discussion has indeed been the first article of our faith. We have founded our political system on it. It has been the safeguard of every religious, political, philosophical, economic, and racial group among us. We have counted on it to keep us from embracing what is cheap and false; we have trusted the common sense of our people to choose the doctrine true to our genius and to reject the rest. This has been the one single outstanding tenent that has made our institutions the symbol of freedom and equality. We have deemed it more costly to liberty to suppress a despised minority than to let them vent their spleen. We have above all also feared the political censor. We have wanted a land where our people can be exposed to all the diverse creeds and cultures of the world.[15]

The equal time legislation was designed to protect this free and full discussion over radio for all political candidates, if one was given the right. A broadcasters' right to determine whether or not to allow this type of program is not censorship. It would be, however, if he allowed one candidate to speak and not another, for then he would be using the public airwaves to voice exclusively one opinion while censoring or discriminating against the other.

John Stuart Mill expressed his belief on the importance of protecting all opinion, popular or not, thusly:

> If all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind . . . The peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; posterity as well as the existing generation: those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth; if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error.[16]

Later in the debate (to which reference has been made above) Senator Foss asked a question covering non-political appearances by a candidate. This is a question pinpointing a problem area which today is still clouded with misunderstanding and apparent inconsistency in Federal Communications Commission decisions.

> Mr. Foss. . . . It would appear to me from the first part of the paragraph, beginning with line 5, the amendment would mean this, although I am sure the Senator does not intend to write this meaning into the amendment; that an individual being a candidate for an office, Senator of the United States, for example, might be invited to speak somewhere on the occasion of some great celebration where what he was going to say would be broadcasted. He would not talk on the subject of politics at all, he might be talking on something entirely free from his interests, but in the interests of the community at large. I read in this amendment that he could not accept the invitation to speak over the radio unless the candidate who might be running against him in the same election would be invited likewise to speak. I know the Senator from Washington does not mean so to provide.
>
> Mr. Dill. . . . I recognize that the construction stated by the Senator from Ohio might be put upon the amendment; but, if the Senator will examine the amendment, he will find that following this provision is the statement that the Commission shall make rules and regulations to carry out the provision. It seemed to me to be better to allow the Commission to make rules and regulations governing such questions as the Senator has raised rather than to attempt to go into the matter in the bill.[17]

Senator Howell followed this exchange with a lengthy explanation of his observations on the desirability of treating all controversial public issues equally.

> Mr. Howell. . . . radio affords such a unique facility of publicity that one has to think very carefully lest he go astray, thinking of newspapers and reasoning by

> analogy. This vehicle for publicity is entirely different from any other with which we are familiar. We have tens of thousands of newspapers, magazines, and other publications, but there is now from necessity, and will be hereafter, only a limited number of radio stations . . .
>
> * * *
>
> We are familiar with the results of propaganda, its dangers and its advantages; and the question which we are called upon to settle now is how the public may enjoy the advantages of broadcasting and avoid the dangers that may result therefrom. It must be recognized that, so far as principles and policies are concerned, they are major in political life; candidates are merely subsidiary. We recognized that fact when this bill was formulated, and provided that if a radio station allowed the discussion of a public question it must afford, if requested, an opportunity to present the other side.[18]

Senator Howell continued with his opinions on the original provision in Section 4 of H.R. 9971 which would have considered stations as common carriers when political speeches or public questions were being aired:

> Mr. President, to perpetuate in the hands of a comparatively few interests the opportunity of reaching the public by radio and allowing them alone to determine what the public shall and shall not hear is a tremendously dangerous course for Congress to pursue . . . Are we to consent to the building up of a great publicity vehicle and allow it to be controlled by a few men, and empower those few men to determine what the public shall hear?
>
> It may be urged that we do that with the newspapers. Yes, that is true; but anyone is at liberty to start a newspaper and reply. Not so with a broadcasting station . . . If any public question is to be discussed over the radio, if the affirmative is to be offered, the negative should be allowed upon request also, or neither the affirmative nor the negative should be presented.
>
> We furthermore provided in this bill that if one candidate was allowed to address his constituency his opponents should be allowed to make addresses also, and if all could not have this privilege then no one should have the privilege. Is not that fair and just?

> Mr. President, if all candidates can not be heard, none should be heard. If both sides of a question can not be heard over a particular radio station, none should be heard. I can not emphasize this too strongly. It is a matter of tremendous importance, because every day radio is reaching more and more homes . . .[19]

Finally, after the debate had subsided and all sides had been heard, a vote was taken and the Dill amendment was accepted.[20]

The next day, July 2, 1926, the question on the bill itself was called, the vote taken and H.R. 9971 passed the Senate. Senator Waters then moved that the Senate insist upon its amendment and asked for a conference with the House to iron out the differences in the two versions of the bill.

It wasn't until the next year at the second session of the 69th Congress that the conference report was ready for presentation. The report (H. Report 1886) was submitted in the House on Thursday, January 27, 1927, and was brought up for debate two days later. On the matter of political broadcasting, the conferees had made certain changes in the language of the Dill amendment and had placed it in the bill as Section 18. The section as presented by the conferees read as follows:

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

> any licensee to allow the use of its station by any such candidate.[21]

A short debate followed concerning this section:

> Mr. Blanton. Suppose there are two candidates, one a rich man and one a poor man, and the corporation charges for services one candidate $5,000, a sum that the poor man can not pay. Is that giving them an equal chance?
>
> Mr. Scott. No; I think the bill preserves to the commission the authority to prevent any discrimination.
>
> Mr. Blanton. That would be discrimination.
>
> Mr. Scott. Absolutely.[22]

Later that day, following further debate on other sections of the bill, the House agreed to the compromise bill as presented in the conference report.[23]

On Monday, January 31, 1927, the conference report (Senate Document Number 200) was submitted to the Senate. Two and a half weeks later, on February 18th, it was brought forth for debate. Senator Howell had his opinions on Section 18 as agreed to by the conferees and had no hesitation about voicing them:

> Mr. President, it will be noted that under the provisions of this latter section (Section 18) if a candidate is allowed to use a station, other candidates for the same office must be allowed the same privilege, however, if a representative of a candidate is allowed to use a station, there is no provision that the representatives of other candidates must likewise be allowed to broadcast. Moreover, as to public questions, censoring discrimination generally and declaring the licensee to be a common carrier, this substitute section is silent.[24]

But despite the misgivings of Mr. Howell on Section 18 and of others on various sections of the conference bill,

a final vote showed a majority of the Senate agreeable to the conference report. The first major radio legislation had passed Congress, and with it, Section 18.[25] On February 23, 1927 the signature of President Coolidge made it official and the Federal Radio Act of 1927 was made law.[26]

Unsuccessful Attempts to Amend Section 18

Following five years of rapid industry growth, Section 18 of the Federal Radio Act of 1927 and radio regulations in general once more came under the close scrutiny of Congress. The result was a bill to amend the 1927 act, which passed both Houses of Congress in March of 1933, but was subject to a pocket veto by President Hoover.[27] It is included here because of the interesting concepts which it proposed as a change to Section 18. It should be noted that a portion of the ideas stated in this bill would be enacted in future legislation.

The bill, H.R. 7716, as first introduced and passed by the House, left Section 18 untouched. On Tuesday, February 11, 1932, it was presented to the Senate. After two readings it was referred to the Committee on Interstate Commerce.[28] Almost a month later, on April 14, 1932, Senator Dill submitted the committee's report (Senate Report #564) upon the bill. In Committee a Section 14 was added; it struck out Section 18 and replaced it with a longer section having several additional features. In dealing with equal opportunities for candidates Section 14 stated:

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

Section 14 kept two principles found in Section 18. First, that there was need of an authority to make rules to carry out the provisions of the section and second, that the stations were not obligated to allow candidates to use their services. A final section, however, added a new thought:

> The rates charged for the use of any station for any purpose set forth in this section shall not exceed the regular rates charged for the use of said station to advertisers furnishing regular programs, and shall not be discriminatory as between persons using the station for such purposes.[29]

In the explanation of Section 14 the Committee said that it was added for the purpose of "extending the equality of treatment requirement of political candidates to supporters and opponents of candidates, and public questions before the people for a vote."[30]

Before debate on this bill could begin, however, a motion by Senator Couzens sent it back to the Committee on Interstate Commerce.[31] When the 2nd Session of the 72nd Congress convened Senator Dill again brought forth H.R. 7716 and submitted a committee report (S. Report #1044).

But once again, on January 3, 1933, upon the request of Senator Couzens, the bill was recommitted to the Committee

on Interstate Commerce.[32] When the next committee report (S. Report #1045) was submitted by Senator Dill on January 11, there appeared a slight change in Section 14. Following the words "or in the presentation of views on a public question to be voted upon at an election" was added "or by a governmental agency."[33]

On Friday, February 10, Senator Dill called for the consideration of H.R. 7716 by the Senate. Section 14 was read in its order and passed without debate; and, following the reading of the entire bill and debate dealing with other sections, H.R. 7716 was read for the third time and passed by the Senate.[34] The next day the House formally disagreed with the Senate amendments and called for a conference.

The conference report (House Report 2106) was submitted Saturday, February 25th, 1933, in the House. In dealing with Section 14 the committee recommended that: "The House secede from its disagreement to the amendment of the Senate . . . and agree to the same with an amendment as follows . . . strike out 'or by a governmental agency' (added in Senate Report 1045)." It also called for the addition of a sentence which would state: "Furthermore, it should be considered in the public interest for a licensee, so far as possible, to permit equal opportunity for the presentation of both sides of public questions."[35]

Some discussion on Section 14 of the bill followed. Mr. Stafford pointed out that it banned, "for all time the

right of these broadcasting stations and particularly those controlled by newspapers, from holding up members of Congress for higher rates than are charged to advertisers furnishing the regular programs."

Mr. Davis followed with a statement which expressed his gratitude that Section 14 was "considerably broader" than the existing legislation regulating political broadcasting. He then called for the adoption or rejection of the conference report. The report was agreed to by the House.[36]

On Tuesday, February 28th, the same conference report was submitted to the Senate by Senator Dill. In the discussion that followed, Senator White expressed his wholehearted disapproval of the section as reported by the conference committee. For one thing, Senator White pointed out, "it leaves to implication or to construction entirely whether or not the present section is intended to repeal Section 18 of the existing law." Also, in discussing the part of the section dealing with rates, Senator White complained that, "if (the rule) is to be enforced, (it) involved a determination as to what are regular programs, and . . . what are the regular rates charged for such regular programs." He further pointed out that under the then existing law neither were there means for filing of rates, nor was there control over the rates charged, and that "there (was) no authority in the present law to make effective this provision."[37]

In defending Section 14 Senator Dill stated:

> We have found in actual experience that some radio stations have charged candidates for office a higher rate for the time used for making a political speech than they charge advertisers. The committee believes that public discussion is of such interest that it is but a fair requirement to say that they should not charge any higher rate when a candidate speaks than when an advertisement of some kind is going over the air. That is not fixing of rates; that is a provision for equality of treatment of public candidates as compared to advertising clients who may come to the radio station.

Following this statement Senator Dill moved for the adoption of the report, and after some debate not concerning Section 14 the report was agreed to in the Senate.[38]

On March 1, 1933 H.R. 7716 was presented to President Hoover for his approval. Section 14 of that bill as sent to the President read in full:

> (a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such station and if any licensee shall permit any person to use a broadcasting station for public office, or in the presentation of views on a public question to be voted upon at an election, he shall afford equal opportunity to an equal number of other persons to use such station in support of an opposing candidate for such public office, or to reply to a person who has used such broadcasting station in support of or in opposition to a candidate or for the presentation of opposite views on such public question. Furthermore, it shall be considered in the public interest for a licensee so far as possible, to permit equal opportunity for the presentation of both sides of public questions.
> (b) The commission shall make rules and regulations to carry this provision into effect. No such licensee shall exercise censorship over any material broadcast in accordance with the provisions of this subsection. No obligation is imposed upon any licensee to allow the use of his station by any candidate, or in support of

> or in opposition to any candidate, or for the presentation of views of any side of a public question.
> (c) The rates charged for the use of any station for any of the purposes set forth in this section shall not exceed the regular rates charged for the use of said station to advertisers furnishing regular programs, and shall not be discriminating as between persons using the station for such purposes.[39]

On March 4, 1933, the bill was killed by a pocket veto by President Hoover.[40] This veto only temporarily halted the attempts to revise broadcasting legislation for, as we shall see, major communications legislation was just around the corner.

Prior to this, however, another unsuccessful attempt at legislative change was to take place. It would have broadened the regulation for fair treatment or non-discrimination towards political candidates to include "any religious, charitable or educational company, corporation, association, or society or any other like association."[41] This bill, H.R. 7986, introduced to the House by Representative McFadden on February 14, 1934, carried a penalty of a $500 - $5,000 fine and possible loss of a license to any station which willingly discriminated against or in favor of any of these groups to the exclusion of another with an opposing view.

Interest in this type of legislation, unsuccessful though it was, arose with the politicians' realization that they could use broadcasting for other reasons than campaigning. They found it, for instance, to be a very effective aid

to explain certain stands they had taken, a means to publicize their idea on governmental policy, and an effective way to influence public opinion. In the late 1920's and early 1930's, concern on the part of individuals and groups began to grow. At that time a group of anti-Hoover Senators raised the question because they feared that the radio people would favor the Hoover administration.[42] Also at about this same time, Congress was faced by a demand by the Jehovah's Witnesses for radio time to preach its doctrine, after the National Broadcasting Company had withdrawn its facilities because of an intemperate attack made by the "Witnesses" upon other churches. With their failure to get the desired regulations out of the Federal Radio Commission, the "Witnesses" brought their demands to Congress resulting in bill H.R. 7986.[43]

Consequently in the Senate a much broader and all inclusive bill S. 2910 was introduced. This bill would have required the broadcaster to air material equally for all points of view on all subjects "so far as possible."[44] Although neither of these bills made it out of their respective committees, the principle of fair treatment to all responsible points of view was later placed into broadcasting legislation and today is known as the "fairness doctrine."

As the decade of the 1930's progressed, the rapid development of the broadcasting industry caused our Senators and Representatives in Congress to take second looks at the

Federal Radio Act of 1927, the Federal Radio Commission, and Section 18. As the industry grew, so did our lawmakers' concern that a proper and efficient set of regulatory laws exist to protect the public and to insure the proper use of their airwaves. The results of their concern was to be the Communications Act of 1934.

FOOTNOTES - CHAPTER I

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5. Ibid., Part 5, p. 4956.
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7. Op. cit., Cong. Rec., LXVII, p. 12356.
8. Ibid., p. 12358.
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14. Ibid., Radio Regulations, pp. 719, 720.
15. Dennis v. United States, 341 U.S. 494 (1951), pp. 584, 585.
16. John Stuart Mill, On Liberty (Oxford: Basil Blackwell, 1946), pp. 14, 15.
17. Op. cit., Radio Regulations, p. 721, and also Cong. Rec., Part 11, p. 12503.
18. Ibid., Radio Regulations, pp. 721, 722, and also Cong. Rec., pp. 12503, 12504.
19. Ibid.

20. Op. cit., Cong. Rec., Part 11, p. 12505.

21. U.S., Congressional Record, 69th Cong., 2nd Sess., 1927, LXVIII, Part 3, p. 2561, also House Document No. 1886, and Senate Document No. 200, 69th Cong., 2nd Sess.

22. Ibid., p. 2567.

23. Ibid., p. 2580.

24. Ibid., Part 4, p. 4125.

25. Ibid., Part 4, p. 4155.

26. Ibid., Part 5, p. 4938.

27. U.S., Congressional Record, 72nd Cong., 1st Sess., 1932, LXXV, Part 5, p. 5397.

28. Ibid., Part 4, p. 3735.

29. U.S. Congress, Senate, Report on Public Bills, Vol. I, 72nd Cong., 1st Sess., 1932, Rept. #564.

30. Ibid., p. 10.

31. Op. cit., Cong. Rec., Part 9, p. 10049.

32. Ibid., Part 2, p. 1181.

33. U.S. Congress, Senate, Report on Public Bills etc., 72nd Cong., 2nd Sess., 1933, Rept. #1045.

34. U.S., Congressional Record, 72nd Cong., 2nd Sess., 1933, LXXVI, Part 4, pp. 3767-3770.

35. Ibid., Part 5, p. 5037.

36. Ibid., p. 5039.

37. Ibid., p. 5210.

38. Ibid., p. 5212.

39. U.S. Congress, House, Report on Public Bills, 72nd Cong., 2nd Sess., 1933, Rept. #2106.

40. Op. cit., Cong. Rec., p. 5397.

41. U.S., Congressional Record, 73rd Cong., 2nd Sess., 1934, LXXVIII, Part 4, p. 3544.

42. Elmer E. Smead, Freedom of Speech by Radio and TV. (Washington, D.C.: Public Affairs Press, 1959), p. 53.

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CHAPTER II

SECTION 315 AND ATTEMPTS AT AMENDMENT

1934 - 1956

In 1934 Congress enacted the most important piece of Federal legislation in the field of broadcast law. The Communications Act of 1934 replaced the earlier Federal Radio Act of 1927, and with amendments thereto, remains today the law governing broadcasting in the country. Easily the most noted achievement of this act was the formation of the Federal Communications Commission, to police and regulate all fields of communication.

In dealing with political broadcasting regulations, the bill was less dramatic. In fact the end result was the direct transfer of Section 18 from the older act to the new, as Section 315.

This famous piece of communications legislation began in the Senate as Senate Bill #3285. It was introduced to that body by Senator Dill on April 4, 1934, and was referred immediately to the Committee on Interstate Commerce.[1] As introduced, S. 3285 contained the same provisions as the earlier House Bill H.R. 7716 concerning political broadcasting. These included the provision for extending the equal

time principle to supporters and opponents of candidates, or public questions. It also contained a section that would prevent rate discrimination against political speakers.[2]

On Thursday, April 18th, Senator Dill presented before the Senate the committee report on S. 3285. Section 315 of this legislation dealt with political broadcasting. In explanation the committee said, "Section 315 on facilities for candidates for public office is a considerable enlargement of Section 18 of the Radio Act of 1927 . . . It is identical with the provisions of H.R. 7716 of the 72nd Congress which passed both houses."[3]

S. 3285 was formally presented for the consideration of the Senate on May 15th. After considerable debate over a variety of provisions, mostly regarding the creation of the new commission, the bill was passed; and with it, undebated, Section 315.[4]

On Monday, April 21, 1934, S. 3285 was placed before the House and referred to the Committee on Interstate and Foreign Commerce for review and opinions.[5] Eleven days later, Mr. Rayburn brought the bill from the committee with an amendment. The committee report (H. Report 1850) showed that a drastic change in Section 315 had been made. In fact it was completely eliminated from the bill. The committee comment of this change was as follows:

> The amendment of this committee eliminates this title (Number III of which Section 315 was a part) from the bill and substitutes a provision which transfers to

> the new commission all the functions of the Federal Radio Commission, but leaves the provisions of the Radio Act of 1927, as amended unchanged and adds no provisions to supplement that act.[6]

On June 2, 1934 the House passed S. 3295 and without debate had restored Section 18 to its 1927 style and content. Following the passage, the House insisted upon its amendments, and appointed conferees. Two days later the Senate did likewise.[7]

The committee's conference report was presented before both Houses of the Congress on Saturday, June 9, 1934. As presented in the House by Mr. Rayburn, House Report #1978 did not alter the House action which left Section 18 as it was; it did, however, place it intact as Section 315 into the new bill.[8]

Most of the debate following the report centered around the new Federal Communications Commission and the common carriers. Finally Mr. Rayburn moved that the House adopt the conference report; the question was asked and passed by a vote of 58 ayes and 40 noes. A point of order that a quorum was not present was raised, then withdrawn, and the conference report was formally agreed to in the House.[9] In the Senate, following a very short debate by Senators King and Dill on jurisdiction over public utilities, the conference report was accepted.[10] On June 14, 1934, carrying the signatures of House speaker Henry Rainey and Vice President John N. Garner, S. 3285 was presented to

President Roosevelt. Four days later the President expressed his approval by adding his signature to the bill, and the Communications Act of 1934 was law.[11]

As for political broadcasting regulations, for the second time in as many years, attempts to revise Section 18 were unsuccessful, and it remained unchanged. It was to remain this way for another eighteen years, until 1952. In that year Congress and the President were to agree on a bill which would enact the provisions concerning the prevention of rate discrimination which, as discussed above, was killed in the House Committee on Interstate and Foreign Commerce in 1934. Prior to this 1952 amendment, however, several unsuccessful yet interesting attempts at change took place.

First Attempts to Amend Section 315

In August of 1935 two bills were introduced in the House of Representatives with the purpose of broadening Section 315. The first of these bills introduced by Mr. Scott, H.R. 9230,* would have required broadcast stations to make available on a regular basis, attractive periods of time for the free and full discussion of public issues. It would also have required that all speakers on such issues be given equal treatment, and that the licensees could not be held liable or responsible in local courts for any remarks made during these broadcasts.[12]

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*See Appendix A for full text.

The other bill introduced by Mr. Scott, H.R. 9231,* would have placed an additional subsection to Section 315, which would be administrative in nature and would outline the stations' record keeping function in dealing with broadcasts falling under this regulation. Among other things, it would have required the stations to keep complete and accurate records of political broadcast requests and rejections which were to be open to reasonable public inspection.[13]

Although these proposed law changes never proceeded out of committee, the attitude of concern expressed by Mr. Scott cannot be overlooked. Many lawmakers shared similar feelings then and still do today. In asking for consideration of his bills Mr. Scott stated:

> Section 315 in its present form is unsatisfactory from the standpoint of the industry as well as the public . . . The provision has . . . favored the party or person with the largest war chest to the prejudice of minority groups and individuals of small means . . . It is believed that all stations as an incident of the right to operate as public callings under Federal franchises should be required to devote certain periods to political broadcasts without profit or censorship.[14]

Four years later in the first session of the 76th Congress these same bills were proposed in the United States Senate as S. 635 and S. 636. The results however, were the same as those of their House counterparts of four years earlier.

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*See Appendix B for full text.

The White Bill of 1947

On May 23, 1947, the "White Bill," S. 1333, was introduced in the United States Senate. This bill, which in essence would be a complete overhaul of the Communications Act of 1934, was the culmination of a series of attempts by Senators White, Wheeler and others to rewrite broadcasting regulations. The purpose of S. 1333 was, according to Senator White, "to clarify the meaning and intent of the existing act and to rectify some of the defects which have become obvious during the past twelve years of administration of the law."[15] Section 15* of this bill amended Section 315, and Section 17** would have added two new Sections, 330 and 331. The amendment of Section 315 was a lengthy one, spelling out the regulations in extreme detail. It kept all the existing principles but went further by extending the equal opportunity principle to official representatives of a candidate, to officials of a regularly organized political party, and to persons supporting or opposing any public measure requiring a vote. At the same time it prohibited use of broadcasting stations by any persons for or against any candidate except (1) by a legally qualified candidate for the same office, (2) by a person so designated in writing by the candidate, or (3) by a representative of a regularly organized

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*See Appendix C for text.

**See Appendix D for text.

political party. In addition to this, Section 15 also prohibited the broadcasting of any political material for a period of twenty-four hours before and extending through the day of an election. The problem of station liability was met by a section to exempt the broadcaster from any libel, slander, invasion of right of privacy, or any other similar complaint under any state, Federal, territorial, or local law for statements made during broadcasts governed by Section 315. Finally, Section 15 defined in detail what was meant by "equal opportunities."

Hearings on this bill before a subcommittee of the Senate Committee on Interstate and Foreign Commerce in June of 1947 brought forth vast disapproval from the broadcasters, network officials and officials of the National Association of Broadcasters. Most of them complained that the amendments were too confusing. The opinion of Frank Stanton of Columbia Broadcasting System was typical:

> . . . it is impossible to legislate fairness. I am convinced that no mathematical formula, no matter how detailed, will insure that result. Because of a multitude of uncontrollable factors, available listeners and actual listeners vary from hour to hour, day to day, and week to week, so also are there differences in delivery, content and personality among speakers.
>
> In an effort to plug all possible loopholes, the detailed provisions of the proposed Section 315 might well have the effect of inducing a large number of stations to refuse to carry political broadcasts at all. The minutiae of the proposed regulations are such as to cause any broadcaster to wonder whether it is possible in the course of a political campaign to avoid unintentional violation of some prohibition . . . I recommend that Section 315 of

> the Act, as well as of the bill be eliminated because it is unworkable as a practical matter.[16]

The first of the two new sections, #330, which Section 17 of the bill would have added to the Communications Act of 1934, dealt with the broadcasting of controversial issues, and public questions not covered by Section 315. It provided that a station had to provide time for the broadcasting of both sides of any public question raised or commented on over the air. It also stated that the station or Commission had no power of censorship over this material, provided that the material did not advocate the overthrow of the United States Government by force or violence. Finally it stated that the station was entitled to an accurate copy of material to be broadcast in sufficient time to check it as it would not be required to broadcast any material which might subject it to "liability for damages or to penalty or forfeiture under any local, state, or federal law or regulation."

The second section added dealt with the requirement of announced indentification of all political or public presentations which were covered by Sections 315 or 330.

These sections drew as much criticism as the first from the industry spokesmen. Mr. Stanton again voiced his opposition.

> . . . A speaker in reply seldom limits himself to exactly the same points made by the original speaker. If broadcasters attempt to confine a speaker in reply to the points raised by the original speaker, we would soon hear the cry of censorship. If broadcasters do

> not attempt this kind of control--and I do not for a moment think they should--then if A speaks upon a question and time is given to B and C to reply, both B and C may make new points which would require replies from D and E and from F and G. The requirement for twice the number of replies results in a geometric progression which would, conceivably, exhaust the entire broadcast schedule of the station.[17]

It is obvious that a majority of congressmen were not willing at that time to accept the ideas of S. 1333. The bill, following the committee hearing, was never acted upon, and as a result Section 315 remained unchanged in form and principle.

The End of Rate Discrimination - 1952

Four years later, however, in June 1952, a bill (S. 658) was brought to the floor of the House of Representatives which eventually would contain the first successful addition to Section 315 since its birth 27 years earlier.

On January 23, 1951 Senator McFarland introduced in the Senate this bill, to amend the Communications Act of 1934. As introduced and as it had passed the Senate on February 5th, 1952, S. 658 did not involve Section 315.[18] The bill then proceeded to the House where political broadcasting was not mentioned until June, after the bill had reached the floor from the Committee on Interstate and Foreign Commerce. At that time Representative O'Hara presented his feelings on the subject of station liability for the content of political broadcasts thusly:

> Now, I intend to offer an amendment which will, in plain language, say that in a political broadcast the radio station shall exercise the right of censorship as to defamatory or obscene matters in the script; it shall have the right to delete it.[19]

During the debate which followed, Mr. Horan made it known that he was going to propose a substitute amendment for the one planned by Mr. O'Hara. In the proposed Horan amendment, stations would be eliminated from any liability over political broadcasts and the rates for these broadcasts would be regulated so that they would be no higher than the regular commercial rates. Mr. Horan proceeded to explain that his amendment was an outgrowth of an earlier bill H.R. 5470, introduced in the House.[20]

Mr. McCormack then took the floor and voiced his thoughts on the principles involved in the two proposed amendments. He stated that he felt the Horan amendment was sound, and that speeches by politicians should not be censored by any station. He then proceeded to state:

> . . . the stations themselves should not be liable. They are more or less in an innocent bystander position . . . The question of libel is one that concerns a very small percentage of those who might be candidates for public office, it seems to me that . . . the station should be removed from being liable for certain statements. The person who makes them is liable. Why the station is made liable is hard for me to understand.[21]

The Congressman went on to express his belief that only one rate should be charged for speeches, and that being the same as the regular advertising rates. His feelings had been shown earlier in the form of an amendment to a bill

(H.R. 7062) which had been introduced by Mr. Horan. That measure had included all of the principles concerning political broadcasting that were in Mr. Horan's proposed amendment to S. 658.[22]

Following this statement the bill was read for the purpose of calling for proposed amendments. At the proper time Mr. O'Hara introduced his amendment. It would have changed Section 315 to read:

> (a) If any licensee shall permit any legally qualified candidate for any public office to use, in person, a broadcasting station, such licensee shall afford equal opportunity to all other such candidates for that office, to use, in person, such broadcasting station.
> (b) In any case of such use of a broadcasting station, the licensee shall have no power to censor the material broadcast; but the licensee may require deletion of any defamatory, obscene, or other matter which would subject the licensee to any civil or criminal liability in any Federal, State, or local court.
> (c) Except to the extent expressly provided in subsection (a) of this section, no obligation is imposed upon any licensee to allow the use of its broadcasting station by any person.
> (d) The Commission shall issue regulations to carry into effect the provisions of this section, and such regulations shall be issued initially not later than one year after the date of the enactment of the Communications Act Amendments, 1952.[23]

In effect, the only change suggested by this amendment was contained in subsection (b), in that it would hand over to the broadcast licensee the right to require the omission of material they felt would subject them to legal action.

Mr. Horan followed the amendment with a statement which summed up the decision which faced Congress. He stated:

> We are here . . . to do one of two things. The O'Hara bill suggests one, and my amendment, if we reach it, by defeating his amendment will do the other . . . There are two people subject to being responsible when you talk about radio broadcast; one is the broadcast station, the other is the individual who makes the broadcast; I feel that it should be the individual who is responsible.[24]

It seems that the majority of Congressmen agreed with him because the O'Hara amendment was then defeated by a vote of 59 to 37. This defeat allowed Mr. Horan to present his amendment. It read in full:

> Section 315
> (a) If any licensee shall permit any legally qualified candidate for any public office in a primary, general, or other election, or any person authorized in writing by such candidate to speak on his behalf, to use a broadcasting station, such licensee shall afford equal opportunities in the use of such broadcasting station to all other such candidates for that office or to persons authorized in writing by such other candidates to speak on their behalf.
> (b) The licensee shall have no power to censor the material broadcast by any person who is permitted to use its station in any of the cases enumerated in subsection (a) or who uses such station by reason of any requirement specified in such subsection; and the licensee shall not be liable in any civil or criminal action in any local, State, or Federal court because of any material in such a broadcast, except in case said licensee shall willfully, knowingly and with intent to defame participate in such broadcasts.
> (c) Except to the extent expressly provided in subsection (a), nothing in this section shall impose upon any licensee any obligation to allow the use of its broadcasting station by any person.
> (d) The charges made for the use of any broadcasting station for any of the purposes set forth in this section shall not exceed the minimum charges made for comparable use of such station for other purposes.
> (e) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of the section.[25]

We see here that in subsection (a) Mr. Horan included the principle of extending the equal facilities guarantee to persons authorized to speak in behalf of candidates. This is quite similar to those changes proposed several times before which fell by the wayside. Subsection (b) echoed the principle dealing with censorship that had been put forth prior in the various versions of the White and Wheeler Bills. This whole complex problem of station liability versus the right to censor, which plagued broadcast law for many years, will be covered in more detail in the next chapter.

Briefly, however, the debate which followed saw Mr. O'Hara expressing his dissatisfaction with the amendment, and Mr. Horan and Mr. McCormack defending. Concerning the rate principle of subsection (d) which ultimately was the only part to become law, Mr. McCormack states:

> If we are going to do anything now about proper and justifiable protection of men and women who aspire to public office in the use of radio stations and television stations, now is the time to see that we are not charged more than the minimum commercial rates charged to others.[26]

After further debate over the censorship section of the amendment, it was called for a last reading by Mr. Dondero. The amendment was read, the question called, and passed by a vote of 92 ayes and 27 noes.[27] A little later the question was called on the bill itself, and the House gave its approval.[28] During the next two days conferees were appointed on the part of both houses.[29]

On Wednesday, July 2, 1952 the conference report was submitted to both houses of the Congress and passed after little debate. The report (H. Report #2426) showed some drastic changes and omissions in Section 315:

> 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 broadcasting station: Provided, that such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is hereby imposed upon any licensee to allow the use of its station by any such candidate.
> (b) The charges made for the use of any broadcasting station for any of the purposes set forth in this section shall not exceed the charges made for comparable use of such station for other purposes.
> (c) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.[30]

In explanation of the changes the committee stated:

> The committee of conference agreed to omit the provisions with respect to liability of licensees in civil or criminal action and the extension of the present law to include spokesmen for candidates because these subjects have not been adequately studied by the Committee on Interstate and Foreign Commerce of the Senate and the House of Representatives. This proposal was adopted in the House after the bill had been reported to the House committee. The proposal involved many different problems and it is the judgement of the committee of conference that it should be acted on only after full hearings have been held.[31]

It should be noted here that the broadcasters are still waiting for legislative action in this vein, although a 1959 Supreme Court decision would seem to have solved this problem.

On July 15, 1952 President Truman signed S. 658 and it became public law number 554 of the 82nd Congress. Here we see legislation passed by Congress and approved by the President to protect against rate discriminations in political broadcasting. The question of rates discrimination was far from being new, as it had been proposed in H.R. 7716 in 1933, again in S. 3285 in 1934, and once again in 1949 by Senator Howard McGrath.[32] All these attempts failed for one reason or another.

In 1933, H.R. 7716, which passed the Congress, had been vetoed by the President. In the 1934 bill, the rate principle was dropped in committee along with the more controversial idea of extending the equal time principle to supporters and opponents of candidates. Finally in 1949 no legislative action at all was taken on Senator McGrath's call for guaranteed equal rates. It was not until this bill, S. 658, was made law in July 1952 that candidates for office were protected from increased time rates by law.

Make-Up and Teleprompters

By 1955 the rapid expansion of the use of the television media by candidates for public office, prompted a bill dealing with a problem of a different nature. On May 5th of that year a bill, S. 1909, was introduced in the Senate by Senator Neuberger. This bill would have provided that " . . . any TV broadcast of an address by or on behalf

of a candidate for any public office shall include an announcement of whether the speaker is speaking extemporaneously or from prepared material and what facial make-up, if any, is being used by the speaker . . ."[33]

Senator Neuberger was concerned with the growing use of theatrical and specialized television devices such as make-up and teleprompters, in the political broadcasts. The bill would have required that the television audience "be informed when a candidate for public office (was) using either facial make-up or a contrived device for reading, which (was) not in the line of vision of his viewers."[34]

This idea found a supporter in Lawrence Laurent, the radio editor of the Washington Post and Times Herald. It was his feeling that the use of these "aids" were a "form of deception." He stated in an editorial in support of this bill that ". . . this practice (use of make-up and teleprompters) is not entirely honest. It deceives the voters. It can make an empty headed dolt appear an intelligent candidate."[35]

Although the bill was never acted upon it raised an interesting problem and one in which, if not corrected, Senator Neuberger found deeper implications.

> If politicians' speeches are to be staged like comedians' jokes, and if public policies are to be merchandised like soap, we shall soon see the effects of a Gresham's law on politics, in which showmanship on the television screen will take the place of statesmanship, and public officials will be chosen

> for histrionic aptitude by those who can afford to contribute the immense financial expense of a television buildup.[36]

Political Campaign Length and Costs

Prompted by his concern over the vast sums needed for a television campaign, Senator Neuberger also took issue with the major parties, who in 1955, had decided on a shorter campaign period. It was the feeling of many that because of the expanded use of the media, the campaign time as it stood from mid-summer until November was too long. However, contrary to these beliefs Senator Neuberger held the opposite opinion. It was his belief that the shorter campaign time would hurt the poorer candidates who could not afford television and had to depend on the whistle-stops, community suppers, church socials etc.

> Such word of mouth campaigning . . . takes time--a lot of time. It can't be flashed onto millions of television screens virtually overnight at vast expense. I wonder if a "blitzkreig" on television will not shape the public mind, before a less favorably financed nominee can get his message to the people by slower and less costly means. Someday . . . shorter political campaigns may well be possible and desirable, but I believe they will be premature until we have solved the urgent problem of making television--and perhaps other media--equally available to candidates irrespective of their financial backing.[37]

Once again, as we have seen before and as we will see again, the cry of inequality caused by the high costs of broadcast air time was raised. On May 29, 1956 the then Senator Hubert Humphrey introduced a bill in the United

States Senate (S. 3962)* which he and others felt would help bring about the "equality" that Senator Neuberger had called for the year before.[38]

This bill, along with its companion bill in the House, H.R. 11150, proposed two major changes in Section 315. In the first part of the bill a limitation was placed on those candidates for President, Vice President, United States Senators and United States Representatives, in connection with the equal time requirement. Senator Humphrey's bill would have required stations only to provide equal time to the before mentioned candidates if they represented a political party which received at least 4% of the total vote in the preceeding election; or if they were supported by petitions in each state in which they were running containing signatures equal to at least 1% of the total vote cast there in the preceeding election.[39] It also provided for a similar provision in dealing with candidates for the nomination to such positions.

In support of this section Senator Humphrey pointed out the problems that broadcasters were having with the present equal time requirement, and the resulting small amount of free time that was being offered to the candidates. He stated, "I can appreciate that we must always safeguard the right of minority party candidates to obtain appropriate

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*See Appendix E for complete text.

public attention. Nevertheless, it is obvious that a change in the present provision of the Communications Act is called for."[40]

The second major change contained in this bill was a plan for the requirement of licensees to provide free time to presidential candidates. Under this plan presidential candidates would qualify for free time only if they filled one of the requirements mentioned in the first part of the bill. If they did, they would be provided with: one-half hour per week during the month of September; one hour per week during the month of October; and one hour in November preceeding the election.[41] These time segments could be used by either the candidate for president or his vice-presidential running mate.

In support of his argument, Senator Humphrey stated that in the case of radio and television,

> . . . the American people have made a gift of the exclusive use of certain channels to the licensees involved. This gift is for a temporary period of time only, and I think it is upon this that the American people may, if they wish, attach to such a lucrative gift certain conditions important to the public welfare. The condition of free time for the discussion of public issues is a reasonable one. Indeed it has now become more than that, I think it has become essential.[42]

Although this bill was not acted upon, it typified the thinking of many leaders of government, industry and other segments of society. On the other hand, a large number of others fear that restrictions of this type would

discriminate against the minority point of view, and in effect would compromise our free speech tradition. Others, predominently the broadcasters themselves, are against any federal regulation which would force them to give away free time to anyone, even political candidates. These people feel such federal control would be an infringement upon their right and a dangerous first step toward direct government control of programming.

In spite of these differing opinions, it is easy to see that a very difficult problem exists. What Newton Minow has called the "dollar wall" is real, and Senator Humphrey described it in these words:

> Campaigning techniques themselves have now been revolutionized by the medium of television. It has added many new dimensions to a candidate's public image. In projecting appearance, as well as words and voice, the television medium is rapidly becoming the single most important vehicle for the conduct of political campaigns . . . We cannot overestimate the importance of allowing the American people to hear the leading presidential candidates without being subject to the financial limitations burdening any particular candidate or party. All of us know television is rapidly assuming the bulk of the expense in campaigning for public office. In some cases it is threatening to force public servants to rely more and more heavily upon the financial contributions of special interests.[43]

FOOTNOTES - CHAPTER II

1. U.S., Congressional Record, 73rd Cong., 2nd Sess., 1934, LXXVIII, Part 6, p. 5953.

2. James M. Herring and Gerald C. Gross, Telecommunications: Economics and Regulations (New York: McGraw-Hill Book Company, Inc., 1936), pp. 396 and 402.

3. U.S. Congress, Senate, Report on Public Bills, 73rd Cong., 2nd Sess., 1934, Rept. #781, p. 8.

4. Op. cit., Cong. Rec., Part 8, p. 8854.

5. Ibid., p. 9204.

6. U.S. Congress, House, Report on Public Bills, 73rd Cong., 2nd Sess., 1934, Rept. #1850, p. 2.

7. Op. cit., Cong. Rec., Part 10, pp. 10332 and 10365.

8. Ibid., p. 10988.

9. Ibid., p. 10995.

10. Ibid., p. 10912.

11. Ibid., Part 11, p. 12452.

12. U.S., Congressional Record, 74th Cong., 1st Sess., 1935, LXXIX, Part 13, p. 14400.

13. Ibid.

14. Ibid., pp. 14399, 14000.

15. U.S., Congressional Record, 80th Cong., 1st Sess., 1947, XCIII, Part 5, p. 5707.

16. Broadcasting and the Bill of Rights (Washington, D.C.: National Association of Broadcasters, 1947), p. 153.

17. Ibid., p. 154.

18. U.S., Congressional Record, 82nd Cong., 1st Sess., 1951, XCVII, Part 1, p. 961.

19. U.S., Congressional Record, 82nd Cong., 2nd Sess., 1952, XCVIII, Part 6, p. 7401.

20. Ibid., p. 7403.

21. Ibid., p. 7404.

22. Ibid., p. 7412.

23. Ibid.

24. Ibid., p. 7414.

25. Ibid., p. 7415.

26. Ibid.

27. Ibid., p. 7416.

28. Ibid., p. 7421.

29. Ibid., pp. 7508 and 7620.

30. U.S. Congress, House, Report on Public Bills, 82nd Cong., 2nd Sess., 1952, Rept. #2426, p. 8.

31. Ibid., p. 21.

32. Sidney Kraus, ed., The Great Debates: Background - Perspective - Effects (Bloomington: Indiana University Press, 1962), p. 40.

33. U.S., Congressional Record, 84th Cong., 1st Sess., 1955, CI, Part 5, p. 5750.

34. Ibid.

35. Ibid., p. 6749.

36. Ibid., Part 7, p. 9246.

37. Ibid., Part 2, pp. 2331 and 2332.

38. U.S., Congressional Record, 84th Cong., 2nd Sess., 1956, CII, Part 7, p. 9148.

39. Ibid., p. 9341.

40. Ibid., p. 9342.

41. Ibid.

42. Ibid., p. 9343.

43. Ibid., p. 9342.

CHAPTER III

CENSORSHIP AND LIABILITY UNDER SECTION 315

Throughout most of its controversial forty-three years of existence, Section 315 has posed a problem dealing with station censorship and liability. As long as there have been political broadcasting regulations on the books, it has contained the following statement, ". . . Provided, that such licensee shall have no power of censorship over the material broadcast under the provisions of this (section)."

Almost from the first day of its appearance as part of Section 18 of the Federal Radio Act of 1927, this portion of the law has raised important questions as to its interpretation. In some quarters it meant that since the broadcaster could not censor he correspondingly could not be held liable for any statements broadcast under the section. To others the word censor did not mean protecting one's self against law suit, but rather the elimination of thoughts and ideas which conflicted with that of the licensee. This second interpretation would have allowed the licensee to eliminate any material from a political speech which he felt was in some way libelous.

Over the years Congress has been struggling with this problem. Bills have been introduced advocating both interpretations, but all have failed. As a result of this lack of action at the Congressional level and because of increasing industry pressure for a solution, the Federal Communications Commission was compelled to act. Their answer was the 1948 Port Huron Decision, which was upheld by the United States Supreme Court in 1959.

Looking back, we can see the problem developing in Congress prior to the enactment of Section 18. In Senator Dill's original section dealing with political broadcasts, introduced to the Senate on July 1, 1926, the censorship sentence read; ". . . licensee . . . shall not be liable to criminal or civil action by reason of any uncensored utterance thus broadcast."[1] Eventually this idea was eliminated from the section as it emerged from the conference committee. Since that time legislative attempts to resolve this problem have been as futile as they have been numerous. It remains today an area where legislative action is needed to place the law in step with the Supreme Court's interpretation.

Early Unsuccessful Amendments

A closer look at the historical development of this problem will prove useful and interesting. In 1935 an unsuccessful attempt to answer the question of whether or not a station could be held liable for uncensorable material,

was submitted to the United States House by Representative Scott. This bill, H.R. 9230* stated in part:

> . . . Provided, that the licensing authority, the advisory committee, and licensees shall have no power of censorship of any kind, nor shall any licensee be subject to liability, civil or criminal, in any State or Federal court for material broadcast under the provisions of this section, nor shall any license be revoked or renewal be refused because of material so broadcast.[2]

Mr. Scott called for the passage of this bill as a means of solving the problem posed by Section 315. In pleading his case he stated:

> It is law at present that network and station owners, managers, program directors, and even announcers and technicians in charge of the electrical controls, must, at the peril of the station, determine at the moment of utterance whether a remark is actionable, a feat that no responsible judge or lawyer would presume to perform except in the plainest cases. This has led necessarily to direct and indirect censorship, to the vicious practice of requiring the submission of manuscripts for approval of networks and stations on an editorial basis.[3]

During the 1940's the question received the attention of the Senate Committee on Interstate Commerce. The discussion showed that most of the committee members favored action but were divided as to the methods to be used. The major question asked was whether or not Congress had the authority to countermand state libel and slander laws. In referring this problem to the Federal Communications Commission's legal staff, it received an answer in return that this staff felt such a law would be constitutional.[4]

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*See Appendix A for complete text.

The results were the Wheeler-White Bill (S. 814), of 1943, and the White Bill (S. 1333),* of 1947. Both of these bills would have provided that:

> . . . licensees shall not be liable for any libel, slander, invasion of right of privacy, or any similar liability imposed by any State, Federal, or territorial or local law for any statement made in any broadcast under the provisions of this section, except as to statements made by the licensees or persons under his control.[5]

As discussed in Chapter II, both of these measures were never passed, due for the most part to general industry opposition. This opposition was directed to the over-all bill and not this section as such.

The Port Huron Case - 1948

The following year however, positive action was taken; not by Congress itself but by the Federal Communications Commission. In one of its landmark decisions, the Port Huron Case, the Commission ruled that a station could not censor political speeches or any material and as a result could not be held liable for its content.[6] Immediately following this controversial decision the Federal Communications Commission was charged by many lawyers with misinterpreting the law. Many felt that Congress had not intended to prevent broadcasters from censoring libelous statements, but rather only statements which politicians had the right to say. This

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*See Appendix C and D for a complete text.

group defined censorship to mean "the deletion of something which one has a legal right to say."[7]

On the other hand, others criticized the Federal Communications Commission on the alleged grounds that the Communications Act of 1934 did not give the industry any protection from liability under state laws. In fact the Attorney General of Texas wrote the Commission stating: "Texas libel laws are still in effect. Radio stations carrying libelous matters will be subject to state laws."[8]

Renewed Congressional Action

The controversy raised as a result of this 1948 Commission decision resulted in renewed activity in Congress. The industry began to demand a release from the fear and uncertainty created by the decision, and government people recognized a need for new legislation. In January of 1950 a renewed effort in Congress began, with H.R. 6949 introduced by Representative Sedowski. This bill, which failed to win approval, contained substantially the same language as the two previously mentioned White Bills. In presenting his bill before his colleagues Mr. Sadowski explained that: ". . . a serious question has arisen as to whether the obligation to afford equal opportunities on the one hand and the prohibition of censorship on the other hand automatically renders the licensee immune from actions for libel and slander brought on account of any such statement."[9] He

followed with a call to Congress to "clarify the issue by pursuing his bill and thereby immuning the broadcaster from libel and slander action under this section."[10]

The O'Hara and Horan Amendments

The closest attempt to reach any concrete legislative result with this problem area occurred in the form of Senate Bill 658, introduced in the Senate in January of 1951. This bill has been discussed earlier in some detail. Although it passed Congress and became law to protect against rate discrimination in political broadcasts, we are interested here in material which was deleted from the bill in the joint conference committee. A closer look at the debate concerning this bill in the House of Representatives will provide the opportunity to examine the two basic philosophical answers to this problem of censorship and liability.

As we have seen, as S. 658 reached the floor of the House in June of 1952 two amendments concerning censorship were presented. Mr. O'Hara's amendment would have allowed broadcasters no power of censorship but the right to "require deletion of any defamatory, obscene, or other matter," which the broadcaster felt would involve him in any legal troubles.[11]

In opposition to this Mr. Horan made it known that he planned to offer an amendment which would free the broadcaster from the liability of political broadcasts. As a

result of these two opposing answers to a very complex problem, long and sometimes passionate debate took place on the floor of the House. The major roles in this debate, as would be expected, were taken by Mr. O'Hara and Mr. Horan.

In defense of his "right to delete" amendment Mr. O'Hara began:

> On three different occasions in the history of radio legislation the Congress of the United States has refused to give the exemption of liability to radio, and rightfully so: this great, tremendous instrumentality that enters into 50,000,000 to 75,000,000 American homes. This instrumentality that is in the business of selling radio time and political time should also take some responsibility, because so often the vicious character assassins who may attempt in a political campaign to ruin someone's reputation may not be worth a dime, so far as civil liability is concerned. However, that radio station must treat both sides alike and give both of them time. That is provided for in my amendment. But, if they are going to permit broadcasts, then they are going to have to assume also some of the liability and some of the responsibility of controlling the vicious types of statements that are made that are defamatory or obscene.[12]

At this point a question was put to Mr. O'Hara as to the operations of his amendment if the station was broadcasting an ad-lib, round table discussion type program. A program of this type would have no script to screen for obscene or defamatory materials. He answered that the ruling would not change just for these types of programs, and added:

> . . . it is true there would be a different defense to that if they were completely surprised by the statement that was made by the individual on such a broadcast. You would not have the right to censor the script because there would not be any script, but that is one of the responsibilities they would have to take.[13]

This prompted a short exchange between the two representatives, Mr. O'Hara, and Mr. Horan.

> Mr. Horan. My bill would eliminate his (the station's) liability.
> Mr. O'Hara. Yes: the gentlemen would eliminate all liability on the part of the station.
> Mr. Horan. And place it on the guilty party, who was the individual who uttered the libelous words.
> Mr. O'Hara. Yes. He is also liable under my bill, too. Do not worry about that.[14]

Later, during the debate, these two were involved in a longer exchange provoked by Mr. Horan's criticism of the O'Hara amendment. It was Mr. Horan's contention that it would be impossible, in most cases, to decide between the libelous and obscene, which would be approved for censure; and the partisan or political matters which could not be censored.

This exchange followed:

> Mr. Horan. The bill (O'Hara Amendment) does not involve censorship to that extent. If it is obscene, or libelous, or otherwise, the station may censor it, but the trouble would come in the matter of deciding what was partisan or political, because most defamatory statements would come in political broadcasts. The result would be that the radio station would find itself between the courts and the FCC. . . .
> Mr. O'Hara. Does the gentleman think the Congress could pass an act which would amend and change the police powers of the States as affecting libel or slander?
> Mr. Horan. I am not sure about that, but I do know that you have interstate, even national broadcasts which come within the purview of the National Government in the matter of the morals concerned in any such broadcast; and I believe that we will have to make a final, factual, and statutory determination one way or the other after considerable study until we can answer that question authoritatively. . . . We must do what we can to clarify the status of radio stations. Some of them are going to refuse to carry political broadcasts, or so they tell me, if this matter is not

> clarified. I would simply relieve them of a lot of that liability, which should be the individuals, so they could feel free to go ahead. . . . something must be done to correct what is generally considered to be an intolerable situation in the present Communications Act of 1934. We should keep in mind that whatever we do here we will have to finally meet this problem in some succeeding session of the Congress.[15]

Following a short speech by Mr. McCormack, in support of the Horan idea of no censorship and no liability on the part of the station, Mr. O'Hara issued his major defense of his amendment.

> Mr. O'Hara. . . . I think . . . In the first place, (Mr. McCormack) expressed his views that he resented censorship and therefore, under the Horan bill, which he favored and which I doubt the constitutionality of very much, he felt it was wrong to censor, no matter what the statement was. This is a radio station which broadcasts all over the country. Why should it not apply to radio stations? If a newspaper took a political advertisement that was libelous, it would be responsible if it carried it in the newspaper. Here is the great instrumentality of the radio. This (Horan Amendment) gives the political candidate the right to come on there and speak in whatever partisan or political sense he wants to. What he may say may affect his political opponent. If it is defamatory or libelous or slanderous, whichever it may be, under certain decisions it is subject to a charge of being libelous or slanderous. But the point is that the damage is done after that instrumentality has been used.
>
> I think probably every one of us as political candidates has been solicited at double the commercial rates to take all the time we can on the radio. Let them take some of the responsibility. . . . The only right of censorship that my amendment gives is the right to eliminate defamatory or obscene matter. Defamatory matter means libelous or slanderous matter, not the partisan statements or the viewpoints of the gentleman from Massachusetts (Mr. McCormack) or any other political person speaking upon a political subject.[16]

Debate over these two amendments continued and reflected the complex problem which they raised. When the votes were counted, the Horan amendment was adopted and placed as part of Section 315 in the bill (S. 658) which later passed the Senate. As we have seen, all the debates were purely academic, for this section on censorship was completely killed in the House Senate Conference Committee. The only thing most congressmen could agree upon was that a basic problem existed in this area of broadcast law. However, the committee felt compelled to postpone any direct action towards the solution of the problem until full and thoughtful hearings could be held on the possible solutions.[17] Today the broadcaster is still waiting for this thoughtful legislative action.

Fair Political Broadcasting Act of 1959

In May of 1959 another in a long line of attempts to free the licensee of this liability under Section 315 was introduced in the United States Senate, as Section 3(d), within the Fair Political Broadcasting Act of 1959 (S. 1858).* This bill was introduced by Senator Hartke with the purpose to "revise, extend, and otherwise improve the Communications Act of 1934 (and) to bring into focus and more proper perspective that section of the law governing political broadcasts."[19] If acted upon it would have, among other things,

*See Appendix F for full text.

provided that ". . . no action, either civil or criminal, (could) be maintained by any person in any court against any licensee or agent or employee of any licensee," for material aired by political candidates, unless of course the station was involved further or had intended to defame.[20]

The Port Huron Case and the Courts

Long before this unsuccessful attempt, the nation's broadcasters realized that they would have to turn to the courts of the land and state lawmakers rather than relying on Federal legislative action. The 1948 Port Huron Decision on the part of the Federal Communications Commission offered the broadcasters a way out. In their ruling, radio station WHLS of Port Huron, Michigan, was found guilty of violating the Communications Act of 1934 by censoring the campaign speeches of a candidate for municipal judge. To support this decision the Commission had stated:

> We are of the opinion that the prohibition of Section 315 against any censorship by licensees of political speeches by candidates for office is absolute, and no exception exists in the use of material which is either libelous or might tend to involve the station in an action for damages.[21]

As we have seen earlier the Commission stipulated that since the stations had absolutely no power of censorship in this area, they could not be held liable for any utterances.

In making this decision the Commission was aware that years earlier the Nebraska Supreme Court had reached a

contrary decision in the case of Sorenson v Wood (1932), 123 Neb. 348. In this case it was ruled that Congress had not intended to prevent a broadcaster from censoring libelous remarks and that he was liable for the remarks of a candidate while making a political broadcast.[22]

For the few years following the Port Huron Decision, the Federal Communications Commission let it be known that it would follow a more lenient course and wait for the courts to pass on the legal issues involved and to give Congress a chance to enact new legislation. In this regard the Commission instructed the licensees that if they acted rationally, and fairly to all candidates and parties they would not lose their licenses even if they did censor defamatory statements. The Commission kept this promise in the case of radio station WGOV in Valdosta, Georgia. WGOV had been charged with the censoring of a political speech of such references to an opponent as "pistol toten criminals," "fugitive from justice," "jail bird," and "big slew-footed ox." Its licensing was set for a hearing but it was renewed.[23]

If the Federal Communications Commission expected any immediately conclusive action on the part of the courts or Congress, it must have been quite disappointed. As we have seen, the Congress was unable to resolve the division of thought within its ranks to pass any new legislation. In the field of judicial review the results were contradictory. A three judge Federal District Court in Houston, Texas in

1948 held that the Federal Communications Commission had merely stated its opinion as to the meaning of a statute and that the decision (Port Huron) was not an order having the force of law. They added, "We think it doubtful that the Commission would have power to lay down a binding rule or regulation on the nature of that expressed in its opinion."[24]

On the other hand, two years later the United States District Court, of the Eastern District of Pennsylvania ruled that since the Port Huron Decision had denied the power of censorship to the defendent, it could not be held liable under Pennsylvania law. This law stated "a broadcasting station cannot be held for damages for remarks in a broadcast made by others than its own agents or employees unless there is fault of some kind on its part."[25]

Industry Reaction

All the while, the Federal Communications Commission was a target from both sides. The regular practice of the broadcasters prior to the Port Huron Decision was to screen all up-coming political talks and delete any objectionable materials. However, the Commission had taken a stand to prevent this practice. The courts and Congress, however, had not provided the broadcasters with any protection. The confusion had prompted Broadcasting Magazine to advise the industry to : "Do as you have done. Accept no speech that is even borderline libel. If possible get candidates to

agree in advance to protect you from damage suits. Act in good faith. Let the Federal Communications Commission sweat it out."[26]

A few people suggested that to protect themselves, broadcasters refuse to allow any campaigner to use their facilities. This threat, however, was never taken too seriously, for broadcasters, generally, weren't eager to give up substantial income derived from political broadcasting. Also tradition had called for the broadcasting of campaignes as part of a station's obligation to operate in the public interest. To ignore this tradition might well result in reaction in Congress which would produce new and possibly more distasteful regulations.

By 1951 the Commission had heard a lot of talk, but there was still no positive action from either the courts or Congress. As a result, in that year, it announced that it would begin enforcing the law as it had interpreted it in the Port Huron Case:

> Hereafter we will not accept the plea of doubt and uncertainty in the state of law as a reason for not administering the law as we read it. Nor will we accept the argument that state statutes or common law on the subject of libel in someway supplement or modify the unqualified pronouncements of Congress on the use of the interstate facilities of radio by candidates in making political broadcasts.[27]

In response to this the industry developed a new pattern of procedure. It generally became the common practice for stations to ask candidates for scripts of their

speeches in advance of air time. At that time, offensive and doubtful language was called to the attention of the candidate and a change urged. Discussion and persuasion, instead of coersion, became the chief protective tool of the broadcaster. Just the same, as the decade of the 1950's rolled on, the broadcaster still had no concrete protection against the off-hand remark of a politician or the ad-lib remark of an unscripted discussion program.

With the election year pressure off, in 1953, the National Association of Broadcasters changed its stand. In that year it announced that it would ask Congress to delete completely the "no censorship" part of the law. In this action it hoped that broadcasters would get control over what went over the air. The claim was made that in order to serve the public interest broadcasters should have power to prevent defamation; that they were responsible people who could be trusted not to abuse this power. As could be expected, Congress took a very dim view of giving power to broadcasters to censor their speeches.

State Action

In a more positive vein the National Association of Broadcasters also urged the broadcasters to press for legislation in their individual states which would limit their liability in political cases. This approach received a more favorable response. Although the results were varied, most

of the states acted. A few states gave the station complete exemption from liability in political campaign speeches. Others more commonly relieved stations of liability if they had exercised due care in preventing the offense. In a few states it was made law that the plaintiff must prove a station negligent before he could recover damages. Also, a few states required the plaintiff to prove actual malice.[28] In all such cases the speakers were personally held liable for their defamatory statements.

Supreme Court Action - 1959

Finally in 1956 the basic tenent of the Port Huron Case was directly challenged. Station WDAY-TV in Fargo, North Dakota, was sued by a farmers' union on the grounds that it had been libeled on the air by a candidate who said that the union was tainted with communism. The station's defense was that it could not be held liable for any uncensorable material broadcast over its facilities, and cited the 1948 Federal Communications Commission decision. WDAY won this case, and it was upheld by the North Dakota Supreme Court and by the United States Supreme Court in 1959.

Prior to support by the United States Supreme Court, the North Dakota Supreme Court had held that:

> . . . since (the) power of censorship of political broadcasts is prohibited it must follow as a corollary that the mandate prohibiting censorship includes the privilege of immunity from liability for defamatory statements made by the speakers.[29]

In upholding this position the Supreme Court had to override the petitioner's (the farmers' union) argument that Congress had continually defeated any attempt to write into the law this type of liability immunity. To this the court majority opinion answered ". . . whatever adverse inference may be drawn from the failure of Congress to legislate an express immunity is offset by its refusal to permit stations to avoid liability by censoring broadcasts."[30]

The conclusion of this majority opinion must have been sweet music to the ears of all broadcasters. For at last, here in black and white, the U.S. Supreme Court removed the weight of liability from the broadcasters' drooping shoulders, and, if nothing else, provided them with at least one concrete hand-hold in an area of regulatory quicksand. The Court stated:

> . . . We are aware that causes of action for libel are widely recognized throughout the states. But we have not hesitated to abrogate state law where satisfied that its enforcement would stand "as an obstacle to the accomplishment and execution of the full purposes and objective of Congress.[31] Here, petitioner (Farmers Union) is asking us to attribute to Section 315 a meaning which would either frustrate the underlying purpose for which it was enacted, or alternatively impose unreasonable burdens on the parties governed by that legislation. In the absence of clear expression by Congress we will not assume that it desired such a result. Agreeing with the State Courts of North Dakota that Section 315 grants a licensee an immunity from liability for libelous material it broadcasts, we merely read Section 315 in accordance with what we believe to be its underlying purpose.[32]

This momentous decision for United States broadcasters finally began to settle the waters which the Commission had

churned up in 1948. The Port Huron Case raised questions which have never been answered by our Federal lawmakers. And although recent court decisions appear to have freed the broadcaster of liability in political cases, the best advice for the broadcaster is still provided in a 1966 edition of a handbook on Federal Communications Commission rules and regulations, which says:

> However, due to inconsistencies in case law, it still seems advisable, where local law does not provide complete protection, for the broadcaster to obtain his own protection via libel and slander insurance.[33]

FOOTNOTES - CHAPTER III

1. U.S., Congressional Record, 69th Cong., 1st Sess., 1926, LXVII, Part 11, pp. 12501, 12502.

2. U.S., Congressional Record, 74th Cong., 1st Sess., 1935, LXXIX, Part 13, p. 14399.

3. Ibid.

4. Elmer E. Smead, Freedom of Speech by Radio and TV (Washington, D.C.: Public Affairs Press, 1959), p. 24.

5. Broadcasting and the Bill of Rights (Washington, D.C.: National Association of Broadcasters, 1947), p. 243.

6. Op. cit., Smead, pp. 23,24.

7. Ibid., p. 24.

8. Broadcasting Magazine, May 10, 1948, p. 4.

9. U.S., Congressional Record, 81st Cong., 2nd Sess., 1950, XCVI, Part 1, p. 839.

10. Ibid.

11. U.S. Congress, House, Report on Public Bills etc., Vol. III, 73rd Cong., 2nd Sess., 1934, Rept. #1850, p. 2.

12. U.S., Congressional Record, 82nd Cong., 2nd Sess., 1952, XCVIII, Part 6, pp. 7401, 7402.

13. Ibid., p. 7402.

14. Ibid.

15. Ibid., p. 7403.

16. Ibid., p. 7412.

17. U.S. Congress, House, Miscellaneous Reports, Vol. IV, 82nd Cong., 2nd Sess., 1952, Rept. #2426, p. 21.

18. U.S., Congressional Record, 86th Cong., 1st Sess., 1959, CV, Part 6, p. 7408.

19. Ibid., p. 7404.

20. Ibid., p. 7408.

21. Op. cit., Smead, pp. 23, 24, and also Radio Regulations, Vol. IV, p. 1.

22. James M. Herring and Gerald C. Gross, Telecommunications: Economics and Regulations (New York: McGraw-Hill Book Company, Inc., 1936), p. 174.

23. Op. cit., Smead, p. 27.

24. Ibid., p. 24.

25. Ibid., pp. 24, 25.

26. Broadcasting Magazine, February 8, 1948, p. 50.

27. Op. cit., Smead, p. 27, and also Federal Communications Commission Release (Mimeo.), November 26, 1951, p. 5.

28. Op. cit., Smead, p. 26.

29. Farmers Union v WDAY, 360 U.S. 248, p. 527.

30. Ibid., p. 532.

31. Bethlehem Steel Company v New York Labor Board, 330 U.S. 767, 773; Hill v Florida, 325 U.S. 538, 542. Also San Diego Building Trades Council v Gormon, 359 U.S. 236; California v Taylor, 353 U.S. 553.

32. Op. cit., Farmers Union v WDAY, p. 335.

33. Verne M. Ray, Interpreting F.C.C. Broadcast Rules and Regulations (Thurmont, Maryland: Tab Books, 1966), p. 85.

CHAPTER IV

EQUAL TIME AND NEWS BROADCASTING

1955 - 1960

The January 29, 1959 United States Supreme Court decision in Farmers Union v WDAY Inc. settled just in time the broadcasters troubles concerning political candidate censorship and station liability. Three months earlier the Federal Communications Commission had opened another can of worms, bringing to a head a problem which had been festering for several years. On February 19th in its landmark Lar Daly Decision, the Federal Communications Commission had ruled that "an appearance by a political candidate on a newscast not initiated by him constitutes a 'use' of the stations facilities by the candidate within the meaning of Section 315 of the Communications Act of 1934."[1] The distastefulness of this move can be measured by the outcry from the industry and more so by the fact that before the year was out Congress had acted to correct the situation.

Prior to this decision an attempt to exempt news shows from the equal time requirement had failed to win support in Congress. In June of 1955, S. 2306 and H.R. 6810 were introduced in their respective chambers. These bills

called for the amendment of Section 315 by the addition of the following:

> Appearance by a legally qualified candidate on any news, news interview, news documentary, panel discussion, debate or similar type program where the format and production of the program and the participants therein are determined by the broadcasting station, or by the network in the case of a network program, shall not be deemed to be use of a broadcasting station within the meaning of this subsection.[2]

In 1955 the pressure, which was later to be applied on Congress to make such a change, was absent. The idea of the exemption of news programs from the equal time requirement was new, and study was needed. Senator Payne introduced the bill in the Senate but warned that the matter, "should be given careful study . . . before any legislation." He added further:

> Although the difficulties caused the broadcasting industry by the present law are readily apparent, those difficulties should not be resolved in such a way as to infringe on equal opportunities to broadcast time by legitimate candidates for public office.[3]

While the Congress was beginning to take this problem to its committee rooms, the actions of the Federal Communications Commission were such as to warrant positive congressional action.

The Blondy Case

In the winter of 1957 the Federal Communications Commission had refused a request by Allen H. Blondy for equal time on a Detroit television station. Mr. Blondy, then a

candidate for Judge of the Common Pleas Court of the City of Detroit, claimed that he was deserving of this time because one of his opponents had been seen on a local news program. The program, one of WWJ-TV's regularly scheduled newscasts, had aired a filmed coverage of the swearing in ceremonies of a number of newly appointed judges to a state court, one of whom was Elvin L. Davenport, a legally qualified candidate running for the same post as Mr. Blondy.[4]

The Commission held that the appearance of Mr. Davenport on WWJ-TV did not amount to a "use" of the station by the candidate, and therefore did not require the station to give equal opportunities to the other candidates. In a letter to Mr. Blondy dated February 4, 1957, the Commission explained its action:

> There is no evidence before us that Mr. Davenport in any manner or form directly or indirectly initiated or requested either filming of the ceremony or its presentation by the station, or that the broadcast was more than a routine news broadcast by WWJ-TV in exercise of its judgement as to newsworthy events. In our opinion . . . WWJ-TV did not "permit" . . . a legally qualified candidate . . . for public office to use a broadcasting station by showing and referring to Mr. Davenport on its routine newscast . . . therefore, it is under no obligation to . . . afford equal opportunities to all other candidates for the office for which Mr. Davenport has filed.[5]

The Lar Daly Decision

Two years later in the now famous Lar Daly Decision the Commission completely reversed directions and ruled:

> An appearance by a political candidate on a newscast not initiated by him constitutes a "use" of the stations facilities by the candidate within the meaning of Section 315 of the Communications Act.[6]

This decision grew out of a case initiated by Mr. Lar Daly, a perennial candidate who in the winter of 1959 was a candidate in both the Republican and Democratic primaries for mayor of the city of Chicago. His opponents in this election were Democrat, Richard J. Daley, the incumbent mayor, and Republican, Timothy P. Sheehan. Prior to the February 24th election date, Lar Daly filed a complaint with the Federal Communications Commission alleging that certain Chicago television stations had broadcast film clips showing his opponents performing a variety of functions and that they had refused his request for equal broadcasting time over their stations.

The film clips in question each averaged less than a minute in length. They involved an interview with the Republican candidate as to his reasons for entering the mayorality race; films of both candidates filing their petitions for candidacy; Mayor Daley speaking in connection with the selection of the speaker of the Illinois House of Representatives; the picking of the site of the Democratic National Convention; and the broadcasting of the candidates making their acceptance speeches. In addition, there were two short segments dealing with the incumbent Mayor greeting the President of Argentina and the mayors' official proclamation opening the annual March of Dimes Campaign.[7]

In way of explanation of the decision which shocked the nation's broadcasters the Commission stated:

> . . . This interpretation is compelled by the legislative history of the section and by the possible benefits and advantages which occur in favor of a candidate who is given exposure on television. While news presentation by radio and television stations is of inestimable value to the public interest, a station licensee does not have the same freedom of choice in presenting the news that a newspaper enjoys. Radio and television stations employ the public domain and their use thereof may properly be limited by Congress. The word "use" in Section 315 is synonymous with "appearance" and the word appearance is essentially the same as "exposure." The problem of equalizing advantages through exposure of candidates on television and radio newscasts is not one to be resolved through application of the overall "public interest" standard of fairness in presenting balanced programming . . .[8]

The Commission continued to assert that its interpretation in no way involved any violation of freedom of speech or the press, nor did it bring about any discrimination between candidates in violation of the 5th amendment.

The industry moved immediately to pursuade the Commission to reconsider and reverse its ruling. Columbia Broadcasting System, National Broadcasting Company, and Westinghouse filed documents with the Federal Communications Commission in argument against this strict interpretation of Section 315. On June 15, 1959, the Commission issued a 41 page decision upholding its original decision. It traced in detail the legislative history of Section 315 and dealt in great length with the arguments put forth by its petitioners.[9] Referring to the importance of the role of television in political campaigning the Commission stated:

> . . . the candidate has several roles in which he may appear on television. The most obvious appearance is as a candidate campaigning for office. Of no less importance is the candidate's appearance as a public servant, as an incumbent office holder, or as a private citizen in a non-political role. It is, of course, in these latter roles that questions are raised about the applicability of Section 315 of the Act. While not always indispensable to political success, for some purposes television may enjoy a unique superiority in selling a candidate to the public in that it may create an impression of immediacy and intimate presence, it shows the candidate in action, and it affords a potential for reaching wide audiences.[10]

The effect of the decision was to place pressure on Congress for legislative action to alter this section. This pressure appears to be exactly the result the Commission had wanted. The wording of their opinion made it clear that the problem was placed squarely in the laps of Congress.

> . . . It may, of course, seem that such a holding is harsh or underly rigid and that within the area of political broadcasts, it has a tendency to restrict radio and television licensees in their treatment of campaign affairs. If this be so, the short answer is that such a result follows not from any lack of sympathy on our part for the problems faced by licensees in complying with Section 315, which we are not at liberty to ignore. As the Court of Appeals observed in Felix v Westinghouse 186F. 2d1, "We must accordingly take the statute as the Congress intended it to be and leave it to that body to resolve the questions of public policy involved in the one construction or the other."[11]

Congressional Reaction

By this time action was already being initiated in Congress. On May 21, 1959, Senator Case of South Dakota echoed the feeling of the industry and many governmental leaders. In referring to the Lar Daly Decision, the Senator said:

> . . . The President has termed Section 315 "ridiculous." Mr. John Doerfer, Chairman of the Federal Communications Commission has called for repeal of Section 315. Attorney General Rogers' recent memorandum urged that the Federal Communications Commission reverse its equal time ruling in the Lar Daly case.
>
> We pride ourselves on freedom of speech and press in this country. But a ruling which can indirectly inhibit the handling of news would be as injurious to a free press and free speech as consorship.
>
> To require equal time for all candidates in the coverage of news is as absurd as requiring of a newspaper equal space to all candidates, including minor factions.
>
> It would make candidates the judge of news values; abuse would be inevitable.[12]

A short time before, bills to rewrite Section 315 to exempt news broadcasts from the equal time requirement had begun to appear before both houses of Congress. On March 9, 1959, H.R. 5389 was introduced to the House by Mr. Cunningham.[13] In May of the same year Senator Hartke presented a bill, S. 1858, to his colleagues in the Senate.*[14] Both of these were unsuccessful, but the ground work had been laid and it was only a matter of time before Congress would take positive steps to correct the situation.

Section 315 is Amended - 1959

Finally on July 22, 1959, Senator Pastore brought forth from committee the report #562 on Senate bill S. 2424. The bill dealing entirely with Section 315 read:

> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 315 (a) of the Communications Act of 1934 is amended by inserting at the end thereof the following: "Appearance by a legally qualified candidate on any newscast, news interview, news

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*Text of Sec. 3 (e) in Appendix F.

> documentary, on-the-spot coverage of news events or panel discussion, shall not be deemed to be use of a broadcasting station within the meaning of this subsection.
> Sec. 2. (a) The Congress declares its intention to examine the amendment to Section 315 (a) of the Communications Act of 1934 made by the first section of this Act, at or before the end of the three-year period beginning on the date of the enactment of this Act, to ascertain whether the remedy provided by such amendment has proved to be effective and practicable.
> (b) To assist Congress in making the re-examination of the amendment made by the first section of this Act, the Federal Communications Commission shall make a report to the Congress, within 15 days after close of each of the following two years, setting forth (1) the information and data used by it in determining questions arising from or connected with such amendment, and (2) such recommendations as it deems necessary to protect the public interest and to assure equal treatment of all legally qualified candidates for public office under Section 315 of the Communications Act of 1934.[15]

The Committee felt that although it agreed with the basic purpose of Section 315, the strict line held by the Federal Communications Commission in the Lar Daly case, would "tend to dry up meaningful radio and television coverage of political campaigns." The report continued:

> No one will question that these categories of programs exempted by this legislation serve to enlighten the public and that a broadcaster who offers news, news interviews, new documentaries, on-the-spot coverage of news events, or panel discussion programs is discharging his obligation to operate in the public interest by making such programs available.[16]

In conclusion the committee expressed its belief that the bill would provide broadcasters with the opportunity to serve the public and that adequate safeguards had been placed in the bill to assure that broadcasters did not abuse the privilege.[17]

The Senate debate on S. 2424 began on July 28, 1959. During these deliberations three amendments were proposed, the first by Senator Engle. This amendment would have struck out the words, "or panel discussion" in the main section of the bill. Senator Engle, who was basically in favor of reversing the Lar Daly Decision, felt that the bill as read went too far. He was in agreement that news shows etc. should be exempt from the equal time provision, but not panel discussions. He explained:

> . . . panel discussions go to the point where it is possible to intrude into the field of favoritism and thus violate the basic intention of the law, the purpose for which it was passed and for which it has been on the books for a period of 32 years, during which time there have been no complaints about it, and no difficulty with it, until the Lar Daly Decision.[18]

Senator Javits expressed his opinion against the proposed amendment in this manner:

> I think we should preserve panel discussions, and not make the requirement ridiculous. I refer to the opportunity of Americans to hear face-to-face debates by opponents . . . Let us not forget that Congress is a dynamic agency, and if the broadcasting systems abuse their facilities, Congress can adopt another regulation by passing a bill to that effect . . .[19]

Debate continued along these lines until the alloted time limit was reached, and the question was called. The amendment by Senator Engle was agreed to and the words "or panel discussion," were removed from the main section.[20]

The second amendment proposed to this bill was introduced by Senator Long of Louisiana. His amendment would have struck out most of the section labeled 2 (a) and have

inserted the following at the end of the bill, "Section 1 of this Act shall expire on June 30, 1960."[21]

In explaining his amendment, Senator Long expressed his feeling that the bill would permit "great discrimination" on behalf of particular candidates if a station so desired. He went on to explain that because of the automatic expiration date, if the principle involved did not work out and the broadcasters abused their privileges the bill would automatically expire at the appointed time. He reasoned that it would be much easier for Congress to extend the law if it worked out rather than try to reverse it later if it did not. He feared that it would be very difficult to, "overcome the tremendous inertia which (would) develop to try to get a bill through the Congress to amend the Communications Act, over what might be the overwhelming opposition of NBC and CBS and all the affiliated stations."

Despite these feelings, Senator Long could not convince enough of his Senatorial colleagues to stand with him. His amendment was defeated.[22]

The third and final amendment was proposed by Senator Proxmire. This change would have added to the first subsection of the bill a statement reading:

> . . . but nothing in this sentence shall be construed as changing the basic intent of Congress with respect to the provisions of this act, which recognizes that television and radio frequencies are in the public domain, that the license to operate in such frequencies requires operation in the public interest, and that

> in newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, all sides of public controversies shall be given as equal an opportunity to be heard as is practically possible.[23]

Senator Pastore followed the reading with the suggestion that in the last sentence of the amendment the phrase "as equal an opportunity" be changed to read "as fair an opportunity,"; to which Senator Proxmire agreed.[24]

Following statements by Senator Hartke that the amendment served only to confuse the issue further, and Senator Javits in favor of the measure, the question was called and the Proxmire amendment was passed.[25] Following this action, there being no more amendments presented, the bill was read for the third time, voted upon, passed, and sent on to the House.[26]

On August 18, 1959, Representative Harris asked for consideration of S. 2424 since it was very similar to H.R. 7985 which had just been passed by the House. Mr. Harris then proposed an amendment that would strike out all of S. 2424 after the enacting clause and add the text of H.R. 7985.[27]

The bill was therefore cut down to read simply:

> Appearances by a legally qualified candidate on any bona fide newscast (including but not limited to political conventions and activities incidental thereto), where the appearance of the candidate on such newscast, interview, or in connection with such coverage is incidental to the presentation of news, shall not be deemed to be use of broadcasting stations within the meaning of this subsection.[28]

The amendment was agreed to at once and the bill was passed.

The following day the Senate moved to disagree to the House amendment.

The resulting conference report was submitted for the approval of the House on Wednesday, September 2, 1959. In conference the delegates from both houses of the Congress produced a bill which contained most of the main points placed in the Senate bill, only in slightly different form; however, a second section was added which removed the three year limit on congressional reexamination.

That day, following a lengthy defense of the bill by Representative Harris, the bill passed the House by a vote of 142 to 70. The next day Senator Pastore submitted the conference bill to the Senate and after a full explanation of all its provisions, the bill passed the Senate.[29] On September 14, 1959 President Eisenhower signed S. 2424 and it became public law 86-274.*

This law exempted from the equal time requirement any "appearance by a legally qualified candidate on any, bona fide newscast, news interview, news documentary, or on-the-spot coverage of a news event." It also added that it was Congress' intention to "reexamine from time to time," the amendment to see if it had proved to be "effective and practicable." Finally the last portion of the law instructed

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*Complete text of Section 315 in Appendix G.

the Federal Communications Commission to include in its annual report to Congress all information and any recommendations concerning the new amendment.[30]

In June of 1960 the passage of Senate Resolution 305 established a watch dog sub-committee to study the effects of the 1959 change in Section 315. At this time many congressmen felt that a sub-committee was needed to prevent any broadcasters from taking unfair advantage of this loosening of 315 requirements.[31]

This committee with the assistance of the Federal Communications Commission has proposed no new regulations as a result of their study. In fact, since 1959, in their Annual Reports the Federal Communications Commission had constantly repeated that it has encountered no "serious problems in applying the 1959 amendment to Section 315 in cases before it, (and) accordingly, is not making any recommendation on the subject."[32]

As the 1950's ended and we embarked on a new decade, the liberalizing effects of the 1959 amendment could be felt. The Congressional action encouraged the broadcaster to believe that at last he was beginning to be trusted in the delicate field of political broadcasting. Statements like the following from Senator Pastore served to strengthen this belief:

> Very frankly . . . I think the broadcasting systems today have reached a position of integrity and good

> judgement so that they can very well parcel out time without the assistance of any law.[33]

As a result, as one decade gave way to the new, the old beliefs on the strict regulation of political broadcasting seemed to be giving away to those of a more liberal point of view.

FOOTNOTES - CHAPTER IV

1. Pike and Fischer, Radio Regulations, XVIII, p. 701.
2. U.S., Congressional Record, 84th Cong., 1st Sess., 1955, CI, Part 6, p. 8208, Part 7, p. 9152.
3. Ibid., Part 7, p. 9153.
4. Op. cit., Radio Regulations, XIV, p. 1199.
5. Ibid., p. 1200.
6. Op. cit., Radio Regulations, XVIII, p. 701.
7. Ibid., pp. 703-704.
8. Ibid., p. 701.
9. Ibid., pp. 701-744.
10. Ibid., p. 713.
11. Ibid., p. 736.
12. U.S., Congressional Record, 86th Cong., 1st Sess., 1959, CV, Part 7, p. 8746.
13. Ibid., Part 3, p. 3675.
14. Ibid., Part 6, p. 7404.
15. U.S. Congress, Senate, Senate Miscellaneous Reports on Public Bills, IV, 86th Cong., 1st Sess., 1959, Rept. #562, pp. 1-2.
16. Ibid., p. 10.
17. Ibid., p. 14.
18. Op. cit., Cong. Rec., Part 11, p. 14451.
19. Ibid., p. 14452.
20. Ibid., p. 14453.
21. Ibid.
22. Ibid., p. 14456.

23. Ibid., p. 14457.

24. Ibid.

25. Ibid., p. 14462.

26. Ibid., p. 14463.

27. Ibid., Part 13, p. 16260.

28. U.S. Congress, House, House Miscellaneous Reports on Public Bills, VI, 86th Cong., 1st Sess., 1959, Rept. #1069, pp. 3-4.

29. Op. cit., Cong. Rec., Part 14, pp. 17782, 17832.

30. Ibid., p. 17777, and U.S. Statutes at Large, LXXIII, p. 557.

31. U.S., Congressional Record, 86th Cong., 2nd Sess., 1960, CVI, Part 10, pp. 12517, 12518.

32. U.S. Federal Communications Commission, 28th Annual Report (Washington, D.C.: U.S. Government Printing Office, 1962), p. 49.

33. Op. cit., Cong. Rec., Part 10, p. 12520.

CHAPTER V

SECTION 315 IN THE 60's

1960 - 1965

Since the beginning of this decade, the "equal time" requirement in Section 315 has drawn a great deal of attention from our law makers. Congressional attempts at change have been frequent. Amendments have fallen into three distinct groups. First, those to eliminate permanently the equal time requirement of the section; second, those to lift temporarily the requirement for certain candidates; and third, those to limit the equal time requirement to majority candidates and at the same time require from the licensee free broadcast time for political programs.

Of the three, attempts to obtain temporary repeal of the equal time clause when applied to the leading candidates have been most numerous. All this type of legislation owes its existence to the 1960 Joint Resolution which temporarily allowed the now famous Kennedy-Nixon debates.

Just prior to this action by the Congress, Senator Magnuson and others had introduced in the Senate a bill to deal with this question.[1] Introduced on March 10, 1960,

this bill, S. 3171,* would have provided that certain facilities be given to the presidential candidates of the major parties without charge, during the presidential election campaign.[2] Generally this bill would have provided that each network and station give one hour of free time each week to "major party" candidates for president. This provision would have been in effect during the eight week period beginning September 1 preceding all presidential elections. Also, a one hour period would have been reserved for the Monday preceding the day of the election.

The bill defined "major party" candidates as those who represented political parties which received no fewer than 4% of the total popular vote in the previous presidential election. Judging from past presidential elections this 4% figure would in effect have precluded all minority parties. In fact, only once in the past 40 years has the total vote of all minority groups totaled more than 4%.**

Senator Magnuson along with a number of his colleagues felt that the bill was a sorely needed piece of legislation. Senator Smathers stated:

> . . . the time (has) come when we (have) to make it possible for those who run for election to (the presidency) in the United States to have an opportunity to go before all the people of the nation and at one time develop their thinking on all the major issues of the day.[3]

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*Complete text in Appendix H.

**See Appendix I for total minority vote figures 1900-1964.

In discussing the problems of determining whether or not a political party was major or minor, and its rights under this bill, Senators Pastore and Monroney had this exchange:

> Mr. Monroney. . . . . the suggested 4-percent provision would seem to provide--as I think any bill must--a chance for a third party to have this opportunity, once a third party has been organized and established, and once it has developed that much strength. Such a third party would be entitled to time on the air, if it had demonstrated that it had received a certain percentage of the total popular vote in the last election.
>
> In other words, we dare not freeze out a third party movement by making it impossible for its candidate to be heard.
>
> Mr. Pastore. However, such a law must not be made too liberal for then we would become involved in the dilemma which has plagued the television and the radio broadcasting stations, who have had great difficulty in deciding to what extent to limit these opportunities.[4]

Finally Senator Church had hopes that such a change in the law would help to lower the rapidly rising campaign costs.

> It seems to me that until we come to grips with the problem of cost, we place the parties in jeopardy of captivity to those organized groups within the country that have the necessary sums of money to contribute. So I think this bill works constructively in two directions. First, it makes it possible to have a campaign which focuses attention upon the issues through the best means by which that can be done, namely, by direct debate between the presidential candidates. Second, it permits this debate to take place as a public service, without the enormous expense which is now entailed, and which tends to bind the two parties to the large organized groups that alone have the means to afford the heavy cost.
>
> Elections should be won, not bought. This bill advances democracy in the best sense.[5]

As would be expected, the broadcasting industry was strongly opposed to any such type of government-controlling

legislation. They felt that their industry had matured to a point where they should be relieved of the shackles placed upon them by the "equal time" requirement. As a compromise move, Congress in 1960 gave the broadcasters an opportunity to prove to the Congress and the public that they would operate fairly and with good conscience without this requirement. Congress, however, in taking this step made it quite clear that if the broadcasting industry didn't conduct itself in a proper manner, legislation on the order of S. 3171 would be forthcoming.

A Temporary Change - 1960

This legislation, known as Joint Resolution 207, was brought to the floor of the Senate out of the Committee on Interstate and Foreign Commerce by Senator Pastore on June 8, 1960.[6] The resolution read:

> Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that that part of Section 315 (a) of the Communications Act of 1934, as amended, which requires any licensee of a broadcast station who permits any person who is a legally qualified candidate for any public office to use a broadcasting station to afford equal opportunities to all other such candidates for that office in the use of such broadcasting station, is suspended for the period of the 1960 presidential and vice presidential campaign with respect to nominees for the offices of President and Vice President of the United States. Nothing in the foregoing shall be construed as relieving broadcasters from the obligation imposed upon them under this Act to operate in the public interest. (a) The Federal Communications Commission shall make a report to the Congress, not later than March 1, 1961, with respect to the effect of the provisions of this joint resolution.[7]

In its report (S. Rept. 1539) the committee said that the hearings had shown very little disagreement about the need, importance, and urgency of such legislation. It reported, however, that the basic disagreement arose over the method of giving time to the major presidential and vice presidential candidates. On the one hand many people believed the amount of time should be regarded as outlined in Senate bill 3171 which had been introduced earlier. On the other hand, there were those who felt the time scheduling should be left to the networks on a voluntary basis.[8]

The committee continued to say that the reason it had adopted this original joint resolution was that it was ". . . impressed by the sincere desire of the broadcasters to meet their obligation of public service in the national political arena provided this obligation was voluntary."[9]

However, the committee issued this warning to the networks:

> If the broadcasters fail to measure up to their responsibility in this limited field or attempt to abuse the discretion herein granted, the committee serves notice that it will proceed to consider legislation similar to S. 3171 in the next Congress.[10]

The report was concluded by this statement of the individual view of Senator Ralph Yarborough.

> I do not agree with all the views expressed in the majority report. In my opinion, the resolution, as reported, does not contain sufficient safeguards to insure fairness and impartiality of treatment to the candidates.[11]

On Monday, June 27, 1960 the resolution was brought to the floor of the Senate by Senator Pastore. Following a statement of explanation of the resolution, Senator Yarborough expressed his opinion as stated in the report. A portion of the short exchange here sums up the debate.

> Mr. Yarborough. Under the provisions of the Senate joint resolution any station could grant to a candidate for the Presidency or a candidate for the Vice Presidency any time it chose without obligation to grant any time to an opponent of either of these candidates.
> Mr. Pastore. That is correct under the joint resolution, but the stations and networks would come under the rules of fair and impartial treatment by all with respect to their public service responsibility. I think they would be in a difficult position when their licenses came up for renewal if, to use a harsh word, they betrayed the committee and the Congress by doing what the Senator has suggested.
> Mr. Yarborough. But there is no obligation for them to grant an opponent time.
> Mr. Pastore. There is no legal obligation, and I have already stated that.
> Mr. Yarborough. They are free from all restraint.
> Mr. Pastore. That is correct.[12]

Following this exchange and after getting Senator Pastore's assurances that the network affiliates were bound by the network agreement of fairness, Senator Yarborough ended his move in opposition to the resolution. The question was then taken and the Senate approved the resolution without amendment.[13]

In the House on August 22, Representative Harris moved for a suspension of the rules and the passage of the resolution. Mr. Harris then explained the resolution and presented to that body a letter from network officials

expressing their good faith.[14] Following some debate over this expressed good faith, the question on the suspension of the rules and passage of the resolution was called, and received the required 2/3 majority.[15]

On Wednesday, August 24, President Eisnehower placed his name along with those of House Speaker Rayburn and Vice President Nixon thus opening the door for the "1960 Great Debates" between Richard Nixon and John F. Kennedy.

Lasting Effects of the 1960 Action

The effects of these debates are still being weighed today. However, the precedent set by the passage of this measure, along with the acceptable behavior of the networks, has resulted in a series of bills calling for more temporary as well as permanent suspensions of the equal time requirement.

On June 7, 1961, Senator Pastore introduced Senate Bill 2035, which would have added to the list of candidates not to be covered by the "equal time" requirement, those running for United States Senate, United States House of Representatives and Governors.[16] Senator Javits introduced a similar joint resolution (S.J. Res. 140) on September 19, 1961, which would have been applicable to New York City's candidates for mayor, president of city council, and city comptroller.[17]

Another attempt to temporarily alter Section 315 was introduced by Senator Javits June 6, 1962, in the form of S.

J. Res. 196. This joint resolution was to make possible television debates between major party candidates for United States Senate and House of Representatives in the 1962 Congressional elections.[18] A month later a similar piece of legislation was presented. S.J. Res. 209, introduced by Senator Williams on July 18, 1962, would have gone a little further than the previous measures.[19] This joint resolution would have done three things:

> First, it would suspend the equal opportunity or equal time requirement of the Communications Act for the 1964 presidential and vice presidential campaign. Second, it would suspend the equal time requirement for the 1962 congressional and gubernatorial campaigns. Third, it would direct the Federal Communications Commisssion to study the effect of the suspension on the 1962 and 1964 campaigns, the advisability of suspending or repealing or modifying the equal time requirement for future campaigns, and the need for establishing standards with respect to any change in Section 315.[20]

Action on these measures was not forthcoming; but as the 1964 presidential election approached, interest grew in the possibility of another series of "Great Debates." President Kennedy had indicated that he would be willing to meet his Republican opponent on a face to face broadcast. Under these circumstances the Democratic majority in both Houses of Congress generally favored providing legislation to make these debates possible.

On February 11, 1963, House Joint Resolution 247 was introduced to the House of Representatives by Mr. Harris. This resolution, except for a word change and appropriate date

changes, was identical to the resolution which was passed prior to the 1960 national election.*[21]

Supporters of this measure included both National Political Committees, National Association of Broadcasters, and all three major broadcasting networks. Its opponents included the Socialist Labor Party, the International Brotherhood of Teamsters, and the American Civil Liberties Union.[22] Although a majority of the representatives favored this resolution and were eventually to pass it, the arguments against it were passionate. For the most part these arguments were voiced in an effort to "protect" minority rights of free speech.

Representative Williams, who was against the resolution stated:

> Mr. Chairman, if I had been told 20 years ago that there would be legislation before this House which had for its purpose a restriction on free speech, I would have thought such a suggestion completely fantastic.
>
> Voltaire has been quoted here many times, even by those who support this legislation in this House when he said, in effect, "I may not agree with what you say, but I will defent to the death your right to say it." This bill certainly cannot be reconciled in the light of that statement.
>
> As far as I am concerned any candidate, no matter how minor he might be, so long as he is a legally qualified candidate, has the same rights, privileges, and immunities as any other candidate for the office that he seeks, no matter how little his chances of election may be.
>
> I hope this legislation, Mr. Chairman is defeated.[23]

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*See Appendix J for Text of Resolution with House Committee Amendments.

Although the basic philosophy of free speech and minority rights behind these arguments against this resolution were agreed to by all, those who favored the measure felt that high campaign costs and small third party numbers, out weighed idealistic concepts. A speech by Representative Springer expressed this feeling.

> . . . The purpose of this legislation is to get before the American people the two nominees who have a chance to be elected in 1964. That is about as practical legislation as I know.
>
> Mr. Chairman, this has been supported editorially from coast to coast. I have not seen an editorial against it. There may be some to which the Members may refer, but all of the editorials I have seen, and I think I have read them all on the rack out here, have supported it. They supported it in 1960 and they will support it in 1964 because they believe that is the only way the American people can see the two candidates of the two major parties confront each other, and they can then decide after seeing them on television which one of those candidates they want.[24]

Eventually, after defeating an amendment which would have limited H.J. Res. 247 to joint appearances by the two major presidential candidates, the House passed the measure by a vote of 263 to 126, and sent it to the Senate for its approval.

On September 1, 1963, the resolution was reported out of committee favorably to the Senate.[25] The committee had made only two slight changes. First, it shortened the period that the resolution would be in effect, from 75 days to 60 days prior to November 3, 1964. This move was made because of the late summer date of the Democratic National Convention, scheduled for August 24-28. Second, it removed

from Section 2 the requirement which would have required broadcasters to provide information on rates charged for political broadcasts.[26]

Debate on the measure was very limited, with no major objections. Senator Pastore, on October 2, introduced it to his fellow Senators stating that it was his belief "the public interest (would) be served by the enactment of this bill."[27] Senator Hartke expressed support for the bill, but called for more permanent action and the complete elimination of the equal time requirement from Section 315. Following voices of support from a few more Senators, H.J. Res. 247 was passed by the Senate.[28]

Almost two months later the tragedy in Dallas, Texas, had a profound effect on this legislation. The assassin's bullet which killed President Kennedy also made Lyndon B. Johnson President of the United States. As the months passed, the new President adjusted to his office and the American people, beginning to adjust themselves to the terrible events which had passed, looked towards the 1964 national elections.

As the interest in the election increased, action on H.J. Res. 247 was renewed. In February 1964, both Houses of Congress appointed members of a conference committee to examine the measure and come to one accord.[29] By May 19, the conference report (H. Rept. 1415) was ready and presented to

the House. The report recommended that the House accept both of the Senate amendments.

By the time the conference report was submitted to the Senate on June 3, 1964, new opposition to the entire resolution was beginning to be evident. As the weeks passed with no action on the conference report, Senator Mansfield was compelled as majority leader to explain that the holdup on the bill was due to the lack of response from the Democratic National Committee as to its stand on the issue, since the death of President Kennedy.[30]

Debate in the Senate began on August 11, 1964. Complaints were raised by Republican Senator Colton that the Democrats were keeping the resolution from a vote on purpose. By this time it was generally known that President Johnson was not interested in a face to face debate with the Republican nominee, Senator Goldwater. So now the Democrats were placed in an awkward position. The change in their leadership brought a change in ideas, which would cause some of them, in order to support the new party line, to vote against a bill which they had supported under President Kennedy.

In pointing this situation out to the Senate, Senator Colton stated:

> I must say this plainly--let the chips fall where they may. I can see but one reason why those who have pushed this proposal all the way along to its final enactment are hesitating and holding, and that is that they want to save the president of the United States from simply saying "No" when he can say that

> without loss of respect or prestige on the part of any citizen in the country.
>
> In view of what has transpired this afternoon I shall still, as a member of the minority, wait patiently, in the hope that the distinguished majority leader and those charged with the responsibility of conducting the Senate will decide to permit the Senate to vote on the conference report.
>
> I wish also to add--and this is only an honest statement, not in any sense a threat--that I do not propose to be governed by the Democratic policy committee.[31]

In answering this, Senator Pastore, who had been a driving force in the passage of this resolution before President Kennedy's death, was a little less than enthusiastic. Although he was still for the passage, he acknowledged that the change of leadership had affected his thinking on the problem of whether or not a president should be subject to a debate with his opponent.

> Mr. Pastore. I am one of those who believe that the joint resolution would serve a good purpose. I am not denying that. I am only saying that a cloud has been cast over the issue on the question of personal confrontation . . . the question of whether or not the President of the United States should be subjected to debate is quite serious. I am the one who said in the committee hearing, when we were receiving a report from the officials of the networks, that I would question very much whether President Kennedy, now that he was the President--and this was shortly after he was elected and inaugurated--would be amenable to a debate format.
>
> That very question was asked of him at a news conference. I believe he answered the question in the affirmative. That was his responsibility. That was his decision. He was speaking for himself, and no one else.
>
> Since that time we have had a new President, and this serious question has risen. There are sensitive spots all over the world. It makes a great difference, when a President is asked a question, whether or not he answers or does not answer it, or takes a certain posture, or shows some physical feature that

> indicates or leaves an impression one way or the other. It is quite serious.[32]

Next, Senator Pastore questioned whether or not the networks would be so in favor of this legislation if the candidates did not appear jointly. He felt that the networks were after the dramatic, the debate, and would not be so eager to give the President free time for individual exposure and his Republican opponent the same. Finally, the Senator suggested that the choice on this type of temporary measure should be left up to the two candidates themselves, since they were the ones directly involved.[33]

> Mr. Pastore . . . If the two potential participants are not interested, what are we becoming excited about? This measure has to do with President Johnson and Senator Goldwater; and if neither one is interested--and neither one has discussed it with me--why should I become excited? Why should we take four hours this afternoon to decide something they do not want?[34]

A week later the debate was resumed. On this date the Senate majority leader, Senator Mansfield, moved that the conference report on J.H. Res. 247 be tabled. Senator Colton once again took up the call to denounce those who were out to kill the bill:

> . . . why should we kill this measure which has been the result of long, painstaking, and careful preparation and support by the very people who seem to be lukewarm now . . . Free and fair public exposure is being killed by the very people who pressed for it in the beginning . . . I believe that those who feel compelled to kill the bill tonight . . . are doing so with regret and sorrow . . . I feel that this is unfortunate . . . Politics are being talked, but the question is one of future policy. I regret the

> action that is being taken. This is a regretable occurrence.[35]

When the vote on the Mansfield motion was taken, the "regretable occurrence" became reality; the motion passed by a vote of 44-41, with 15 not voting.[36] Following this action an editorial appeared in the New York Times on August 20, 1964, which was typical of the papers throughout the country. The editorial read:

> (From the New York Times, August 20, 1964)
>
> No Debate
>
> The decision of President Johnson to avoid a television debate with Senator Goldwater is poor public policy, whether or not it is wise politics. The Senate Democrats were clearly deferring to the President's assessment of his own political interests when they voted to table the bill which would have suspended the equal-time requirement and thus cleared the way for a direct confrontation before a nationwide audience.
>
> It is in the public's interest that a presidential campaign should approach as nearly as possible a coherent and responsive dialog between the two candidates. The televised debates, as our experience of 1960 demonstrated, are valuable in developing that dialog. They could have been especially useful this year in view of the Republican candidate's apparent determination to avoid press conferences and his propensity for repudiating or reinterpreting his previous remarks.
>
> President Johnson is not a man given to underconfidence in his own persuasiveness. His reticence in this instance has put an unfortunate limit on the evidence available to the voters in judging which nominee is better qualified to act as spokesman for this nation before the world.

These actions by the United States Senate are quite revealing, and very likely will be indicative of Congressional action in this field for some time. It appears that on the subject of debates between the major candidates for

president and vice president, the candidates themselves will be the determining factors. The positions taken by the candidates, for or against debates, will be reflected in Congress. The will of the candidate who represents the majority party in the Congress will most likely prevail. It is safe to say that the determining factor as to whether or not Congress passes legislation allowing for "Great Debates" rests not so much on the question of the relative worth of such debates to our society, but rather on the willingness of the nominees to face each other in full view of the vast television audience.

Attempts to Repeal "Equal Time"

The "Great Debates" of the 1960 presidential election prompted not only these attempted temporary measures, but also a number of attempts for the complete repeal of the "equal time" requirement in Section 315.

On June 18, 1962, Senator Pastore of Rhode Island (representing his colleague Senator Hartke) introduced Senate Bill 3434.* This measure would have amended Section 315 so as to eliminate the statutory requirement of affording equal time for use of broadcasting stations by candidates for public office.[37] Speaking for Senator Hartke, Senator Pastore explained that it was time for the Congress to

*Complete text in Appendix K.

"recognize the maturity" of the broadcasting industry by acting favorably upon this amendment.[38] One year later Senator Hartke himself, who had by this time become the leading voice in the Senate advocating repeal of the equal time requirement, reintroduced this bill as Senate Bill 1696.[39] On February 4, 1965 he made another attempt, with Senate Bill 1010.[40] A month prior to this, Senator Robertson, added his voice to this cause, with the introduction of Senate Bill 673.[41]

Industry Reaction

As could be expected, industry support of these bills was very favorable. For years the industry had been complaining that the "equal time" requirements had hindered their presentation of our political campaigns. In a talk before the Economic Club of Detroit, in December of 1964, David Sarnoff, Chairman of the Board of the National Broadcasting System stated:

> . . . Its (the equal time requirement) effect has been to restrain broadcasters from presenting serious and major candidates who command the public interest, by requiring the same amount of air time to be devoted to candidates of splinter and frivolous parties, in whom the public has little or no interest: and the by-product of this mechanistic rule has been less, rather than more, exposure of candidates and discussion of issues.
> . . . the Congress should revise section 315 of the Communications Act to eliminate the equal-time requirement completely and permanently. This provision of the law has in fact served a purpose contrary to the one anticipated and it discriminates against the medium of information best equipped to inform the public on candidates and issues.

> Only then will we be true to the precepts of Thomas Jefferson, who displayed an insight that was to prove applicable over the ages when he wrote: "I know of no safe repository of the ultimate powers of society but the people themselves, and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them but to inform their discretion by education."[42]

Holding similar views, Dr. Frank Stanton, President of Columbia Broadcasting System, has stated:

> . . . As a practical matter, Section 315 not only prevents face-to-face discussions . . . but many individual appearances by the candidate . . . Congress has a clear mandate to correct what is in effect a deplorable short-changing of the American People.[43]

Congressional Inaction

Despite these pleas, the Congress has refused to act. Guarding carefully this aspect of broadcast regulation which so directly affects them as well as basic traditional beliefs of free speech and minority rights, our Congressmen have not been willing to allow the broadcasters of the United States the right to cover our political campaigns as they see fit. Rather, it has been their general feeling that it is government's role to protect all political opinions and to see that broadcasters do not discriminate for or against a cause just because they champion it or because it does not command widespread popular support.

In an attempt to compromise between those who would repeal the "equal time" requirement, and those who would leave the Section as it stands, Senator Scott offered Senate

Bill 1287* on February 25, 1965. This amendment would have made the following basic changes in Section 315:

First, it would permit the broadcaster to make free time available to major candidates without requiring that he make similar free time available to the nominee of every splinter group.

Second, if a station chose to sell time to a major candidate, it could effectively charge no more than 2/3 of the rate which the candidate would, under present law, be required to pay.[44]

Senator Scott explained to his fellow Senators his reasons for submitting this measure:

> The presidents of both major television networks have recently delivered speeches urging complete repeal of this section. It is understandable that the broadcasting industry would like to see the equal-time provision pass into oblivion so that it could exercise sole power over which candidates would appear and under what circumstances. This may be the ultimate answer, but I suggest an approach which I believe to be presently preferable.
>
> My amendment would meet the legitimate objections of the industry, while still preserving certain guarantees of fair and equitable use of broadcasting facilities. Furthermore, it would assure a reduction in the actual charges for television and radio time which a major candidate would have to pay, in keeping with the public interest in a vigorous campaign between qualified candidates, regardless of their financial resources.
>
> This would not impose an unreasonable burden on the broadcasting industry.[45]

Up to now the controversy over Section 315 in Congress has been unsolvable. The factions representing the

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*Complete text of this bill in Appendix L.

three basic approaches to the "equal time" question have been unable to come up with a compromise solution. As a result, Section 315 remains today unchanged since the liberalizing 1959 amendment dealing with bona fide newscasts. With the eyes of the nation and its political parties now turning towards another presidential election, however, pressure in Congress to once again review this Section is bound to increase. The American people liked the 1960 "Great Debates" and would like to see them repeated in 1968. The American broadcast industry feels that it proved itself with its conduct in the 1960 election and has earned the right to be freed from the equal time restriction of Section 315. The cost of the American political campaign is rising with alarming speed, with broadcast expenses taking the larger share. Many contend that Section 315 causes these large expenditures by preventing the broadcaster from providing the major candidates with free time without being obligated to a host of minority candidates. All these factors will combine and enlarge as the magnifying effect of a presidential election sweeps the country and the halls of Congress. The pressure will build and the results in Congress could have a profound effect on the future of political broadcasting in the United States.

FOOTNOTES - CHAPTER V

1. U.S., Congressional Record, 86th Cong., 2nd Sess., 1960, CVI, Part 4, p. 5121.
2. Ibid., p. 5146.
3. Ibid.
4. Ibid., p. 5147.
5. Ibid.
6. Ibid., Part 9, p. 12064.
7. U.S. Congress, Senate, Senate Miscellaneous Reports on Public Bills, III, 86th Cong., 2nd Sess., 1960, Rept. #1539, p. 1.
8. Ibid., pp. 4-5.
9. Ibid., p. 5.
10. Ibid., p. 6.
11. Ibid., p. 9.
12. Op. cit., Cong. Rec., Part 11, p. 14474.
13. Ibid., p. 14477.
14. Ibid., Part 13, pp. 17036-38.
15. Ibid., p. 17041.
16. U.S., Congressional Record, 87th Cong., 1st Sess., 1961, CVII, Part 7, p. 9698.
17. Ibid., Part 15, p. 20150.
18. U.S., Congressional Record, 87th Cong., 2nd Sess., 1962, CVIII, Part 7, p. 9833.
19. Ibid., Part 9, p. 12510.
20. Ibid., p. 12511.
21. U.S., Congressional Record, 88th Cong., 1st Sess., 1963, CIX, Part 2, pp. 2203 and 2219.

22. Ibid., Part 8, p. 11182.

23. Ibid., p. 11190.

24. Ibid., p. 11193.

25. Ibid., Part 13, p. 17119, also U.S. Congress, Senate, Senate Miscellaneous Reports on Public Bills, IV, 88th Cong., 1st Sess., 1963, Rept. #501.

26. Op. cit., Cong. Rec., Part 14, p. 18565.

27. Ibid.

28. Ibid., p. 18566.

29. U.S., Congressional Record, 88th Cong., 2nd Sess., 1964, CX, Part 3, pp. 3005 and 3246.

30. Ibid., Part 14, p. 19043 and Part 9, p. 12566.

31. Ibid., Part 14, p. 19048.

32. Ibid., pp. 19046-47.

33. Ibid., p. 19047.

34. Ibid.

35. Ibid., Part 15, pp. 20030-31.

36. Ibid., p. 20032.

37. Op. cit., Cong. Rec., CVIII, Part 8, p. 10734.

38. Ibid., p. 10736.

39. Op. cit., Cong. Rec., CIX, Part 8, pp. 10555-56.

40. U.S., Congressional Record, 89th Cong., 1st Sess., 1965, CXI, Part 1, p. 1948.

41. Ibid., p. 1009.

42. Ibid., p. 1271.

43. Ibid., p. 1010.

44. Ibid., Part 3, p. 3459.

45. Ibid.

CONCLUSION

In the forty years since the emergence of political broadcasting regulations, the industry has developed into a major force in American life. The technical advances of the transistor have freed radio to go easily everywhere we go. Television has become a major factor in our society and one of the most important factors in political campaigns.

During these forty years of rapid development and growth of the industry, political broadcasting regulations has remained basically the same. The "equal time" concept placed in the law in 1927 has remained untouched, with the exception of the 1959 amendment and the 1960 experiment. Today Congress is faced with the task of reevaluating Section 315 in terms of the times in which we live. In making this reevaluation it must use its knowledge of the past to determine what changes, if any, should be made for the future of political broadcasting regulations. The problems are fundamental to our political structure, and the debate over changes will likely be extensive.

On the surface the conflicts are easily viewed. First, as mentioned before, as a result of the law, networks and stations do not generally give free time to majority candidates because of the obligation by which they would

have to do the same for all candidates. The result is that only the major parties can afford the high expense of buying broadcast time. Newton Minow called this a "dollar wall" preventing the small parties from access to the air waves. This economic problem was for the most part overlooked at the time of original drafting of the law, because the Congressmen at the time did not foresee the great growth of the media, especially that of television. However, at that time a short exchange between two senators during the debate over Section 18 in 1927 suggests Congress did believe that this economic wall would be discriminating.

> Senator Blanton. Suppose there are two candidates, one a rich man and one a poor man, and the corporation charges for services one candidate $5,000, a sum that the poor man can not pay. Is this giving them equal chance.
> Senator Scott. No: I think the bill preserves to the commission the authority to prevent any discrimination.
> Senator Blanton. That would be discrimination?
> Senator Scott. Absolutely.[1]

It is obvious that the commission has not taken any action in this vein, and today this is the most pressing complaint concerning Section 315. To remedy this problem, the broadcasters have pushed for full repeal of the Section. In one typical opposing answer to this suggestion, Robert Lewis Shayon from the Saturday Review has stated, "If he (the minority candidate) gets an unfair shake in buying time on the air he may get no shake at all in his demands for free and equal time if he is left to the mercy of the broadcasters."[2]

In the same vein, during the 1959 Lar Daly case, the American Broadcasting Company network voiced its opinion against the elimination of Section 315:

> . . . While the political scene is as presently constituted with two major parties, it may seem of less importance that candidates of parties who represent fractional interests in our country be accorded the same opportunity as those representatives of the major parties. It is, however, impossible to foresee that this situation will always remain and the possibility of a third party is ever present. The broadcaster should not be put in a position where he makes the decision that the third party candidate is of less importance than the candidate of the two other parties and therefore need not be given equal time.[3]

On the other hand as we have seen, support for full repeal of the "equal time" portion of Section 315 can be found on the Senate floor.

In a democracy such as ours, congressional action has to walk the narrow line of majority rule on the one side, and protection of minority rights on the other. In dealing with Section 315 the question is, should minority candidates representing only a fraction of the voting public (total vote in national elections only once over 1% since 1940)* be guaranteed equal right over radio and television? Or conversly, should major political candidates, who represent the overwhelming majority of American voters, be barred from free broadcast time by a law which is designed to serve the interest of minority candidates who represent only a small fraction of the voters?

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*For complete figures, see Appendix I.

Along with this question is an alternative one: should the United States Government step in and make it its business to tell the broadcaster to give free time to some candidates and not others. A number of suggestions have been made in this area. Some suggest giving free time on a formula basis; that is with majority parties given so much per week before the election and minority parties getting a fraction of free time to correspond to the percent of votes they received in the previous election. There have been many different formulas of this type proposed, and I would be very much surprised if this kind of answer to the Section 315 question is not in the forefront when Congress returns to the problem. However, this type of expanded government control will bring sharp criticism from those who fear strong government authority in the regulation of political campaigns. For in this case the government would be given authority not only to tell broadcasters to whom they should give time but how much time they are required to give.

As one can see, there is no easy solution to this dilemma. About the only thing we can agree upon is that Section 315 should be studied and debated, and decisions made by our representatives as to its relative worth to our political way of life. May we all hope that when the time comes for an evaluation of Section 315, the men we have elected to represent us and preserve our way of life, have the intellect, the foresight, and good judgment to accomplish

that task. I for one do not envy their role and will be very interested in seeing what road they will take in solving the problem of Section 315.

FOOTNOTES - CONCLUSION

1. U.S., Congressional Record, 69th Cong., 2nd Sess., 1927, LXVIII, Part 3, p. 2567.

2. The Saturday Review, Robert Lewis Sheyon, Television and Radio Section, January 7, 1961, p. 33.

3. Pike & Fischer, Radio Regulations, Vol. 18, p. 728.

APPENDICES

APPENDIX A

H.R. 9230 Text August, 1935

Be it enacted, etc., That Section 315 of the Communications Act of 1934 be and hereby is amended by striking out the whole of said section and by inserting in lieu thereof the following:

"Sec. 315. Each licensee of a radio broadcasting station shall be required to set aside regular and definite periods at desirable times of the day and evening for uncensored discussion of a nonprofit basis of public social, political, and economic problems, and for educational purposes. When any such licensee permits any speaker of any controversial social, political, or economic issue to use its facilities during any such period, it shall afford to at least one exponent or advocate of each opposing viewpoint equivalent facilities. The licensing authority shall without delay makes rules and regulations to carry this provision into effect, and in proceeding hereunder it shall appoint, and, in its discretion, act upon the recommendations of an advisory committee consisting of disinterested, representative citizens: Provided, That the licensing authority, the advisory committee, and licensees shall have no power of censorship of any kind, nor shall any license be subject to liability, civil or criminal, in any State or Federal court for material so broadcast under the provisions of this section, nor shall any license be revoked or renewal be refused because of material so broadcast."

APPENDIX B

H.R. 9231 Text August, 1935

Be it enacted, etc., That the Communications Act of 1934 be and hereby is amended by adding thereto the following:

"Sec. 315. (a) Each licensee of a radio broadcasting station shall keep complete and accurate records open to reasonable public inspection:

"(1) Of all applications for time;

"(2) Of all rejected applications and the reasons for such rejections;

"(3) Of all additions and changes requested in arranged programs on public, social, political, and economic issues, and on educational subjects;

"(4) Of interference with and substitution of programs on public, social, political, and economic issues, and on educational subjects."

"The licensing authority shall make rules and regulations to effectuate this provision."

APPENDIX C

S. 1333 Section 15 of the White Bill to Amend Sec. 315 May 23, 1947 of the Communications Act of 1934

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

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

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

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

"(c) No licensee shall, during a political campaign, permit the use of the facilities of a broadcast station for or against any candidate for any public office except (1) by a legally qualified candidate for the same office; or (2) by a person designated, in writing, by such candidate; or (3) by a regularly organized political party whose candidate's or candidates' names appear on the ballot and whose duly chosen responsible officers designate a person to use such facilities.

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

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

"(f) Neither licensees nor the Commission shall have power of censorship over the material broadcast under the provisions of this section: Provided, That licensees shall not be liable for any libel, slander, invasion of right of privacy, or any similar liability imposed by any State, Federal, or Territorial or local law for any statement made in any broadcast under the provisions of this section, except as to statements made by the licensee or persons under his control.

"(g) The duty of the licensee to observe the conditions herein stated shall apply to all political activities, whether local, State, or National in their scope and application. The term 'equal opportunities' as used in this section and in section 330 of this Act means the consideration, if any, paid or promised for the use of such station, the approximate time of the day or night at which the broadcast is made, an equal amount of time, the use of the station in combination with other stations, if any used by the original user, and in the case of network organizations, an equivalent grouping of stations connected for simultaneous broadcast or for any recorded rebroadcasts."

APPENDIX D

S. 1333 Section 17 to Amend Sec. 315 of the Communications Act of 1934 May 23, 1947

Sec. 17. Part 1, of title III of such Act is amended by adding two new sections as follows:

"Discussion of Public or Political Questions

"Sec. 330. When and if a radio broadcast station is used for the presentation of political or public questions otherwise than as provided for in section 315 hereof, it shall be the duty of the licensee of any such station to afford equal opportunities, for the presentation of different views on such questions Provided, That the time, in the aggregate, devoted to different views on any such questions shall not be required to exceed twice that which was made available to the original user or users. Neither the licensee of any station so used nor the Commission shall have the power to censor, alter, or in any manner effect or control the substance of any program material so used: Provided, however, That no licensee shall be required to permit the broadcasting of any material which advocates the overthrow of the government of the United States by force or violence: And provided further, That no licensee shall be required to broadcast any material which might subject the licensee to liability for damages or to penalty or forfeiture under any local, State, or Federal law or regulation. In all cases arising under this section, the licensee shall have the right to demand and receive a complete and accurate copy of the material to be broadcast a sufficient time in advance of its intended use to permit an examination thereof and the deletion therefrom of any material necessary to conform the same to the requirements of this section.

"Sec. 331. No licensee of any radio broadcast station shall permit the use of such station for the presentation of any public or political questions under sections 315 or 330, unless the person or persons arranging or contracting for the broadcast time shall, prior to the proposed broadcast, disclose in writing and deliver to the licensee (a) the name of the speaker or speakers; (b) the subject of the discussion (c) the capacity in which the speaker or speakers appear; that is, whether on their own account as an individual candidate or public officer, or as the representative, advocate, or employee of another; and how the time for

the broadcast was made available, and if paid for, by whom. It shall be the duty of the licensee of the station so used to cause an announcement of the name of the speaker or speakers using the station together with the other information required by this section, to be made at both the beginning and the end of the broadcast: Provided, That in the case of a public officer, speaking as such, the announcements shall specify only the subject of the discussion, the office held by him, whether such office is elective or appointive and by what political unit or political officer the power of election or appointment is exercised. Where more than broadcast station or network of such stations is used as herein provided, the requirements of this section will be met by filing the required material with the licensee of the originating station and by broadcasting the required announcements over all stations which broadcast the subject program.

APPENDIX E

S. 3926 Text May 29, 1956

Be it enacted, etc., That section 315 of the Communications Act of 1934 (47 U.S.C. 315) is amended to read as follows:

"Sec. 315. (a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall (except as provided by subsections (b) and (c)) afford equal opportunities to all other such candidates for that office in the use of such broadcasting station.

"(b) Subsection (a) shall apply to the use of a broadcasting station by any legally qualified candidate for the office of President or Vice President of the United States only if such candidate -

"(1) is (A) the nominee of a political party whose candidate for such office in the preceding presidential election was supported by not fewer than 4 percent of the total votes cast, or (2) supported by petitions filed under the laws of the several States which in the aggregate bear a number of signatures, valid under the laws of the States in which they are filed, equal to at least 1 percent of the total popular votes cast in the preceding presidential election; or

"(2) is a candidate for presidential or vice presidential nomination by a political party whose candidate for such office in the preceding presidential election was supported by not fewer than 4 percent of the total popular votes cast and -

"(A) is the incumbent of any elective Federal or statewide elective office of any state: or

"(B) has been nominated for President or Vice President at any prior convention of his party; or

"(C) is supported by petitions filed under the laws of the several states which in the aggregate bear at least 200,000 signatures which are valid under the laws of the States in which they are filed.

"(c) Subsection (a) shall apply to the use of a broadcasting station by any legally qualified congressional candidate only if such candidate is -

"(1) the nominee of a political party whose candidate for the congressional office sought by the legally qualified candidate received in the preceding general congressional

election not less than 4 percent of the total votes cast for all candidates for that office in such election; or

"(2) supported by one or more petitions filed under applicable State law which in the aggregate bear a number of signatures, valid under the laws of the State, equal to at least 1 percent of the total votes cast for all candidates for that office in the preceding general congressional election. For the purposes of this subsection, the term 'congressional candidate' means a candidate for election as a Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.

"(d) No licensee shall have any power of censorship over the material broadcast under the provisions of this section. No obligation is hereby imposed upon any licensee to allow the use of its station by any such candidate.

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

"(f) It shall be the obligation of each television network and each television station to make available without charge to each candidate for the office of President of the United States eligible to receive equal opportunity under subsection (b) one-half hour of time per week during September and 1 hour of time per week during October and 1 hour in November preceding election of any year in which a presidential election is being held. Time made available under this subsection may be utilized only by the candidate for President or the candidate for Vice President and shall be in such time segments (not less than 15-minute segments) and at such time as the candidate for President shall request not less than 15 days in advance, but no network or station shall be under any obligation to provide time in less than half-hour segments at any time when there is a regularly scheduled half-hour program on such network or station or to provide time in less than 1-hour segments at any time when there is a regularly scheduled 1-hour program on such network or station. Where a request for time is made to a network under this subsection, it shall be the obligation of each station affiliated with that network to clear the time requested; Provided, however, That if a station is affiliated with more than 1 network and the total time requested for clearance in any 1 week shall exceed the amount of time the station is obligated to make available under this subsection, the candidate for President shall determine the network to which the time is to be made available by the station. The candidate for President may request time under this subsection directly from a station or stations rather than through a network or networks, but in no event shall any network or station be required to carry programs without charge

for more time than specified in the first sentence of this subsection. No network or station shall be held responsible for the nonfulfillment of any contract heretofore or hereafter made because of its inability to carry out said contract by reason of the obligations imposed upon such network or station under this subsection.

"(g) The Commission shall -

"(1) prescribe appropriate rules and regulations to carry out the provisions of this section, and

"(2) determine, and upon request of any licensee notify such licensee concerning, the eligibility of any candidate to receive equal opportunity under subsection (b) or (c) in the use of any broadcasting station."

APPENDIX F

S. 1858 "The Fair Political Broadcasting Act of 1959."
May 5, 1959

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Political Broadcasting Act of 1959.

Sec. 2. The Congress finds (1) radio and television as a means of mass communication have played, and will continue to play, an ever-increasing role in the conduct of election campaigns; (2) the basic purpose of section 315 of the Communications Act of 1934 is to insure that a broadcasting licensee, which allows its facilities to be used by a legally qualified candidate, affords fair and equal opportunities to all opposing legally qualified candidates; (3) the great variety of factors which are relevant in deciding what constitutes "fair and equal" opportunity have afforded constant frustration and pitfalls to legally qualified candidates for public office and the broadcast industry; and (4) recent rulings by the Federal Communications Commission concerning the interpretation of section 315 as it now stands have tended to be inconsistent with the original intent of the Congress and thus with the objectives of public service and public enlightenment. Therefore, it is the purpose of the Congress to extend, revise, and improve the Communications Act of 1934 to bring into focus that section of the law governing political broadcasts.

Sec. 3. Section 315 of the Communications Act of 1934 (47 U.S.C. 315) is amended to read as follows:

"Sec. 315. (a) If any licensee shall permit any person who is a legally qualified and nominated candidate for the office of President or Vice President of the United States to use a broadcasting station, he shall afford fair and equal opportunity in the use of such broadcasting station to every other such candidate for such office -

"(1) who is the nominee of a political party whose candidate for that office in the preceding presidential election was supported by not fewer than 4 percentum of the total popular votes cast; or

"(2) whose candidacy is supported by petitions filed under the laws of the several States which in the aggregate bear a number of signatures equal to at least 1 percentum of

the total popular votes cast in the preceding presidential election and which signatures are valid under the laws of the States in which they are filed.

"(b) If any licensee shall permit any person who is a legally qualified or substantial candidate for nomination by a political party for the office of President or Vice President of the United States to use a broadcasting station, such licensee shall afford fair and equal opportunity in the use of such broadcasting station to every other such candidate for nomination to such office by such party.

"For the purposes of subsection (b) of this Section 315, a candidate for Presidential or Vice Presidential nomination who is otherwise legally qualified shall be presumed to be substantial if:

"(i) he is the incumbent of any elective Federal or statewide elective office of any State; or

"(ii) he has been nominated for President or Vice President at any prior convention or caucus of his party; or

"(iii) his candidacy is supported by petitions filed under the laws of the several states which, in the aggregate, bear a number of signatures, valid under the laws of the States in which they are filed, equal to at least -

"(a) one percentum of the total popular vote cast in the preceding Presidential election for the candidate of such party, or

"(b) 200,000 whichever is smaller.

"(c) If any licensee shall permit any person who is a legally qualified candidate for any other public office to use a broadcasting station, he shall afford fair and equal opportunities to all other such candidates for that office in the use of such broadcasting station.

"(d) No licensee shall have any power of censorship over the material broadcast under the provisions of this section. No action, either civil or criminal, shall be maintained by any person in any court against any licensee or agent or employee of any licensee, because of any defamatory or libelous statement made by a legally qualified candidate for public office in a broadcast made under the provisions of this section, unless such licensee, agent or employee participated in such broadcast willfully, knowingly, and with intent to defame.

"(e) Appearance by a legally qualified candidate on any regularly scheduled or bona fide newscast, news documentary, panel discussion, debate, or similar type program where the format and production of the program are under exclusive control of the broadcasting station, or by the network in case of a network program, as to content, presentation, length, time, and all other details, and determined in good faith in the exercise of the broadcaster's judgment to be a newsworthy event and in no way designed to advance the cause

of or discriminate against any candidate shall not be deemed to be use of a broadcasting station within the meaning of this subsection.

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

"(g) The Commission shall -

"(1) prescribe appropriate rules and regulations to carry out the provisions of this section, and

"(2) determine, and upon the request of any licensee notify such licensee concerning, the eligibility of each candidate for the office of President or Vice President of the United States to receive equal opportunity under subsections (a) and (b) of this section in the use of any broadcasting station.

"(h) No obligation is hereby imposed upon any licensee to allow the use of its station by any such candidate."

Sec. 4. The amendment made by this Act shall be effective as of January 1, 1960.

APPENDIX G

Section 315 of the Communications Act of 1934, as amended.[1]

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 broadcasting station: provided that such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is hereby imposed upon any licensee to allow the use of its station by any such candidate. Appearance by a legally qualified candidate on any

(1) bona fide newscast

(2) bona fide news interview

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

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

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

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

Section 2 (a) The Congress declares its intention to reexamine from time to time the amendment to Sec. 315 (a) of the Communications Act of 1934 made by the first sections of

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[1] U.S. Statutes at Large, LXVI, p. 717 and also LXIII, p. 557.

this Act, to ascertain whether such amendment has proved to be effective and practicable.

(b) To assist the Congress in making its reexaminations of such amendment, the Federal Communications Commission shall include in each annual report it makes to Congress a statement setting forth (1) the information and data used by it in determining questions arising from or connected with such amendment, and (2) such recommendations as it deems necessary in the public interest.

APPENDIX H

S. 3171 A bill to provide for the use of television broadcasting stations by candidates for the office of President of the United States. March 10, 1960.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Presidential Campaign Broadcasting Act."

Sec. 2 (a) It shall be the obligation of each television broadcasting station licensed under the Communications Act of 1934 and each television network to make available without charge the use of its facilities as hereinafter provided to each candidate for the office of President of the United States who is the nominee of a political party whose candidate for that office in the preceding presidential election was supported by not fewer than 4 percentum of the total popular votes cast.

(b) Each candidate eligible under subsection (a) shall be entitled to one hour of time each week from each such station and network for eight weeks during the period beginning September 1 preceding election of any year in which a presidential election is being held.

(c) The time to which eligible candidates are entitled under subsection (b) shall be provided in prime viewing hours, and shall be scheduled in programs of one hour each, equally divided, without intervening commercial material, one of which shall be presented on Monday preceding the day of election.

(d) The Federal Communications Commission shall make arrangements for carrying out the provisions of this Act in cooperation with the networks and stations. Such arrangements shall provide that time provided under this Act shall to the extent possible be simultaneous in each time zone of the Nation. Where such time cannot be provided simultaneously any expenses incurred in recording and distributing such simultaneous broadcast for later use shall be borne by the candidates.

(e) Time made available under this Act may be utilized only by a candidate for President, except that at the election of such candidate for President the candidate for Vice President may utilize not to exceed two of the half-hour periods made available.

(f) No station or network shall be held responsible for the nonfulfillment of any contract heretofore or hereafter made because of its inability to carry out such contract by reason of the obligations imposed upon such station or network under this Act.

Sec. 3. A station or network shall have no power of censorship over material broadcast under the provisions of this Act.

Sec. 4. (a) The Federal Communications Commission shall make rules and regulations to carry out the provisions of this Act, including requirements for each station or network to report to the Commission, in such form and manner and at such time, as the rules and regulations may prescribe, with respect to use of its facilities pursuant to the provisions of this Act.

(b) In determining whether public interest, convenience, and necessity will be served by the granting of a renewal of a license for the operation of a broadcasting station, the Commission shall give due consideration to the reports with respect to compliance with the provisions of this Act submitted to the Commission pursuant to subsection (a) of this section.

Sec. 5. The provisions of Section 315 of the Communications Act of 1934 (47 U.S.C. 315) shall not apply in the case of the use of facilities without charge under the provisions of this act.

APPENDIX I

Year	Minority Party Percentage	Minority Party Votes
1900	2.8	393,000
1904	7	810,000
1908	5.3	897,000
1912	34.9	5,254,000*1
1916	4.6	869,000
1920	5.5	1,475,000
1924	17.2	4,983,000*2
1928	1.1	404,000
1932	2.9	1,163,000
1936	2.7	1,215,000
1940	.6	262,000
1944	.7	347,000
1948	5.4	2,615,000
1952	.5	299,000
1956	.6	413,000
1960	.8	504,000
1964	.4	337,000[1]

*1Over 4,100,000 for Theodore Roosevelt, Progressive Party.

*2Over 4,800,000 for Lafallot, Progressive Party.

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[1]Statistical Abstract of the United States 1965, National Data Book and Guide to Sources, 86th Edition, U.S. Dept. of Commerce, Bureau of the Censis.

APPENDIX J

House Joint Resolution 247 - Joint resolution to suspend for the 1964 campaign the equal opportunity requirement of Section 315 of Communications Act of 1934, for nominees for the office of President and Vice President.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That that part of section 315(a) of the Communications Act of 1934, as amended, which requires any licensee of a broadcast station who permits any person who is a legally qualified candidate for any public office to use a broadcasting station to afford equal opportunities to all other such candidates for that office in the use of such broadcasting station, is suspended for the period of the 1964 presidential and vice presidential campaigns with respect to nominees for the offices of President and Vice President of the United States. Nothing in the foregoing shall be construed as relieving broadcasters from the obligation imposed upon them under that Act to operate in the public interest.

With the following committee amendments.

Page 1, line 9, strike out "period of the 1964 presidential and vice presidential campaigns" and insert "seventy-five-day period immediately preceding November 3, 1964.

Committee amendment: Page 2, line 2 strike out "nominees" and insert "legally qualified candidates."

Sec. 2. The Federal Communications Commission shall require broadcast stations and networks to make such reports as may be necessary to enable the Commission to make a detailed report to the Congress not later than May 1, 1965, on: (1) The effect of the suspension of the equal opportunities requirement of section 315 on the 1964 presidential and vice presidential campaigns, including information concerning requests for time, amount of time made available (including amount of free time, time paid for by candidates or political organizations, and time paid for by others), total charges, rates, editorializing, distribution of time during various phases of the campaigns, and clearance by individual stations of network program concerning the candidates or the issues, and (2) the role of broadcast stations and networks in other political campaigns during 1964.

APPENDIX K

S. 3434 June 18, 1962 Text

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 315 of the Communications Act of 1934, as amended (47 U.S.C. sec. 315), is amended to read as follows:

"CHARGES FOR USE OF BROADCASTING FACILITIES BY CANDIDATES FOR PUBLIC OFFICE

"Sec. 315. (a) The charges made for the use of any broadcasting station by any person who is a legally qualified candidate for public office shall not exceed the charges made for comparable use of such station for other purposes.

"(b) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of subsection (a)."

Sec. 2. The amendment to section 315 of the Communications Act of 1934, as amended, made by the first section of this Act shall not be construed as relieving any licensee from the obligation imposed upon him under the Communications Act of 1934 as amended, to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

APPENDIX L

S. 1287 February 25, 1965 Text.

The bill (S. 1287) is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 315 of the Communications Act of 1934 is amended-

(1) in the first sentence of subsection (a) by inserting after "to use a broadcasting station" the following; "in return for a payment of any kind:, and

(2) by redesignating subsection (c) as subsection (d) and inserting before such subsection the following new subsection:

"(c) (1) For the purposes of this subsection the term 'major candidate' means any person who is a legally qualified and nominated candidate for the office of President or Vice President of the United States, Senator, Representative, Delegate, or Resident Commissioner in Congress, or Governor of a State or Commonwealth of the United States, and who is the nominee of a political party whose candidate for such office in the preceding election was supported by not less than 10 percentum of the total votes cast for such office.

"(2) If any licensee shall permit any major candidate to use a broadcasting station without charge, it shall afford equal opportunity in the use of such station to all other major candidates for the same office.

"(3) If any licensee shall permit any major candidate to use a broadcasting station for any period of time in return for a payment of any kind, the charges for such time shall not exceed two-thirds of the charges made for comparable use of such station for other purposes."

APPENDIX M

Federal Communications Commission Rules and Regulations Governing Section 315 of the Communications Act of 1934.

73.120 Broadcasts by candidates for public office.

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

(1) Has qualified for a place on the ballot or

(2) Is eligible under the applicable law to be voted for by sticker, by writing in his name on the ballot, or other method, and (k) 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.[1]

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

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

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[1]Federal Communications Commission, Rules and Regulations, III, Part 73, January 1946, Radio Broadcast Services.

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