The original documents are located in Box 14, folder "Federal Communications Commission - Equal Time Provisions (4)" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

FCC

THE WHITE HOUSE

WASHINGTON

October 6, 1975

MEMORANDUM FOR: DON RUMSFELD

FROM: PHIL BUCHEN P.

Attached is a copy of the published opinion of the Federal Communication Commission on the petitions of the Aspen Institute and CBS to revise and clarify previous Commission rulings under Section 315 of the Act.

Attachment

→ HON. BUCHEN

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF COMMISSIONER ABBOTT WASHBURN

10/1/75

Dear Phil,

Our action of last week has now been printed.

Copy attached.

— Abbott

Form A-28 7/74

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 75-1090
37356

In the Matter of

Petitions of the Aspen Institute Program on Communications and Society and CBS, Inc., for Revision or Clarification of Commission Rulings under Section 315(a)(2) and 315(a)(4).	)

Declaratory Order

MEMORANDUM OPINION AND ORDER

Adopted: September 25, 1975 ; Released: September 30 , 1975

By the Commission: Commissioners Lee and Hooks dissenting and issuing statements; Commissioner Quello issuing a statement in which Commissioner Robinson joins; Commissioners Washburn and Robinson issuing separate statements.

1. The Commission is in receipt of petitions filed by Mr. Douglass Cater, Director of the Aspen Institute Program on Communications and Society (Aspen), received April 22, 1975, and by CBS, Inc. (CBS), received July 16, 1975. Both petitions raise questions concerning the applications of the provisions of Section 315 of the Communications Act.

2. Aspen seeks revision or clarification of the Commission's policies concerning the applicability of the 1959 Amendments to Section 315 to certain joint appearances of political candidates. It is urged, that the two revisions will enable broadcasters to "more effectively and fully ... inform the American people on important political races and issues" and to "make the Bicentennial a model political broadcast year."

3. The two revisions sought by the Institute are:

(1) The Commission should give the Section 315(a)(4) exemption for on-the-spot coverage of bona fide news events its proper broad

remedial construction, and should thus overrule the NBC (Wyckoff) and Goodwill Station decisions; 1/ and

(2) The Commission should clarify its position on Section 315(a)(2) -- the exemption for bona fide news interview programs -- in light of the Chisholm case. 2/

These are crucial, in Aspen's view, because the Commission, in its interpretive rulings, has not given full scope to the Congressional purpose in enacting the 1959 Amendments to Section 315, and its rulings are founded upon mistaken assumptions and interpretations of law, which must be acknowledged and corrected as a matter of law and policy.

4. The Institute seeks these revisions in the context of Docket No. 19260, which addressed political broadcasting issues or, in the alternative, in a new policy statement or declaratory ruling.

5. Because the proposed revisions concern a broader set of issues than those discussed in the Fairness Report, 48 FCC 2d 1 (1974), and in the First Report-Handling of Political Broadcast, 36 FCC 2d 40 (1972), we believe that these broader issues should not be decided without further consideration in a more expansive proceeding. 3/ However, the first issue raised by the petition as to the legal misinterpretation which underlies our 1962 decisions with respect to Section 315(a)(4), can be dealt with at this time in a declaratory ruling. 4/

6. CBS requests a declaratory ruling that Presidential press conferences are exempt from the "equal opportunities" provision of Section 315 of the Communications Act. CBS contends that the live broadcast of such news conferences constitutes (1) "on-the-spot coverage of bona fide news events," within the meaning of Section 315(a)(4) of the Act, and (2) "a bona fide news interview," within the meaning of Section 315(a)(2) of the Act. Petitioner urges that we re-

1/ The Goodwill Station, Inc., 40 FCC 362 (1962); National Broadcasting Co., 40 FCC 370 (1962).

2/ Hon. Sam Yorty and Hon. Shirley Chisholm, 35 FCC 2d 572, remanded and order for interim relief granted, No. 72-1505, D.C. Circuit, June 2, 1972, on remand, 35 FCC 2d 579 (1972).

3/ We expect to reconsider the issues raised in our Chisholm ruling, supra, and among other political broadcast questions, at that time.

4/ Parties who wish to challenge this Declaratory Ruling on appeal will have an opportunity to do so well in advance of the 1976 elections. Felix, v. Westinghouse Radio, 186 F.2d 1 (3rd Cir. 1950), cert. denied, 341 U.S. 909 (1951).

examine our decision in Columbia Broadcasting System, Inc., 40 FCC 395 (1964) (hereinafter referred to as CBS). 5/

7. Section 315, as it was originally worded, established a principle of absolute equality for competing political candiates in the "use" of broadcast facilities. In the 1959 "Lar Daly" case, the Commission interpreted the statute to mean that the equal time rule applied even to the appearance of a candidate on a regularly scheduled newscast. Columbia Broadcasting System, 18 RR 238, reconsideration denied, 18 RR 701 (1959). Daly, a perennial candiate in both the Republican and Democratic mayoralty primaries in Chicago, had complained to the Commission that several stations presented newsclips showing the major candidates in the two primaries but refused to afford him equal time. The Commission ruled that the presentation of these film clips were "uses" within the meaning of the statute, and that consequently Daly was entitled to equal time. The Commission's position on this matter created a national furor, and it was feared that this strict application of the equal opportunities provision "would tend to dry up meaningful radio and television coverage of political campaigns." Sen. Rep. No. 562, 86th cong. 1st Sess. 10 (1959).

8. This concern led Congress to a realization that the concept of absolute equality among competing political candiates would have to give way, to some extent, to two other "worthy and desirable" objectives:

> First, the right of the public to be informed through broadcasts of political events; and Second, the discretion of the broadcaster to be selective with respect to the broadcasting of such events.

Hearings on Political Broadcasts-Equal Time Before the Subcommittee on Communications and Power of the House Committee on Inter-state and Foreign Commerce, 86th Cong., 1st Sess. 2 (1959) (comments of Chairman Harris).

9. In order to attain these worthy objectives, Congress adopted the 1959 amendments to the Communications Act. These amendments provided that an appearance by a candidate on any one of four types of news programs should not be deemed to be a "use" of the station by that candidate. The four categories of exempt programs are as follows:

5/ Informal comments have been filed in opposition to this request by the Democratic National Committee, which urges us to reaffirm the validity of the CBS decision. See paragraph 17, infra. An additional request for the same relief asked for by Aspen was filed by Henry Geller on September 18, 1975.

(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).

The Congress also provided that the Commission should have broad discretion in interpreting and implementing the new policy. See 47 U.S.C. §315(c). Indeed, in the words of the Senate Report:

> It is difficult to define with precision what is a newscast, new interview, news documentary, or on-the-spot coverage of news event .... That is why the committee in adopting the language of the proposed legislation carefully gave the Federal Communications Commission full flexibility and complete discretion to examine the facts in each complaint which may be filed with the Commission .... In this way the Commission will be able to determine on the facts submitted in each case whether a newscast, new interview, news documentary, [or] on-the-spot coverage of news event ... is bona fide or a "use" of the facilities requiring equal opportunity.

Sen. Rep. No. 562, 86th Cong., 1st Sess. 12 (1959).

10. In The Goodwill Station, Inc., radio station WJR broadcast a debate sponsored by the Economic Club of Detroit between two major candidates for Governor of Michigan, then-Gov. John B. Swainson and Republican challenger George Romney. The two participants were invited by the Club to debate issues following a dinner meeting. Neither had any part in establishing the format for the debate. The candidates appeared as invited, debated, and following the debate answered questions posed by Economic Club members. Each candidate had an opportunity to respond to an equal number of questions. Station WJR merely covered "live," the debate and question and answer period. It exercised no control whatsoever over the program content. The Commission ruled that this was not a "bona fide news event" under Section 315(a)(4), a ruling which had the effect of affording equal time to the candidate of the Socialist Labor Party, a party which in the previous election received only 1,479 votes out of a state-wide total of 3,255,991. The Commission's construction of 315(a)(4) excluded debates from that exemption. Indeed, it concluded that only events "incidental to" the presentation of a bona fide news event (e.g., where a Congressman seeking re-election appeared in connection with a ribbon cutting ceremony for a new highway or bridge)

or some, but not all, activities incidental to the presentation of a political convention might be exempt. The Commission based its conclusion on House Report No. 802, 86th Cong. 1st Sess., August 6, 1959. It took the position that the deletion of the term "debate" from the House version of the bill, as well as the evidence of Congressional action in 1960, which permitted the Great Debates, which it assumed to have been outside the 1959 Amendment's exemptions from Section 315, clearly indicated a legislative intent that debates were not exempt formats. Further, it said that the 315(a)(4) exemption for "on-the-spot coverage of bona fide news events", if applied to debates, would result in the exemption swallowing the rule.

11. National Broadcasting Co., supra, involved a debate between Governor Brown of California and Richard Nixon before the annual convention of the United Press International which NBC covered "live." The debate was arranged by UPI, and NBC had nothing to do with the arrangements. 6/ Indeed, NBC was not invited to cover the debate until after the arrangements had been completed. However, it decided to cover the event, as did all the major newspapers in California, based upon its assessment that the event was singularly newsworthy. The Commission held that equal time must be afforded to the Prohibition Party's candidate for Governor, thereby virtually eliminating the possibility that such debates would receive further broadcast coverage. In elaborating on its Goodwill Station opinion, the Commission stated that merely because an event might be considered newsworthy by the broadcaster did not make the event "bona fide" for purposes of the exemption. The Commission said:

> Where the appearance of a candidate is designed by him to serve his own political advantage and such appearance is ultimately the subject of a broadcast program encompassing only his entire appearance, such program cannot be considered to be on-the-spot coverage of a bona fide news event simply because the broadcaster deems that the candidate's appearance (or speech) will be of interest to the general public and, therefore newsworthy. For as Chairman Harris stated in discussing the conference report on the House floor, an "appearance of a candidate in the on-the-spot coverage of news events is not to be exempt from the equal time requirements unless the program covers bona fide events. And no assertion has been made by either CBS or NBC that this program encompassed any aspect of the UPI convention other than the joint appearance of Governor Brown of Mr. Nixon.

6/ Neither of these cases involved a debate or joint appearance in a studio.

The Commission, in conclusion, repeated that it did not question the broadcaster's news judgment but only the contention that it should consider only the broadcaster's news judgment in the context of the legislative guidelines for the 315(a)(4) exemption.

12. In CBS, we held that press conferences of the President, or a non-incumbent candidate for election to the presidency, would be considered non-exempt "uses" within the meaning of Section 315. In that decision we relied on the language of the Conference Report accompanying the bill containing the 1959 Amendments to Section 315 which stated that in order to qualify for exemption as "bona fide news interview" within the meaning of Section 315(a)(2), a broadcast must meet each of the following criteria:

(1) The broadcast must be regularly scheduled.

(2) The selection of the content, format, and participants of the broadcast must be under the exclusive control of the licensee or network.

(3) Broadcaster decisions as to format, content, and participants must have been made in the exercise of bona fide news judgment and not for the political advantage of any candiate.

13. In addition, we held that the broadcast of such press conferences failed to qualify for exemption as "on-the-spot coverage of bona fide news events," within the meaning of Section 315(a)(4). This conclusion rested on our decisions in Goodwill Station and Wyckoff, supra. We also stated that the mere fact that an event might be considered newsworthy by the broadcaster did not, per se, bring the event within the Section 315(a)(4) exemption, and that we were not questioning the networks' news judgment but only the contention that the Commission should consider only such news judgment in determining whether a broadcast was exempt under Section 315(a)(4).

14. In support of its contention that live broadcast of Presidential press conferences constitutes" on-the-spot coverage of bona fide news events," within the meaning of Section 315(a)(4), CBS argues that a reasonable decision by a broadcaster that a Presidential press conference is sufficiently newsworthy to merit on-the-spot live broadcast coverage should be determinative of whether the broadcast is exempt under Section 315(a)(4).

15. CBS stresses the unique status of the Presidency and the inherent newsworthiness of Presidential communications with the public. Thus, it contends, a distinction must be drawn between those Presidential press conferences called by a President-candidate in furtherance of his duty as Chief Executive to keep the people informed on important national and international issues, and purely political press conferences. 7/ The network claims that, under the CBS decision, no such distinction is drawn and, hence, any press conference now called by President Ford - politicial or non-political -- will give rise to "equal opportunity" rights in opposing candidates and will, therefore, be effectively barred from live broadcast coverage by licensees.

16. To support its assertion that a Presidential press conference constitutes a "bona fide news interview," within the meaning of Section 315(a)(2), CBS submits that while the regularity of broadcast of a news interview program and its control by the licensee are relevent considerations in determining whether or not such an interview is exempt from the "equal opportunities" provision of Section 315, the Commission's perspective in evaluating these considerations has been too narrow. Thus, CBS submits that in our decision in CBS, supra, the Commission applied an overly strict and mechanistic definition of the term "regularly scheduled." In its view, this term is most reasonably construed as meaning "recurrent in the normal and usual course of events," rather than as "recurrent at fixed and uniform time intervals." See CBS, supra, 40 FCC at 404 (dissent of Commissioner Loevinger). Presidential press conferences are "regularly scheduled," since they have been held over the course of many years and are held on a periodic basis. With respect to the element of licensee control, it is claimed that

7/ In this respect, CBS relies heavily on the 1964 dissenting opinions of Commissioners Ford and Loevinger and the separate opinion of Chairman Hyde (which was in substance a dissent).

Congress's primary concern with control of news interview programs was that such control be outside the hands of a candidate; it takes the view that Congress did not intend that such control remain exclusively with the broadcaster. Finally, CBS contends that the principle concern of Congress with respect to "bona fide news interview" programs was the prospect of rigging by some local broadcasters to promote the candidacies of local candidates, and that this concern is obviated in the case of nationwide broadcast of Presidential press conferences. Thus, although a President may make a statement before opening the session to questions, the crux of the press conference is in the questions and answers themselves, and such questions are out of the hands of the President.

17. The Democratic National Committee (DNC), in its informal comments, concedes that "past decisions should be re-examined in light of new facts, new laws, or new interpretations of past laws and facts." However, DNC contends that the reversal of the Commission's 1964 CBS decision would, in effect, "nullify the objectives of Section 315 and render it meaningless as it applies to Presidential elections." DNC further contends that the purpose of the 1959 Amendments was "to provide enough leeway to broadcasters to disseminate the news without incurring equal time obligations," and that "CBS is free to broadcast portions of the Presidential press conference on bona fide news shows or bona fide news documentaries." In its view, an exemption for Presidential press conferences from Sections 315 would "deprive opposing candidates of equal opportunities" and would cause "irreparable damage ... to its 1975 Presidential nominee" and all future candidates opposing incumbent presidents. DNC urges the Commission to retain the "incedental to" test which it has applied since 1962 in interpreting Section 315(a)(4). It contends that if the Commission abandons this test, it is left to determine only whether a licensee's judgment that a program is newsworthy is reasonable, and that the FCC would be left with neither a rational test for determining either the bona fides of a broadcast news event, nor a test with the precision of the equal time rule.

18. DNC also opposes the CBS contention that "regularly scheduled news interviews" refers to "recurrent in the normal and usual course of events, rather than at fixed and uniform time intervals." In its view, that interpretation would be administratively unworkable, and could make a farce out of the well defined news interview exemption. It also contends that the legislative history does not support this CBS assertion. Furthermore, it believes that Presidential press conferences, called at the whim of the President, are subject to abuse. It also believes that many of the significant factors associated with Presidential press conferences are under the control of the President and, thus, the problem of abuse would be heightened by exemption of such programs in direct disregard of the "control" requirement as set forth in the legislative history.

19. DNC believes that the Commission should take into consideration: (1) that if Section 315 is to continue to work effectively, it must continue to work with the "automatic and mathematical" precision it has exhibited in the past; (2) the equal time requirement

posits a particular right in candidates to ensure that they receive an equal opportunity of access to the airways in order to discuss campaign issues, and such rights should not be left to the whim of a station or network; (3) the impact of such a ruling would inhibit the chances of any candidate's bid to unseat an incumbent President running for re-election; (4) that the President's unique status as a newsworthy individual should not be determinative in this case; (5) such an interpretation would be inconsistent with the interpretations of the First Amendment in Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969).

20. The Media Access Project (MAP) has filed a lengthy informal pleading on behalf of the National Organization of Women (NOW) and Congresswoman Shirley Chisholm. MAP argues that the Commission cannot properly issue declaratory rulings in this matter, but may only proceed by way of a rulemaking proceeding. Aside from the procedural arguments, MAP essentially alleges that the potential for abuse of the exemptions in Section 315 requires the Commission to prohibit any use of the exemptions for on-the-spot coverage of bona fide news events. Additionally, it is argued that if a candidate intends to gain an advantage by his or her appearance, coverage of the appearance may not be exempt, and that debates may never be exempted because Congress did not create a specific exemption for them. Moreover, MAP argues that the Commission could, as a matter of administrative discretion, use a test which was rejected by Congress in its determination - the "incidental to" test applied in the 1962 decisions.

21. For the reasons discussed below, we hereby overrule our earlier decisions in The Goodwill Station, Inc., supra, and National Broadcasting Co., supra, and will in the future interpret §315(a)(4), so as to exempt from the equal time requirements of Section 315 debates between candidates as "on-the-spot coverage of bona fide news events" in situations presenting the same factual contexts in Goodwill Station and Wyckoff. At the same time we overrule that part of the 1964 CBS decision which relies on Goodwill Station and Wyckoff, for reasons also discussed below. Thus the press conferences of the President and all other candidates for political office broadcast live and in their entirety, qualify for exemption under Section 315(a)(4). 8/

8/ Because Aspen and CBS both requested declaratory rulings by the Commission, they are the only formal parties before the Commission. DNC and MAP have, therefore, filed informal comments in opposition to the views of Aspen and CBS. The Commission has fully considered the arguments advanced in all those comments in reaching its determination.

DISCUSSION

Debates: The Aspen Petition

22. As Aspen points out, and after thorough review we are compelled to agree, the Commission's decisions in Goodwill Station and Wyckoff, are based on what now appears to be an incorrect reading of the legislative history of the newscast exemptions and subsequent related Congressional action. Our conclusion that the debates were not exempt rested on language in the House Report of August 6, 1959, which indicated that in order for on-the-spot coverage to be exempt the appearance of the candidates would have to be "incidental to" the coverage of a separate news event. The Goodwill Station, Inc., 40 FCC at 364. It was obvious, of course, that in a debate between two candidates the appearance of neither could be deemed to be incidental to the news event. Indeed, the appearance of the candidates would naturally be the central focus of the event. The problem with this reasoning is that it was based on a report of a bill which was not enacted into law. The bill discussed in the August 6 House Report did indeed require that appearances by candidates must be "incidental to" another event - and this requirement was explicitly set forth in the bill. The bill as enacted, however, did not limit the exemption to appearances of candidates which were "incidental to" other news. During the floor debate in the House, Rep. Bennett of Michigan warned the House that the "incidental to" language must be deleted or the bill would not work, citing the text of the bill and the language of the House Committee report. 105 Cong. Rec. 16241. That language was stricken in conference, and in floor discussion of the conference report Bennett again took the floor to comment on the deletion of the provision: "I am glad to see that the conference substitute omits this language because the majority of conferees felt as I do, that this requirement would lead to even greater confusion than we have at present." 105 Cong. Rec. 17778. The conference bill was then adopted. 9/ The rejection by a legislature of a specific provision contained in a reported bill militates against an interpretation of the resulting statute which, in effect, includes that provision. See Carey v. Donohue, 240 U.S. 430 (1916).

9/ Rep. Moss, who drafted the "incidental to" language, dissented from the conference report and during floor debate circulated a letter detailing his reasons. Chairman Harris, the floor manager, responded as folllows:

(Cont'd. next page)

9/ (cont'd. from preceding page)

> The letter alleges that this change replaces "the objective requirement of the House's bill that the appearance be incidental to the reporting of news with the subjective test that the newscast or news interview be bona fide." It states that the conference substitute provides for "a purely subjective text (sic) almost impossible of proof without either the showing of the grossest kind of favoritism or of a long pattern of preferential treatment by the broadcaster"....

He replied to this allegation:

> The test to be applied under the conference substitute is by no means too subjective to permit this.

Continuing, he stated the sentence quoted by the Commission in the NBC opinion:

> ...and appearance of a candidate in on-the-spot coverage of news events is not to be exempt from the equal time requirement unless the program covers bona fide news events.

He continued, in a passage not quoted by the Commission:

> This requirement regarding the bona fide nature of the newscast, news interview or news events, was not included without thoughtful consideration by the conference committee. It sets up a test which leaves reasonable latitude for the exercise of good faith news judgment on the part of broadcasters and networks. However, it is not intended that the exemption shall apply where such judgment is not exercised in good faith. For example, to state a rather extreme case, the exemption from section 315(a) would not apply where the program, although it may be contrived to have the appearance or give the impression of being a newscast, news interview, or on-the-spot coverage of news events, is not presented as such by the broadcaster, but in reality has for its purpose the promotion of the political fortunes of the candidate making an appearance thereon. 105 Cong. Rec. 17782.

Thus, Chairman Harris equated the test as to bona fide in 315(a)(4) to those for "newscasts and news interviews." This statement conflicts with the Commission's 1962 ruling which, as described herein, mistakenly interprets the exemption as if the "incidental to" language had been retained.

23. Thus, the Commission's conclusion, in The Goodwill Station Inc., that a program which might otherwise be exempt should lose its exemption because the appearance of a candidate is a central aspect of the presentation, is not supported by the legislative history.10/ Newscasts, news interviews, news documentaries and "on-the-spot coverage of news events were exempted in order to foster public consideration of major candidates while assuring minor candidates access to reasonable opportunities for air time. 11/ The Commission's mandate was to devise

10/ The Commission appears to have been confused by the legislative history in its 1962 interpretation of the test as to what constituted a bona fide news event under Section 315(a)(4). This confusion resulted in part from the language of the Conference Report, p. 4. The Report discussed the test for "bona fide" news interview, specifying that in addition to certain format requirements, "the determination must have been made by the station or network, as the case may be, in the exercise of its 'bona fide' news judgment and not for the political advantage of a candidate for public office." However, in specifying the "bona fide" test as applied to on-the-spot coverage of bona fide news events, the Report said:

> In the Conference substitute, in referring to the on-the-spot coverage of news events, the expression "bona fide news events" instead of "news events" is used to emphasize the intention to limit the exemptions from the equal time requirement to cases where the appearance of the candidate is not designed to serve the political advantage of that candidate.

The lack of parallel mention of the broadcaster's bona fide news judgment in that paragraph may well have led the Commission, in 1962, to conclude that when Chairman Harris stated that in order to be exempt the program must cover "bona fide events", he meant that the broadcaster's news judgment was not to be considered. However, Congress recognized that the appearance of a candidate at any event would, objectively, serve his political interest. Furthermore, the language of the exemption, "including but not limited to political conventions and activities incidental thereto" indicates that the exemption does not limit broadcasters only to the coverage of non-partisan or non political events. Thus, it is hard to see how the appearance of a candidate at a political convention is not intended to serve the candidate's advantage. Therefore, we believe that the question of what is a "bona fide event" cannot be answered by looking only at the event itself, because if that interpretation were to be given effect, no political event could be covered except the most innocuous ribbon-cutting ceremony. Even then, the broadcaster would be forced to inquire whether the politican's subjective motive for attending was his political advancement. The real question is as to intent-and it is clear here that Congress was naturally focusing on the broadcaster's role.

11/ Sen. Rep. No. 562, 86th Cong. 1st Sess., at p. 10; 105 Cong. Rec. 14445 (1959) (remarks of Sen. Pastore); 106 Cong. Rec. 13424 (1960) (remarks of Senator Pastore). See Lawrence M. C. Smith, 40 FCC 549 (1963); Dr. Benjamin Spock, 38 FCC 2d 316 (1972).

standards to insure that these guidelines were enforced. There is no indication that Congress intended the Commission to take an unduly restrictive approach which would discourage news coverage of political activites of candidates. Rather, Congress intended that the Commission would determine whether the broadcaster had in such cases made reasonable news judgments as to the newsworthiness of certain events and of individual candidacies and had afforded major candidates broadcast coverage. Conference Report, H. Rep. No. 1069, 86th Cong. 1st Sess. In some circumstances this might logically entail exclusion of certain programs from within an exemption, such as programs designed for the specific advantage of a candidate, or those which were patently not bona fide news. It would not in our view extend to a restrictive application as to certain categories of events simply because the candidate's appearance is the central aspect of the event. Accordingly, a program which might otherwise be exempt does not lose its exempt status because the appearance of a candidate is a central aspect of the presentation, and not incidental to another news event.

24. In the Goodwill Station, Inc., the Commission concluded that, since there was no special exemption for debates, these events could not attain exempt status merely by being presented under one of the four exempt formats provided for in the 1959 amendments. This conclusion is unfounded. No appearance of a candidate (in a debate or otherwise) has a special exemption independent of the 1959 provisions, but such events may be properly covered, for example, under the exemption provided for bona fide newscasts. During the House of Representatives floor debate, Congressman Harris noted that a number of important program categories were not specifically exempted from Section 315, but then he made the following observation:

> On the other hand, and I want you to get this, ... the elimination of these categories by the committee was not intended to excluded any of these programs if they can be properly considered to be newscasts or on-the-spot coverage of news events.

105 Cong. Rec. 16229 (August 18, 1959). This view is consistent with the legislative history as to the other news exemptions as well.

25. The Commission, in 1962, stated that its restrictive interpretation of the exemptions (at least as it affected debates) was strengthened by the fact that Congress enacted special legislation in 1960 to exempt the Great Debates. We do not believe that Congress meant that debates presented within an exempt format would somehow lose their exemption. Indeed, the 1960 legislation had no special relevance to the coverage of debates. The legislation was intended to apply to any appearance by the presidential candidates regardless of format; and the measure was

adopted prior to the time when the candidates and the networks proposed the Great Debates. Senator Yarborough offered an amendment which would have limited the exemption to debates, but this amendment was withdrawn. See 106 Cong. Rec. 13423-13428 (June 27, 1960).

26. Why then was the 1960 legislation needed if debates could be carried as on-the-spot coverage of a bona fide news event? It was hoped that the exemptions would "lead to a fuller and more meaningful news coverage of the actions and appearances of legally qualified candidates"; but the Congress recognized that by 1960 not enough time had elapsed "for a full evaluation of this amendment." Sen. Rep. No. 1539, 86th Cong., 2d Sess., p. 2 (1960). As we have already noted, the Congress fully expected the Commission to act to explain fully the scope of the 1959 amendments. At the time of the adoption of the 1960 legislation, however, the Commission had done little to clarify the meaning of the exemptions. The urgent necessity for Congressional action, as stated by Senator Pastore in his remarks of June 27, 1960, was that:

> (1) "Not enough time has elapsed to permit full evaluation [by the FCC] of [the 1959] amendment; and
> (2) "As the 1960 presidential and vice-presidential campaign approached, great concern had been expressed about the serious limitations that were involved in the full application of section 315 to such candidates." 106 Cong. Rec. 13424 (daily ed.).

Thus, it was suggested by broadcasters and agreed to by Congress that Section 315 would be suspended as to major Presidential and Vice Presidential candidates for the 1960 elections, to insure that "adequate free time would be offered voluntarily" by the networks. 105 Cong. Rec. 13424 (June 27, 1960). Thus, reliance by the Commission on the proposition that the 1960 Suspension assumed that a debate was not an exempt format was, and is, misplaced.

27. Furthermore, we are convinced that as a matter of policy the Commission's reversal of these prior decisions comports with the original legislative intent and serves the public interest by allowing broadcasters to make a fuller and more effective contribution to an informed electorate. 12/ As Aspen points out in its petition, "[t]he consequence of these [1962] rulings has been to greatly diminish the efficacy of the on-the-spot news exemption, and thus the broadcaster's coverage of

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12/ Although, our ruling is most directly necessitated by the canon which requires an administrative agency to heed guidelines established by Congress, and to correct clear legal errors which were material to decisional results, we also agree with petitioner's argument that post-1960 developments in the law which support First Amendment interests of the public to view political news and to receive "wide-open, uninhibited and robust debate," Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 390 (1969), New York Times v. Sullivan, 376 U.S. 254 (1964), Garrision v. Louisiana, 379 U.S. 64 (1964), are consistent with Congress's intent in enacting the 1959 Amendments.

political news events," (Petition, p. 5) 13/ rather than "to make it possible to cover the political news to the fullest degree ..." and "to give full and meaningful coverage to the significant events of the day." 14/ By departing from these prior opinions, we can aid the broadcaster in rendering a most unique public service -- bringing a political debate "live into the homes of every interested voter."

28. However, we must advert to the legal arguments raised by the Commission in 1962 rulings as to the difficulties posed by loosening the exemptions to Section 315.

(a) It has been argued that giving Section 315(a)(4) a broader construction would render meaningless the other three exemptions to Section 315. By applying our Declaratory Order here to the circumstances covered by the two cases overruled, 15/ we believe we have preserved the essential nature of the exemption. However, to the extent appearances in debates would fall within another exemption, e.g., newscast or news interview, quite obviously that argument is vitated.

(b) As to the argument that a broader construction would render meaningless the 1960 suspension, S.J. Res. 207, P.L. 86-677, that is of little relevance. As we have pointed out in some detail, Congress acted in 1960 16/ because it was uncertain how the Commission would interpret the 1959 Amendments and in order to facilitate the offer by the networks of free broadcast time to the major Presidential and Vice-Presidential candidates. Furthermore, the 1960 exemption did not specify a debate format at all; rather, it provided that free time could be offered by broadcasters for the candidate's use, without subjecting broadcasters to the equal time requirements.

13/ Sen. Rep. No. 562, supra, at 10: "An informed public is indispensable for the continuance of an alert and knowledgeable democratic society. The public should not be deprived of the benefits that flow from this dynamic form of communications during the critical times of a political campaign..."

14/ Remarks of Senator Pastore, 105 Cong. Rec. 14445 (1959) and 106 Cong. Rec. 13424 (1960).

15/ See paragraphs 10-11, supra.

16/ We are aware that Congressional legislation is proposed which would exempt major Presidential and Vice Presidential candidates from the provisions of Section 315 altogether. The Commission has previously proposed to limit the equal opportunities requirement to major party candidates or candidates with "significant public support." See First Report, supra at 51-52 (para. 35) We do not contemplate that this Declaratory Order will obviate the need for more sweeping action by Congress.

(c) It is also suggested that the broader construction of the exemption would permit the broadcaster to ignore the equal time requirement. Thus, it is said, the opportunity to characterize as "newsworthy" any event covered live and on-the-spot would be irresistable to a broadcaster bent upon aiding a particular candidate in a partisan, discriminatory fashion. This argument is answered in part by the fact that we have limited our action on the 315(a)(4) exemption to the circumstances of Goodwill Station, NBC and CBS. This limited holding does not offer the opportunity for broadcaster abuse that already exists in the "newcast" or "new interview" exemptions. Nor does the narrow exemption reviewed here threaten to swallow the equal time rule. Realistically, the likelihood of broadcaster abuse is remote in coverage of more prominent political races (President, Senator, Governor, etc.). While the opportunity for abuse may exist at the less visible political office level (e.g., councilman, school board, district legislative races), we feel that the absence of abuse in the past 15 years of a broad newscast exemption fails to support the doomsayers' thesis - that this narrower exemption will be abused.

29. Most importantly, we believe that when Congress adopted the 1959 Amendments it squarely faced the risks of political favoritism by broadcasters which might be created by the exemptions--and, on balance, Congress preferred to make available to broadcasters the opportunity "to cover the political news to the fullest degree." 17/ Today, these risks are substantially lessened. 18/ Yet, the Commission's failure to accord the appearances in Goodwill and Wyckoff the exemption of Section 315(a)(4) did not give adequate scope to the Congressional action; rather, the Commission took a more cautious position which would insure that the threat of abuse would never materialize. To do so merely to preserve administrative convenience is not an appropriate course on which we will continue.

17/ 105 Cong. Rec. 14444 (remarks on Sen. Magnuson).

18/ Aspen correctly notes that when Congress faced those risks, the fairness doctrine was enforced through the renewal process. Thus, a misuse of an exemption could not be corrected during the critical days of the political campaign. See 105 Cong. Rec. 17782 (remarks of Chairman Harris) (September 2, 1959). Since then, however, additional protection has been afforded candidates through prompt consideration of fairness and Section 315 complaints.

Press Conferences: The CBS Petition

30. The preceding discussion of the Section 315(a)(4) exemption as it pertains to coverage of debates is also relevant to the question of live coverage of a press conference. As we stated in paragraph 23, supra:

> ... [A] program which might otherwise be exempt does not lose its exempt status because the appearance of the candidate is a central aspect of the presentation, and not incidental to another news event.

Under this test, press conferences do not lose their exemption merely because the candidate's appearance is the central aspect of the news event. The Commission allows reasonable latitude for exercise of good faith news judgments by broadcasters and networks by leaving the initial determination as to eligibility for Section 315 exemption to their reasonable good faith judgment. See United Community Campaigns of America, 40 FCC 390, 391 (1964). Congress intended that the Commission would determine whether the broadcaster had made reasonable and good faith judgments as to the newsworthiness of certain events and of individual candidacies, and had afforded major candidates broadcast coverage. See Conference Report, H. Rep. No. 1069, 86th Cong. 1st Sess. CBS's premise is that its judgment as to the newsworthiness of such press conferences, and its consequent decision to afford such conferences live broadcast coverage, are necessarily wholly determinative of whether such broadcasts are exempt under Section 315(a)(4). However, newsworthiness is not the sole criterion to be used in determining whether Section 315(a)(4) has been properly invoked. A question whether the coverage of a press conference was intended by the broadcaster to be for the specific advantage of that candidate would be considered in terms of the licensee's good faith in deciding to cover the press conference. See 105 Cong. Rec. 17782 (remarks of Oren Harris).

31. With respect to CBS's contention that a Presidential press conference constitutes a "bona fide news interview," within the meaning of Section 315(a)(2), we cannot agree with the claim that our perspective in evaluating the criteria for exemption under that subsection has been too narrow. The Conference Report on the bill containing the exemptions to Section 315(a) set forth the criteria for exemption under subsection (a)(2) with clarity:

> The intention of the committee of conference is that in order to be considered "bona fide" a news interview must be a regularly scheduled program.
>
> It is intended that in order for a news interview to be considered "bona fide" the content and format

> thereof, and the participants, must be determined by the licensee in the case of a news interview originating with the licensee of a station and by the network in the case of a news interview originating with a network; and the determination must have been made by the station or network, as the case may be, in the exercise of its "bona fide" news judgment and not for the political advantage of the candidate for public office. H. Rept. No. 1069, 86th Cong., 1st Sess. 4 (1959).

Moreover, Senator Pastore, Senate Manager of the bill, stated:

> We have spelled out in the House Report itself precisely what we mean by bona fide news interview. It is provided, specifically, first of all, that it shall be a regularly scheduled program. Secondly, the content and format must be exclusively under the jurisdiction of the broadcaster or of the network. 105 Cong. Rec. 17829 (September 3, 1959).

32. The legislative history makes it clear that "regularly scheduled" meant to Congress a program which a licensee or network initiates and schedules for regular, recurrent broadcast, rather than a program which covers an event (such as a press conference) which, although possibly "recurrent in the normal and usual course of events," is initiated by a candidate and takes place and is broadcast only at such times and with such frequency as the candidate may specify. See 105 Cong. Rec. 16224-5 (August 18, 1959) (remarks of Representative Brown of Ohio). The legislative history refers to such programs as "Meet the Press", "Face the Nation" and "College Press Conference" as examples of the type of "regularly scheduled" news interview program contemplated for exemption. See, e.g., 105 Cong. Rec. 16224-5 (August 18, 1959) (remarks of Representative Brown of Ohio); 105 Cong. Rec. 17829 (September 3, 1959) (remarks of Senators Engle and Pastore); id. at 17831 (remarks of Senator Scott). "Regularly scheduled" programs were thus thought to be those scheduled by a licensee or network for broadcast ". . . say every day at a certain time or every week at a certain time . . ." 105 Cong. Rec. 17780 (September 2, 1959) (remarks of Representative Harris). The legislative history does not support the view that the term "regularly scheduled" encompasses broadcasts of press conferences called by a candidate solely at his discretion and at such times and with such regularity as only he may specify. In light of the foregoing, we are unable to accept CBS's suggestion that we construe the term "regularly scheduled" as meaning "recurrent in the normal and usual course of events."

33. As to the "control over content and format" aspect of the test for exemption under Section 315(a)(2), the legislative history unequivocally mandates that such control ". . . must be exclusively under the jurisdiction of the broadcaster or of the network." 105 Cong. Rec. 17829 (September 3, 1959) (remarks of Senator Pastore). Specifically, ". . . the content and format . . . [of the news interview program] . . ., and the participants, must be determined by the licensee in the case of a news interview originating with the licensee of a station and by the network in the case of a news interview originating with a network . . . ." H. Rept. No. 1069, 4. We are unwilling to impose on this plain language the strained interpretation that CBS suggests, viz., that as long as the control over most of a news interview program is out of the hands of a candidate the "control" criterion for exemption is satisfied.

34. In view of the fact that the broadcasts of such conferences are not "regularly scheduled," within the Congressionally contemplated meaning of that term, we reaffirm our view that the broadcast coverage of Presidential press conferences is not exempt as a "bona fide news interview," within the meaning of Section 315(a)(2). We are not persuaded to alter this conclusion by the network's claim that Congressional concern with respect to news interview programs was primarily directed at the danger of such programs being "rigged" by some broadcaster at the local level to further the candidacy of a local candidate. The fact that there was concern with regard to locally originated broadcasts does not necessarily imply that Congress intended that a more permissive standard for exemption under Section 315(a)(2) be used in connection with nationwide broadcasts, as CBS seems to suggest. Rather, the discussion of the danger of local broadcaster "rigging" of news interview programs appears in the legislative history merely as explanation for the need to include the words "bona fide" in the formulation of the subsection (a)(2) exemption. See 105 Cong. Rec. 17778 (September 2, 1959) (remarks of Representative Harris); 105 Cong. Rec. 17831 (September 3, 1959) (remarks of Senator Scott).

35. CBS errs when it states that "other Republican candidates may announce their candidacies within seven days of the press conference and demand "equal time." (Petition, p. 2 n. 1). Candidates seeking equal opportunities must have become legally qualified prior to the "use" in order to properly obtain the right provided by the statute. See, e.g., 47 C.F.R. §§73.120(e), 73.657(e). Moreover, an early declaration of candidacy is irrelevant to whether or not news coverage of the candidate is exempt under Section 315. Although we recognize that the equal opportunity requirement offers a disincentive to live coverage of appearances by candidates, particularly in such a situation, we could not for that reason alone alter our prior rulings if the legislative history of Congressional intent indicated otherwise.

36. DNC argues that the continued effectiveness of Section 315 depends on its precise, indeed "mathematical" operation. Equal opportunity is required by law only after it is determined that a prior, non-exempt "use" has been made on a broadcast. Congress clearly intended that the Commission had ongoing authority to issue interpretive rulings and across-the-board rules to effectuate Section 315 exemptions. See H. Rep. No. 1069, 86th Cong., 1st Sess. 12, 13 (1959). Equal opportunity still is required when a "use" has been made. The rule will operate as precisely after this decision as before. Indeed, it will operate with greater clarity, and in accord with legislative intent. With respect to DNC's argument that Section 315 vested in candidates a right to broadcast after a Section 315 "use", we point out that Congress modified that right in 1959. At that time, it instructed the Commission to implement this modification. We have determined that the Commission, in 1962, misinterpreted Congressional intent, the result of which was an unsupported construction of the Section 315(a)(4) exemption. In this decision, we have sought to remedy that error of law. The "automatic and mathematical" precision described by DNC, viz., an unwarranted narrow construction, was perhaps more convenient to administer. However, strict limits on the exemption cannot be justified if they undermine legislative intent.

37. DNC's assertion that "irreparable harm" will result to its 1976 candidate, or any candidate opposing an incumbent President, from live broadcast coverage of a Presidential press conference is speculative and conclusory. Free-wheeling, wide-open press conferences do not necessarily yield the kind of favorable publicity for the holder which DNC too easily assumes. Most of all, however, we believe that the intent of Congress was to pursue the "right of the public to be informed through broadcasts of political events." Supra, para. 8. The fundamental concept which underscores this objective is that the continued vitality of a democratic society and its freedoms requires the "widest possible dissemination of information," Associated Press v. United States, 326 U.S. 1, 20 (1945), and that the broadcasters' role is to insure "that the American public must not be left uninformed." Green v. FCC, 447 F.2d 323, 329 (1973). We must always keep in mind that "speech concerning public affairs is more than self-expression; it is the essence of self-government." Garrison v. Louisiana, 379 U.S. 64, 74-75 (1964). We believe that the public's interest in "uninhibited, robust, wide-open" debate on public issues far outweighs the imagined advantages or disadvantages to a particular candidate. New York Times v. Sullivan, 376 U.S. 254, 270 (1964).

38. We reject the network's suggestion that we distinguish between press conferences called by an incumbent candidate in his official capacity and those called in furtherance of his candidacy. Such as approach would, necessarily, place the Commission in the position of deciding, in each case, whether the appearance of the official is political or non-political. We have steadfastly eschewed making such determinations, because to draw such distinctions would require us to make subjective judgments concerning the content, context and potential political impact of a candidate's appearance. See Paulsen v. FCC, 491 F.2d 887, 890-91 (9th Cir. 1974). 19/

39. Finally, we reject the suggestion by CBS that, in determining whether press conferences are exempt, we consider the unique status of the Presidency and the inherent newsworthiness of Presidential communications with the public. It must be recognized that, although, it is reasonsable to conclude that the President's unique status as Chief Executive makes his communications relative to major national and international events inherently newsworthy, it is equally as reasonable to conclude that, in any given state in the country, the Governor's unique status as chief executive of that state may well make similar communications concerning that state newsworthy for its citizens. In our view there is no rational distinction to be made between press conferences at one level or another, since no such distinction can be found within the legislative history of the 1959 Amendments, nor are there any persuasive indications that the Congress intended to distinguish between press conferences exempt at one level and those at another level of political offices which would not be exempt. Thus, routine presidential press conferences, as well as press conferences by governors, majors, and, indeed, any candidates whose press conferences are considered newsworthy and subject to on-the-spot coverage may be exempt from Section 315 under our interpretation.

40. Thus, for the reasons stated above, we today announce that in the future we will not follow our 1962 decisions in The Goodwill Station, Inc., and National Broadcasting Co. (Wyckoff), and we will thus permit on-the-spot coverage of appearances by candidates in the circumstances covered by those cases. See para. 10-11, supra. We also announce that we will no longer follow our 1964 CBS decision to the extent that it denies an exemption under Section 315(a)(4), for coverage of a press conference by a candidate for public office.20/

19/ The Commission reviews only whether or not the broadcaster intends to promote the interest of a particular candidate in presenting coverage of a news event. Supra, paras. 22-26 and footnote 9 therein.

20/ We believe that MAP's contention that we may not accomplish this end through declaratory relief, supra, para. 20, to be without merit. Although the Commission may not adopt an interpretation which is inconsistent with a statutory term, it has freedom within the guidelines established to interpret the statute in light of its greater expertise. Cf. American

Footnote 20 con't.

Broadcasting Co. v. United States, 110 F. Supp 374 (EDNY), aff'd 347 U.S. 284 (1953). Furthermore, a regulatory agency is not wedded to its past decisions. FCC v. WOKO, Inc., 329 U.S. 223 (1946). When faced with new developments, or on further consideration of a policy, an agency may alter its past rulings and policies. American Trucking Ass'n v. A.T. & S.F. RR. Co., 387 U.S. 397, 416 (1967). When it reverses course, however, the agency must provide "an opinion or analysis indicating that the standard is being changed and not ignored and assuring that it is faithful and not indifferent to the rule of law." Columbia Broadcasting System, Inc. v. FCC, 454 F.2d 1018, 1026 (D.C. Cir. 1971). We have squarely confronted both the legal and policy issues specifically involved, and have articulated our reasons for the change. The choice between rulemaking and adjudicative decisionmaking is largely one of agency discretion. NLRB v. Bell Aerospace Co., 416 U.S. 267, 290-295 (1974); S.E.C. v. Chenery Corp., 332 U.S. 194, 202 (1947). Declaratory relief, in the form of an advisory ruling, is appropriate where, as here, the controversy concerns the correctness of a Commission's interpretation of law. As we point out herein, the Commission's decisions in 1962 and 1964 as to the "on-the-spot coverage of bona fide news event relied upon a mistaken interpretation of law. See para. 22-26 herein. This error of law cannot stand as the proper view in the future. Thus, prompt prospective application of new policy, which is entailed by correction of legal error is properly within the context of a declaratory ruling. Cf. N.L.R.B. v. Majestic Weaving Co., 335 F.2d 854, 860 (2d Cir. 1966). Furthermore, this action is consistent with Congress's intent that the Commission had ongoing authority to make decisions on a case-by-case basis or by rules in interpreting the exemptions. See Sen. Rep. No. 562, 86th Cong., 1st Sess. 12, 13 (1959); Cf. N.L.R.B. v. Wyman-Gordon Co., 394 U.S. 759, 764 (1969). We believe our rulings will resolve these legal issues well in advance of the 1976 election year, are essential to promote the purposes of the 1959 Amendments to Section 315, and will clarify their interpretation for candidates, licensees, and the Commission staff. Hence, we are not persuaded that our discretion to issue declaratory orders is so limited.

As we said above, the undue stifling of broadcast coverage of news events involving candidates for public office has been unfortunate, and we believe this remedy will go a long way toward ameliorating the paucity of coverage accorded these news events during the past fifteen years.

41. Accordingly, IT IS ORDERED, that the petitions of the Aspen Institute Program on Communications and Society and of CBS, Inc., are GRANTED IN PART and DENIED IN PART, to the extent indicated above.

FEDERAL COMMUNICATIONS COMMISSION

Vincent J. Mullins
Secretary

DISSENTING STATEMENT OF
COMMISSIONER ROBERT E. LEE

In a declaratory ruling, the majority has made a major policy change in its interpretation of what constitutes "on-the-spot coverage of bona fide news events" pursuant to Section 315(a)(4) of the Communications Act of 1934, as amended. The reason given for this significant decision is that the three cases defining Commission policy since the early 1960's were based upon an error in the legal interpretation of Congress' intent in amending Section 315 in 1959. [1]

That there was legal error in deciding Goodwill, NBC (Wyekoff), and Columbia Broadcasting System, Inc., is far from clear. What is clear to me is that the majority has sidestepped the very purpose of Section 315 of the Communications Act - that all qualified candidates for a public office be given equal opportunities to present their images and positions to the voters via broadcast media. With the legal interpretation adopted today, the Commission has created a loophole to Congress' intent that allows grossly unbalanced coverage of the political activities of political opponents, so long as the political activities are covered live and in full. Pursuant to the legal interpretation adopted today, a broadcaster may determine that only major candidates are newsworthy and, while covering their debates and press conferences, may ignore similar appearances of other candidates.

A change in policy of this magnitude affects the heart of our political system. At a minimum, it should be made in the context of a rulemaking proceeding where guidelines for broadcaster judgement can be considered. The preferable procedure, however, is to let Congress define the policy.

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1 The Goodwill Station, Inc., 40 F.C.C. 362 (1962); National Broadcasting Co., 40 F.C.C. 370 (1962); Columbia Broadcasting System, Inc., 40 F.C.C. 395 (1964).

During my tenure at the Commission, we have repeatedly told Congress that we are responsible for communications matters, not political decisions. I feel that this role should be preserved.

I dissent.

DISSENTING STATEMENT OF COMMISSIONER BENJAMIN L. HOOKS

In Re: Section 315 (Political Equal Time)

The Commission is making a tragic mistake.[1] In an ill-considered rush, the majority has swept aside the clear intent of a vital portion of Section 315[2] which was enacted by Congress to ensure that all political candidates were given media equality with all humanly reasonable exactitude. By exempting two popular forms of political weaponry, the press conference and the debate, the delicate balance of eqalitarian precepts underlying political "equal time" legislated into Section 315 and refined over 15 years of consistent administrative and judicial construction, has suffered a severe and, perhaps, mortal blow. I dissent.

Although the reversal of the principal cases holding that press conferences and debates of political candidates triggered the statutory "equal time" mechanism[3] is superficially narrow as expressly treated in the Majority Order, the irresistable consequence of our action effectively renders nugatory §315(a)(4). By necessary implication, our ruling cannot be limited to the coincidental facts of the pivotal cases (fn. 3); and, ultimately, all manner of possibly preferential broadcast coverage[4] under the guise of "bona fide news events" is the undeniable result of our decision herein.

1/ Lest anyone think otherwise, it is my view that the mistake is non-partisan as the vote in this action tends to affirm. However, as any casual student of politics knows, mistake carries no party label and this action demonstrates that Democrats and Republicans can be wrong at once. (In passing, a good reason--I should think--to guaranty that all candidates of all persuasions receive equal time.)

2/ 47 U.S.C. §315(a)(4) which permits an exemption to equal time for "on-the-spot coverage of bona fide news events. . . ."

3/ See The Goodwill Station, Inc., 40 F. C. C. 362 (1962); National Broadcasting Co., 40 F.C.C. 370 (1962); Columbia Broadcasting System, Inc., 40 F.C.C. 395 (1964).

4/ In case anyone thinks the possibility of candidate favoritism is not an omnipresent threat, see Star Stations of Indiana, Inc., 51 FCC 2d 95 (1975) (Hooks not participating), appeals pending, D. C. Cir. Case Nos. 75-1203, 75-1204, 75-1205. The Star decision and Initial Decision (51 FCC 2d at 114) are rife with instances of a broadcaster agonizing to find ways to favor particular candidates with broadcast coverage. How much more simple, and legal, it would have been had the loophole we now fashion been in effect.

The policy decision engendering the renunciation of our well reasoned inclusion of press conferences and debates (cogently set forth in the fn. 3 cases) is based on the expressed desire of the majority to provide fuller broadcast coverage of the activities of political candidates, unencumbered by Section 315 requirements for opponent equal time. However, I do not consider either a debate or press conference to be the type of spontaneous, apolitical occurrence Congress regarded as a conventional news event. Both, and particularly debates, are a species of quasi-news used as potent devices for the promulgation of the claims of a political candidate in the course of an election; they are staged, structured and premeditated campaign tools imparting very little of news value which cannot now be broadcast within a "bona fide newscast" where such news is already exempt under §315(a)(1). Indeed, both are unlikely vehicles for the formation of hard news. For example, if an official must transmit critical information to the citizenry, there is no assurance in a news conference that questions relating to the critical issue will even be asked. Nor does a news conference provide the opportunity for the sort of extended and well considered response one expects to accompany official reaction to a critical event. 5/ Political debates, on the other hand, are hard to imagine as fast-developing news exigencies, since they are ordinarily scheduled long in advance, with partisan hype and hoopla, and the issues in a debate are framed and restricted by the disposition of the participants. Moreover, and most important from the standpoint of assuring at least a modicum of coverage equality, a candidate not invited to participate in a debate is at a double disadvantage; not only does the uninvited candidate miss the exposure and opportunity provided by participation in the debate itself, our ruling today means that the uninvited candidate is not entitled to any other time to compensate for opponent appearances on debate. The spirit of § 315, ergo, has been separated from the body.

5/ The need of an elected official to report to the public on urgent developments has been recognized and provided for by Commission precedent. See, Republican National Committee, 40 FCC 408 (1964), aff'd by an equally divided Court sub nom., Goldwater v. FCC, No. 18,963 (D. C. Cir., Oct. 27, 1964) (per curiam), cert. denied, 379 U. S. 893 (1964).

To ask the rhetorical question "if a Presidential press conference or a majority party candidate debate is not, of itself, a 'bona fide news event,' what is" begs the issue. The real issue, given our reconstruction, is "what, then, involving important elections, is not news." 6/ That is why I said earlier that the inevitable byproduct of this reversal is nullification of the carefully circumscribed, intentionally limited provisions of Subsections 315(a)(1) - 315(a)(3).

That such provisions have been neutralized by our ruling today requires only simple development. On its face, our ruling exempts only press conferences and debates fitting the factual settings of Goodwill, NBC, and CBS (fn. 3, supra). 7/ A strict reversal on indigenous facts legally means that a press conference or a debate may only be covered if it is (a) broadcast live; (b) in its entirety; (c) not sponsored or controlled by the broadcaster; and (4) not rigged by the broadcast and/or candidate.

Inasmuch as ninety-nine percent of the usual news broadcast is of taped excerpts, the "live" and "entirety" limitations have no plausable relationship to the question of "on-the-spot coverage of bona fide news events." §315(a)(4). These two distinctions are so patently meritless as to make further comment practically unnecessary. If "bona fide news events" are only those covered live and in totality, then there is no such thing as broadcast news currently available. The requirement that the event not be arranged or controlled by the broadcaster (and outside of a studio) is similarly artificial distinction because broadcast of any event requires close cooperation between a broadcaster and participants. Stage direction comes close to control or arrangement. 8/ And, finally, whether or not coverage is rigged

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6/ News is dictionary defined as "reports, collectively, of recent happenings, especially those broadcast over radio or TV. . . ." Webster's New World Dictionary of the American Language (2nd College Ed. 1972). This self-definition syndrone of broadcast news is, obviously, a condition requiring a narrow reading of the statute so as not to render the "news event" exemption meaningless.

7/ Even this limitation is not strictly true, since the Order itself goes beyond the facts in CBS which involved a Presidential press conference. Today's ruling concedes the impossibility of limiting exemptions to Presidents and, sua sponte, exempts governors and mayors as well. Even this limitation is tenuous at best.

8/ See, e.g., Complaint Concerning the CBS Program, "The Selling of the Pentagon" 30 FCC 2d 150(1971); CBS "Hunger in America" 20 FCC 2d 143 (1969).

or preference is being afforded one or more candidates relates to the bona fides of the broadcaster. This is a matter of intent and objective proof of favoritism is all but impossible. 9/

Hence, stripped of the foregoing irrelevant distinctions (which, like oak leaves in October, must fall), the remaining test for exempt coverage of debates and press conferences will come to depend on the subjective newsworthiness judgment of a licensee. Indeed, if logic and reasoned policy play any part in our decisional processes, and if the purpose of our policy reversal is to facilitate broadcast coverage of the utterings and activities of political candidates, how can we consistently limit the exemption to debates and press conferences? Is a policy statement, opinion or other activity of a major candidate any less newsworthy or entitled to coverage because it transpires in a format other than a debate or press conference? If the gravamen is the transmittal of substance to the populace, a statement delivered from a soap box in Times Square--from a legal and policy aspect--is equally deserving of a 315(a)(4) exemption.

We, therefore, have interpreted §315(a) into oblivion. That is why our past interpretation requiring the happenstance of a "bona fide news event" extrinsic to the candidate or the political message was imperative to impart any legislative meaning to §315(a)(4). My view is supported by the statement of Chairman Oren Harris to the House of Representatives, noted at the adoption of 315(a): "appearance of a candidate in on-the-spot- coverage of news events is not to be exempt from the equal time requirements unless the program covers bona fide news events." See 40 FCC at 372-373. 10/

9/ But compare, Star Stations of Indiana, Inc., supra fn. 4.

10/ There are, of course, many other manifestations of Congressional intent, chief of which is the enactment of Subsection 315(a) itself when Congress did not delay at all when it felt the Commission had misconstrued the intent of §315 in the Lar Daly case. The other obvious example is the enactment of Senate Joint Resolution 207 (P. L. 86-677) which specifically exempted Presidential debates in the 1960 Kennedy-Nixon election.

It is abundantly clear that Congress saw the candidate appearance, qua appearance, and the "news event" as separate and distinct happenings unless it is assumed that Congressman Harris was talking in nonsensical circles. While Congress rejected the stipulation that an exempt candidate appearance must be "incidental to" a discretely newsworthy event, it is unreasonable to infer that Congress intended a naked candidate appearance on a debate, press conference or street corner to be the "news event" itself. If any unrigged candidate appearance is inherently newsworthy for purposes of a §315(a)(4) exemption, then there is no equal time requirement for the broadcast coverage of opposing candidates save what a broadcaster decides is equally newsworthy. If newsworthiness is the operative test, then all the other carefully drafted 315(a) exemptions and protections are useless and unnecessary. Without being only "incidental to (or, fortuitously circumstantial to) uniquely newsworthy events, there are endless examples of when a candidate's appearance is entitled to a §315(a)(4) exemption. And no better example can be found than that presented by a companion item to the instant ruling wherein a request was made to determine whether the President could be shown initiating the annual United Way charity drive, and which request the majority ironically rejected. Here is an illustration of an inherently newsworthy event (i.e., initiation of the drive) in which the President's appearance, while not merely "incidental" thereto, was in the context of a separate, apolitical, bona fide news event. Although the line is thin (as are many lines we walk, e.g., Red Lion Broadcasting Co. v. FCC, 395 U. S. 367 (1967), we cannot eradicate by administrative fiat that line legislatively drawn by Congress. The curiosity of our two interpretive rulings is that a purely political event like a debate does not activate equal time whereas a purely apolitical, separately newsworthy appearance (viz., United Way drive) does. Non Sequitur.

Because the effects of our action today are so sweeping and important, and whether or not our prior holdings were of such solidified general applicability as to require rule making for significant alteration, an Inquiry and Rule Making would have been helpful in resolving these issues. At least, I believe, it would have helped open our eyes to the drastic ramifications of our seemingly limited exemptions. The question as to whether, as a legal matter under the Administrative Procedure Act, such rule making is mandatory has been ably argued by all sides and the courts will eventually make that judgment.

Finally, our action here is in excess of necessity because if we wish to assure that licensees are not avoiding legitimate and important political issues because they are required to fairly treat candidate access, we are not powerless to act. A licensee has an affirmative duty "to provide a reasonable amount of time for the presentation . . . of public issues." Report on Editorializing, 13 FCC 1246, 1249 (1949).

The majority may no longer be pleased with the journalistic strictures set forth in §315(a) but we cannot legally strain to interpret that statute so as to annul Congressional Acts.

While I do not doubt the motives of the majority in liberalizing political coverage, and as has been expressed in other ways, the road to Perdition bisects the crossroads of Noble Intention and Muddled Perception. We have taken the wrong fork.

STATEMENT OF
COMMISSIONER JAMES H. QUELLO
in which Commissioner Robinson joins
Re: Section 315

The action taken by the majority was, I believe, consistent with Congressional intent, common sense and the public interest. There can be no doubt that the prior interpretation of Section 315(a)(4) was acting as a restraint on broadcast coverage of political candidates to the detriment of an informed populace. I refuse to accept the cynical view that incumbent congressmen preferred this limited coverage in their own self-interest.

I do not view this issue as a partisan political one in which one party or one candidate stands to gain or lose by our decision. Political debates--in the limited context in which they will now be exempt from equal time requirements--can only benefit the American people by making us all more aware of the candidates for political office and their stated views. The news conference, too, can serve to inform and educate without the artificial restraints imposed by government.

The direct coverage of an event--such as debates and news conferences--can present to those who will take the time to watch and listen, many of the subtleties and nuances which often escape the paraphrased reports we hear and read. Direct coverage--to my mind--is one of the unique qualities broadcasting brings to public service. It permits each of us to participate directly in the process of selecting our representatives by what they have to say and how they say it, based upon our own analysis. It helps us to better weigh a candidate's qualifications for office according to our own criteria. Journalistic analysis and commentary, too, are important to our understanding. But, such analysis takes on added value when it is compared with the actual event. Therefore, I believe that a better informed American public is an inevitable consequence of our action.

An added benefit to the listening and viewing public is that our action today has removed the restraints from coverage of all political contests, state and local, as well as Federal. For those who believe that broadcast coverage of political events will hereafter be limited to only major party candidates, I hasten to point out that the Fairness Doctrine remains unaffected. Consistent with the Doctrine, I fully expect that all candidates for political office will be accorded a reasonable opportunity to present their views. I do not see our decision as limiting access to political candidates in any way. On the contrary, it is my hope--and my expectation--that broadcasting will now be better able to fulfill its public interest responsibility in covering political events.

September 25, 1975

STATEMENT OF COMMISSIONER ABBOTT WASHBURN
ON TODAY'S ACTION ON APPLICATION OF
SUBSECTION 315(a)(4) OF COMMUNICATIONS ACT

It is clear from the legislative record that it was the intent of Congress in 1959, by means of the "news exemptions" to the equal-time Section 315, to open up and facilitate broadcast coverage of political discussions and events in this country.

However, the Commission's narrow interpretations, in 1962 and 1964, of the Subsection 315(a)(4) exemption ("on-the-spot coverage of bona fide news events . . . including but not limited to political conventions") have had the opposite effect. They have effectively inhibited live on-the-spot coverage of debates between candidates and live coverage of Presidential news conferences.

Under the Subsection 315(a)(1) exemption, these same events may be, and are, covered in newscasts. Our action today, rescinding the 1962 and 1964 rulings, makes it possible for broadcasters to cover these events not just in newscasts but also live and in their entirety whenever these events are considered bona fide news.

The Bicentennial year should be a model of the fullest possible broadcast coverage of political activities for the benefit of the electorate.

SEPARATE STATEMENT OF COMMISSIONER GLEN O. ROBINSON

I agree with Commissioner Quello's views on our re-interpretation of Section 315, but want to add a few additional thoughts of my own. First, as Commissioner Quello correctly emphasizes, the Commission's declaratory order is not a partisan political act; it is precisely what it purports to be--the rehabilitation of Section 315 by correcting an old and embarrassing mistake concerning its interpretation. Admitting mistakes is not something government agencies do often or promptly, but it should be a source of satisfaction that they do it at all.

Inasmuch as our action today corrects a mistake of law, I am clear that the agency is not obliged to go through a notice and comment rulemaking. As I have elsewhere expounded at length, the process of adjudication--and declaratory rulings belong to this genre of administrative action--is an appropriate vehicle for policy decisions such as this (particularly where, as here, the decision turns on purely legal issues--which, it is noted, were earlier decided by adjudication). See Robinson, The Making of Administrative Policy: Another Look at Rulemaking and Adjudication and Administrative Procedure Reform, 118 U. Pa. L. Rev. 485 (1970). The Supreme Court has made it clear that agencies have a very broad discretion to formulate and re-formulate policies outside the formal constraints of rulemaking. National Labor Relations Board v. Bell Aerospace Co., 416 U.S. 289 (1974). Hence, today's action is as sound legally as it is sensible.

FCC

THE WHITE HOUSE

WASHINGTON

October 8, 1975

MEMORANDUM FOR: PHIL BUCHEN

FROM: BARRY ROTH BR

SUBJECT: FCC Equal Time Ruling

Attached is the FCC's Memorandum Opinion and Order adopted September 25, 1975, and released September 30 concerning the interpretation of the equal time provision of Section 315 of the Federal Communications Act. Subsequent to that decision, a stay from the FCC of the Order was sought and rejected by the Commissioners on the basis that an interpretation of law, rather than the issuance of a new regulation, is not subject to the Administrative Procedure Act. The National Organization for Women, on behalf of Congresswoman Shirley Chisholm, and the Media Access Project have separately filed suit in the U.S. Court of Appeals for the District of Columbia Circuit challenging the FCC opinion. The Civil Division will keep us informed of significant developments in these cases, particularly as to any motions for a stay of the FCC's decision.

You may wish to mention these challenges to the FCC Opinion at a senior staff meeting.

Attachment

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 75-1090
37356

In the Matter of

Petitions of the Aspen Institute Program on Communications and Society and CBS, Inc., for Revision or Clarification of Commission Rulings under Section 315(a)(2) and 315(a)(4).	)

Declaratory Order

MEMORANDUM OPINION AND ORDER

Adopted: September 25, 1975 ; Released: September 30 , 1975

By the Commission: Commissioners Lee and Hooks dissenting and issuing statements; Commissioner Quello issuing a statement in which Commissioner Robinson joins; Commissioners Washburn and Robinson issuing separate statements.

1. The Commission is in receipt of petitions filed by Mr. Douglass Cater, Director of the Aspen Institute Program on Communications and Society (Aspen), received April 22, 1975, and by CBS, Inc. (CBS), received July 16, 1975. Both petitions raise questions concerning the applications of the provisions of Section 315 of the Communications Act.

2. Aspen seeks revision or clarification of the Commission's policies concerning the applicability of the 1959 Amendments to Section 315 to certain joint appearances of political candidates. It is urged, that the two revisions will enable broadcasters to "more effectively and fully ... inform the American people on important political races and issues" and to "make the Bicentennial a model political broadcast year."

3. The two revisions sought by the Institute are:

(1) The Commission should give the Section 315(a)(4) exemption for on-the-spot coverage of bona fide news events its proper broad

remedial construction, and should thus overrule the NBC (Wyckoff) and Goodwill Station decisions; 1/ and

(2) The Commission should clarify its position on Section 315(a)(2) -- the exemption for bona fide news interview programs -- in light of the Chisholm case. 2/

These are crucial, in Aspen's view, because the Commission, in its interpretive rulings, has not given full scope to the Congressional purpose in enacting the 1959 Amendments to Section 315, and its rulings are founded upon mistaken assumptions and interpretations of law, which must be acknowledged and corrected as a matter of law and policy.

4. The Institute seeks these revisions in the context of Docket No. 19260, which addressed political broadcasting issues or, in the alternative, in a new policy statement or declaratory ruling.

5. Because the proposed revisions concern a broader set of issues than those discussed in the Fairness Report, 48 FCC 2d 1 (1974), and in the First Report-Handling of Political Broadcast, 36 FCC 2d 40 (1972), we believe that these broader issues should not be decided without further consideration in a more expansive proceeding. 3/ However, the first issue raised by the petition as to the legal misinterpretation which underlies our 1962 decisions with respect to Section 315(a)(4), can be dealt with at this time in a declaratory ruling. 4/

6. CBS requests a declaratory ruling that Presidential press conferences are exempt from the "equal opportunities" provision of Section 315 of the Communications Act. CBS contends that the live broadcast of such news conferences constitutes (1) "on-the-spot coverage of bona fide news events," within the meaning of Section 315(a)(4) of the Act, and (2) "a bona fide news interview," within the meaning of Section 315(a)(2) of the Act. Petitioner urges that we re-

1/ The Goodwill Station, Inc., 40 FCC 362 (1962); National Broadcasting Co., 40 FCC 370 (1962).

2/ Hon. Sam Yorty and Hon. Shirley Chisholm, 35 FCC 2d 572, remanded and order for interim relief granted, No. 72-1505, D.C. Circuit, June 2, 1972, on remand, 35 FCC 2d 579 (1972).

3/ We expect to reconsider the issues raised in our Chisholm ruling, supra, among other political broadcast questions, at that time.

4/ Parties who wish to challenge this Declaratory Ruling on appeal will have an opportunity to do so well in advance of the 1976 elections. Felix, v. Westinghouse Radio, 186 F.2d 1 (3rd Cir. 1950), cert. denied, 341 U.S. 909 (1951).

examine our decision in Columbia Broadcasting System, Inc., 40 FCC 395 (1964) (hereinafter referred to as CBS). 5/

7. Section 315, as it was originally worded, established a principle of absolute equality for competing political candiates in the "use" of broadcast facilities. In the 1959 "Lar Daly" case, the Commission interpreted the statute to mean that the equal time rule applied even to the appearance of a candidate on a regularly scheduled newscast. Columbia Broadcasting System, 18 RR 238, reconsideration denied, 18 RR 701 (1959). Daly, a perennial candiate in both the Republican and Democratic mayoralty primaries in Chicago, had complained to the Commission that several stations presented newsclips showing the major candidates in the two primaries but refused to afford him equal time. The Commission ruled that the presentation of these film clips were "uses" within the meaning of the statute, and that consequently Daly was entitled to equal time. The Commission's position on this matter created a national furor, and it was feared that this strict application of the equal opportunities provision "would tend to dry up meaningful radio and television coverage of political campaigns." Sen. Rep. No. 562, 86th cong. 1st Sess. 10 (1959).

8. This concern led Congress to a realization that the concept of absolute equality among competing political candiates would have to give way, to some extent, to two other "worthy and desirable" objectives:

> First, the right of the public to be informed through broadcasts of political events; and Second, the discretion of the broadcaster to be selective with respect to the broadcasting of such events.

Hearings on Political Broadcasts-Equal Time Before the Subcommittee on Communications and Power of the House Committee on Inter-state and Foreign Commerce, 86th Cong., 1st Sess. 2 (1959) (comments of Chairman Harris).

9. In order to attain these worthy objectives, Congress adopted the 1959 amendments to the Communications Act. These amendments provided that an appearance by a candidate on any one of four types of news programs should not be deemed to be a "use" of the station by that candidate. The four categories of exempt programs are as follows:

5/ Informal comments have been filed in opposition to this request by the Democratic National Committee, which urges us to reaffirm the validity of the CBS decision. See paragraph 17, infra. An additional request for the same relief asked for by Aspen was filed by Henry Geller on September 18, 1975.

> (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).

The Congress also provided that the Commission should have broad discretion in interpreting and implementing the new policy. See 47 U.S.C. §315(c). Indeed, in the words of the Senate Report:

> It is difficult to define with precision what is a newscast, new interview, news documentary, or on-the-spot coverage of news event .... That is why the committee in adopting the language of the proposed legislation carefully gave the Federal Communications Commission full flexibility and complete discretion to examine the facts in each complaint which may be filed with the Commission .... In this way the Commission will be able to determine on the facts submitted in each case whether a newscast, new interview, news documentary, [or] on-the-spot coverage of news event ... is bona fide or a "use" of the facilities requiring equal opportunity.

Sen. Rep. No. 562, 86th Cong., 1st Sess. 12 (1959).

10. In The Goodwill Station, Inc., radio station WJR broadcast a debate sponsored by the Economic Club of Detroit between two major candidates for Governor of Michigan, then-Gov. John B. Swainson and Republican challenger George Romney. The two participants were invited by the Club to debate issues following a dinner meeting. Neither had any part in establishing the format for the debate. The candidates appeared as invited, debated, and following the debate answered questions posed by Economic Club members. Each candidate had an opportunity to respond to an equal number of questions. Station WJR merely covered "live," the debate and question and answer period. It exercised no control whatsoever over the program content. The Commission ruled that this was not a "bona fide news event" under Section 315(a)(4), a ruling which had the effect of affording equal time to the candidate of the Socialist Labor Party, a party which in the previous election received only 1,479 votes out of a state-wide total of 3,255,991. The Commission's construction of 315(a)(4) excluded debates from that exemption. Indeed, it concluded that only events "incidental to" the presentation of a bona fide news event (e.g., where a Congressman seeking re-election appeared in connection with a ribbon cutting ceremony for a new highway or bridge)

or some, but not all, activities incidental to the presentation of a political convention might be exempt. The Commission based its conclusion on House Report No. 802, 86th Cong. 1st Sess., August 6, 1959. It took the position that the deletion of the term "debate" from the House version of the bill, as well as the evidence of Congressional action in 1960, which permitted the Great Debates, which it assumed to have been outside the 1959 Amendment's exemptions from Section 315, clearly indicated a legislative intent that debates were not exempt formats. Further, it said that the 315(a)(4) exemption for "on-the-spot coverage of bona fide news events", if applied to debates, would result in the exemption swallowing the rule.

11. National Broadcasting Co., supra, involved a debate between Governor Brown of California and Richard Nixon before the annual convention of the United Press International which NBC covered "live." The debate was arranged by UPI, and NBC had nothing to do with the arrangements. 6/ Indeed, NBC was not invited to cover the debate until after the arrangements had been completed. However, it decided to cover the event, as did all the major newspapers in California, based upon its assessment that the event was singularly newsworthy. The Commission held that equal time must be afforded to the Prohibition Party's candidate for Governor, thereby virtually eliminating the possibility that such debates would receive further broadcast coverage. In elaborating on its Goodwill Station opinion, the Commission stated that merely because an event might be considered newsworthy by the broadcaster did not make the event "bona fide" for purposes of the exemption. The Commission said:

> Where the appearance of a candidate is designed by him to serve his own political advantage and such appearance is ultimately the subject of a broadcast program encompassing only his entire appearance, such program cannot be considered to be on-the-spot coverage of a bona fide news event simply because the broadcaster deems that the candidate's appearance (or speech) will be of interest to the general public and, therefore newsworthy. For as Chairman Harris stated in discussing the conference report on the House floor, an "appearance of a candidate in the on-the-spot coverage of news events is not to be exempt from the equal time requirements unless the program covers bona fide events. And no assertion has been made by either CBS or NBC that this program encompassed any aspect of the UPI convention other than the joint appearance of Governor Brown of Mr. Nixon.

6/ Neither of these cases involved a debate or joint appearance in a studio.

The Commission, in conclusion, repeated that it did not question the broadcaster's news judgment but only the contention that it should consider only the broadcaster's news judgment in the context of the legislative guidelines for the 315(a)(4) exemption.

12. In CBS, we held that press conferences of the President, or a non-incumbent candidate for election to the presidency, would be considered non-exempt "uses" within the meaning of Section 315. In that decision we relied on the language of the Conference Report accompanying the bill containing the 1959 Amendments to Section 315 which stated that in order to qualify for exemption as "bona fide news interview" within the meaning of Section 315(a)(2), a broadcast must meet each of the following criteria:

(1) The broadcast must be regularly scheduled.

(2) The selection of the content, format, and participants of the broadcast must be under the exclusive control of the licensee or network.

(3) Broadcaster decisions as to format, content, and participants must have been made in the exercise of bona fide news judgment and not for the political advantage of any candiate.

13. In addition, we held that the broadcast of such press conferences failed to qualify for exemption as "on-the-spot coverage of bona fide news events," within the meaning of Section 315(a)(4). This conclusion rested on our decisions in Goodwill Station and Wyckoff, supra. We also stated that the mere fact that an event might be considered newsworthy by the broadcaster did not, per se, bring the event within the Section 315(a)(4) exemption, and that we were not questioning the networks' news judgment but only the contention that the Commission should consider only such news judgment in determining whether a broadcast was exempt under Section 315(a)(4).

14. In support of its contention that live broadcast of Presidential press conferences constitutes" on-the-spot coverage of bona fide news events," within the meaning of Section 315(a)(4), CBS argues that a reasonable decision by a broadcaster that a Presidential press conference is sufficiently newsworthy to merit on-the-spot live broadcast coverage should be determinative of whether the broadcast is exempt under Section 315(a)(4).

15. CBS stresses the unique status of the Presidency and the inherent newsworthiness of Presidential communications with the public. Thus, it contends, a distinction must be drawn between those Presidential press conferences called by a President-candidate in furtherance of his duty as Chief Executive to keep the people informed on important national and international issues, and purely political press conferences. 7/ The network claims that, under the CBS decision, no such distinction is drawn and, hence, any press conference now called by President Ford - politicial or non-political -- will give rise to "equal opportunity" rights in opposing candidates and will, therefore, be effectively barred from live broadcast coverage by licensees.

16. To support its assertion that a Presidential press conference constitutes a "bona fide news interview," within the meaning of Section 315(a)(2), CBS submits that while the regularity of broadcast of a news interview program and its control by the licensee are relevent considerations in determining whether or not such an interview is exempt from the "equal opportunities" provision of Section 315, the Commission's perspective in evaluating these considerations has been too narrow. Thus, CBS submits that in our decision in CBS, supra, the Commission applied an overly strict and mechanistic definition of the term "regularly scheduled." In its view, this term is most reasonably construed as meaning "recurrent in the normal and usual course of events," rather than as "recurrent at fixed and uniform time intervals." See CBS, supra, 40 FCC at 404 (dissent of Commissioner Loevinger). Presidential press conferences are "regularly scheduled," since they have been held over the course of many years and are held on a periodic basis. With respect to the element of licensee control, it is claimed that

7/ In this respect, CBS relies heavily on the 1964 dissenting opinions of Commissioners Ford and Loevinger and the separate opinion of Chairman Hyde (which was in substance a dissent).

Congress's primary concern with control of news interview programs was that such control be outside the hands of a candidate; it takes the view that Congress did not intend that such control remain exclusively with the broadcaster. Finally, CBS contends that the principle concern of Congress with respect to "bona fide news interview" programs was the prospect of rigging by some local broadcasters to promote the candidacies of local candidates, and that this concern is obviated in the case of nationwide broadcast of Presidential press conferences. Thus, although a President may make a statement before opening the session to questions, the crux of the press conference is in the questions and answers themselves, and such questions are out of the hands of the President.

17. The Democratic National Committee (DNC), in its informal comments, concedes that "past decisions should be re-examined in light of new facts, new laws, or new interpretations of past laws and facts." However, DNC contends that the reversal of the Commission's 1964 CBS decision would, in effect, "nullify the objectives of Section 315 and render it meaningless as it applies to Presidential elections." DNC further contends that the purpose of the 1959 Amendments was "to provide enough leeway to broadcasters to disseminate the news without incurring equal time obligations," and that "CBS is free to broadcast portions of the Presidential press conference on bona fide news shows or bona fide news documentaries." In its view, an exemption for Presidential press conferences from Sections 315 would "deprive opposing candidates of equal opportunities" and would cause "irreparable damage ... to its 1975 Presidential nominee" and all future candidates opposing incumbent presidents. DNC urges the Commission to retain the "incedental to" test which it has applied since 1962 in interpreting Section 315(a)(4). It contends that if the Commission abandons this test, it is left to determine only whether a licensee's judgment that a program is newsworthy is reasonable, and that the FCC would be left with neither a rational test for determining either the bona fides of a broadcast news event, nor a test with the precision of the equal time rule.

18. DNC also opposes the CBS contention that "regularly scheduled news interviews" refers to "recurrent in the normal and usual course of events, rather than at fixed and uniform time intervals." In its view, that interpretation would be administratively unworkable, and could make a farce out of the well defined news interview exemption. It also contends that the legislative history does not support this CBS assertion. Furthermore, it believes that Presidential press conferences, called at the whim of the President, are subject to abuse. It also believes that many of the significant factors associated with Presidential press conferences are under the control of the President and, thus, the problem of abuse would be heightened by exemption of such programs in direct disregard of the "control" requirement as set forth in the legislative history.

19. DNC believes that the Commission should take into consideration: (1) that if Section 315 is to continue to work effectively, it must continue to work with the "automatic and mathematical" precision it has exhibited in the past; (2) the equal time requirement

posits a particular right in candidates to ensure that they receive an equal opportunity of access to the airways in order to discuss campaign issues, and such rights should not be left to the whim of a station or network; (3) the impact of such a ruling would inhibit the chances of any candidate's bid to unseat an incumbent President running for re-election; (4) that the President's unique status as a newsworthy individual should not be determinative in this case; (5) such an interpretation would be inconsistent with the interpretations of the First Amendment in Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969).

20. The Media Access Project (MAP) has filed a lengthy informal pleading on behalf of the National Organization of Women (NOW) and Congresswoman Shirley Chisholm. MAP argues that the Commission cannot properly issue declaratory rulings in this matter, but may only proceed by way of a rulemaking proceeding. Aside from the procedural arguments, MAP essentially alleges that the potential for abuse of the exemptions in Section 315 requires the Commission to prohibit any use of the exemptions for on-the-spot coverage of bona fide news events. Additionally, it is argued that if a candidate intends to gain an advantage by his or her appearance, coverage of the appearance may not be exempt, and that debates may never be exempted because Congress did not create a specific exemption for them. Moreover, MAP argues that the Commission could, as a matter of administrative discretion, use a test which was rejected by Congress in its determination - the "incidental to" test applied in the 1962 decisions.

21. For the reasons discussed below, we hereby overrule our earlier decisions in The Goodwill Station, Inc., supra, and National Broadcasting Co., supra, and will in the future interpret §315(a)(4), so as to exempt from the equal time requirements of Section 315 debates between candidates as "on-the-spot coverage of bona fide news events" in situations presenting the same factual contexts in Goodwill Station and Wyckoff. At the same time we overrule that part of the 1964 CBS decision which relies on Goodwill Station and Wyckoff, for reasons also discussed below. Thus the press conferences of the President and all other candidates for political office broadcast live and in their entirety, qualify for exemption under Section 315(a)(4). 8/

8/ Because Aspen and CBS both requested declaratory rulings by the Commission, they are the only formal parties before the Commission. DNC and MAP have, therefore, filed informal comments in opposition to the views of Aspen and CBS. The Commission has fully considered the arguments advanced in all those comments in reaching its determination.

DISCUSSION

Debates: The Aspen Petition

22. As Aspen points out, and after thorough review we are compelled to agree, the Commission's decisions in Goodwill Station and Wyckoff, are based on what now appears to be an incorrect reading of the legislative history of the newscast exemptions and subsequent related Congressional action. Our conclusion that the debates were not exempt rested on language in the House Report of August 6, 1959, which indicated that in order for on-the-spot coverage to be exempt the appearance of the candidates would have to be "incidental to" the coverage of a separate news event. The Goodwill Station, Inc., 40 FCC at 364. It was obvious, of course, that in a debate between two candidates the appearance of neither could be deemed to be incidental to the news event. Indeed, the appearance of the candidates would naturally be the central focus of the event. The problem with this reasoning is that it was based on a report of a bill which was not enacted into law. The bill discussed in the August 6 House Report did indeed require that appearances by candidates must be "incidental to" another event - and this requirement was explicitly set forth in the bill. The bill as enacted, however, did not limit the exemption to appearances of candidates which were "incidental to" other news. During the floor debate in the House, Rep. Bennett of Michigan warned the House that the "incidental to" language must be deleted or the bill would not work, citing the text of the bill and the language of the House Committee report. 105 Cong. Rec. 16241. That language was stricken in conference, and in floor discussion of the conference report Bennett again took the floor to comment on the deletion of the provision: "I am glad to see that the conference substitute omits this language because the majority of conferees felt as I do, that this requirement would lead to even greater confusion than we have at present." 105 Cong. Rec. 17778. The conference bill was then adopted. 9/ The rejection by a legislature of a specific provision contained in a reported bill militates against an interpretation of the resulting statute which, in effect, includes that provision. See Carey v. Donohue, 240 U.S. 430 (1916).

9/ Rep. Moss, who drafted the "incidental to" language, dissented from the conference report and during floor debate circulated a letter detailing his reasons. Chairman Harris, the floor manager, responded as folllows:

(Cont'd. next page)

9/ (cont'd. from preceding page)

> The letter alleges that this change replaces "the objective requirement of the House's bill that the appearance be incidental to the reporting of news with the subjective test that the newscast or news interview be bona fide." It states that the conference substitute provides for "a purely subjective text (sic) almost impossible of proof without either the showing of the grossest kind of favoritism or of a long pattern of preferential treatment by the broadcaster"....

He replied to this allegation:

> The test to be applied under the conference substitute is by no means too subjective to permit this.

Continuing, he stated the sentence quoted by the Commission in the NBC opinion:

> ...and appearance of a candidate in on-the-spot coverage of news events is not to be exempt from the equal time requirement unless the program covers bona fide news events.

He continued, in a passage not quoted by the Commission:

> This requirement regarding the bona fide nature of the newscast, news interview or news events, was not included without thoughtful consideration by the conference committee. It sets up a test which leaves reasonable latitude for the exercise of good faith news judgment on the part of broadcasters and networks. However, it is not intended that the exemption shall apply where such judgment is not exercised in good faith. For example, to state a rather extreme case, the exemption from section 315(a) would not apply where the program, although it may be contrived to have the appearance or give the impression of being a newscast, news interview, or on-the-spot coverage of news events, is not presented as such by the broadcaster, but in reality has for its purpose the promotion of the political fortunes of the candidate making an appearance thereon.' 105 Cong. Rec. 17782.

Thus, Chairman Harris equated the test as to bona fide in 315(a)(4) to those for "newscasts and news interviews." This statement conflicts with the Commission's 1962 ruling which, as described herein, mistakenly interprets the exemption as if the "incidental to" language had been retained.

23. Thus, the Commission's conclusion, in The Goodwill Station Inc., that a program which might otherwise be exempt should lose its exemption because the appearance of a candidate is a central aspect of the presentation, is not supported by the legislative history.10/ Newscasts, news interviews, news documentaries and "on-the-spot coverage of news events were exempted in order to foster public consideration of major candidates while assuring minor candidates access to reasonable opportunities for air time. 11/ The Commission's mandate was to devise

10/ The Commission appears to have been confused by the legislative history in its 1962 interpretation of the test as to what constituted a bona fide news event under Section 315(a)(4). This confusion resulted in part from the language of the Conference Report, p. 4. The Report discussed the test for "bona fide" news interview, specifying that in addition to certain format requirements, "the determination must have been made by the station or network, as the case may be, in the exercise of its 'bona fide' news judgment and not for the political advantage of a candidate for public office." However, in specifying the "bona fide" test as applied to on-the-spot coverage of bona fide news events, the Report said:

> In the Conference substitute, in referring to the on-the-spot coverage of news events, the expression "bona fide news events" instead of "news events" is used to emphasize the intention to limit the exemptions from the equal time requirement to cases where the appearance of the candidate is not designed to serve the political advantage of that candidate.

The lack of parallel mention of the broadcaster's bona fide news judgment in that paragraph may well have led the Commission, in 1962, to conclude that when Chairman Harris stated that in order to be exempt the program must cover "bona fide events", he meant that the broadcaster's news judgment was not to be considered. However, Congress recognized that the appearance of a candidate at any event would, objectively, serve his political interest. Furthermore, the language of the exemption, "including but not limited to political conventions and activities incidental thereto" indicates that the exemption does not limit broadcasters only to the coverage of non-partisan or non political events. Thus, it is hard to see how the appearance of a candidate at a political convention is not intended to serve the candidate's advantage. Therefore, we believe that the question of what is a "bona fide event" cannot be answered by looking only at the event itself, because if that interpretation were to be given effect, no political event could be covered except the most innocuous ribbon-cutting ceremony. Even then, the broadcaster would be forced to inquire whether the politican's subjective motive for attending was his political advancement. The real question is as to intent-and it is clear here that Congress was naturally focusing on the broadcaster's role.

11/ Sen. Rep. No. 562, 86th Cong. 1st Sess., at p. 10; 105 Cong. Rec. 14445 (1959) (remarks of Sen. Pastore); 106 Cong. Rec. 13424 (1960) (remarks of Senator Pastore). See Lawrence M. C. Smith, 40 FCC 549 (1963); Dr. Benjamin Spock, 38 FCC 2d 316 (1972).

standards to insure that these guidelines were enforced. There is no indication that Congress intended the Commission to take an unduly restrictive approach which would discourage news coverage of political activites of candidates. Rather, Congress intended that the Commission would determine whether the broadcaster had in such cases made reasonable news judgments as to the newsworthiness of certain events and of individual candidacies and had afforded major candidates broadcast coverage. Conference Report, H. Rep. No. 1069, 86th Cong. 1st Sess. In some circumstances this might logically entail exclusion of certain programs from within an exemption, such as programs designed for the specific advantage of a candidate, or those which were patently not bona fide news. It would not in our view extend to a restrictive application as to certain categories of events simply because the candidate's appearance is the central aspect of the event. Accordingly, a program which might otherwise be exempt does not lose its exempt status because the appearance of a candidate is a central aspect of the presentation, and not incidental to another news event.

24. In the Goodwill Station, Inc., the Commission concluded that, since there was no special exemption for debates, these events could not attain exempt status merely by being presented under one of the four exempt formats provided for in the 1959 amendments. This conclusion is unfounded. No appearance of a candidate (in a debate or otherwise) has a special exemption independent of the 1959 provisions, but such events may be properly covered, for example, under the exemption provided for bona fide newscasts. During the House of Representatives floor debate, Congressman Harris noted that a number of important program categories were not specifically exempted from Section 315, but then he made the following observation:

> On the other hand, and I want you to get this, ... the elimination of these categories by the committee was not intended to excluded any of these programs if they can be properly considered to be newscasts or on-the-spot coverage of news events.

105 Cong. Rec. 16229 (August 18, 1959). This view is consistent with the legislative history as to the other news exemptions as well.

25. The Commission, in 1962, stated that its restrictive interpretation of the exemptions (at least as it affected debates) was strengthened by the fact that Congress enacted special legislation in 1960 to exempt the Great Debates. We do not believe that Congress meant that debates presented within an exempt format would somehow lose their exemption. Indeed, the 1960 legislation had no special relevance to the coverage of debates. The legislation was intended to apply to any appearance by the presidential candidates regardless of format; and the measure was

adopted prior to the time when the candidates and the networks proposed the Great Debates. Senator Yarborough offered an amendment which would have limited the exemption to debates, but this amendment was withdrawn. See 106 Cong. Rec. 13423-13428 (June 27, 1960).

26. Why then was the 1960 legislation needed if debates could be carried as on-the-spot coverage of a bona fide news event? It was hoped that the exemptions would "lead to a fuller and more meaningful news coverage of the actions and appearances of legally qualified candidates"; but the Congress recognized that by 1960 not enough time had elapsed "for a full evaluation of this amendment." Sen. Rep. No. 1539, 86th Cong., 2d Sess., p. 2 (1960). As we have already noted, the Congress fully expected the Commission to act to explain fully the scope of the 1959 amendments. At the time of the adoption of the 1960 legislation, however, the Commission had done little to clarify the meaning of the exemptions. The urgent necessity for Congressional action, as stated by Senator Pastore in his remarks of June 27, 1960, was that:

> (1) "Not enough time has elapsed to permit full evaluation [by the FCC] of [the 1959] amendment; and
> (2) "As the 1960 presidential and vice-presidential campaign approached, great concern had been expressed about the serious limitations that were involved in the full application of section 315 to such candidates." 106 Cong. Rec. 13424 (daily ed.).

Thus, it was suggested by broadcasters and agreed to by Congress that Section 315 would be suspended as to major Presidential and Vice Presidential candidates for the 1960 elections, to insure that "adequate free time would be offered voluntarily" by the networks. 105 Cong. Rec. 13424 (June 27, 1960). Thus, reliance by the Commission on the proposition that the 1960 Suspension assumed that a debate was not an exempt format was, and is, misplaced.

27. Furthermore, we are convinced that as a matter of policy the Commission's reversal of these prior decisions comports with the original legislative intent and serves the public interest by allowing broadcasters to make a fuller and more effective contribution to an informed electorate. 12/ As Aspen points out in its petition, "[t]he consequence of these [1962] rulings has been to greatly diminish the efficacy of the on-the-spot news exemption, and thus the broadcaster's coverage of

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12/ Although, our ruling is most directly necessitated by the canon which requires an administrative agency to heed guidelines established by Congress, and to correct clear legal errors which were material to decisional results, we also agree with petitioner's argument that post-1960 developments in the law which support First Amendment interests of the public to view political news and to receive "wide-open, uninhibited and robust debate," Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 390 (1969), New York Times v. Sullivan, 376 U.S. 254 (1964), Garrision v. Louisiana, 379 U.S. 64 (1964), are consistent with Congress's intent in enacting the 1959 Amendments.

political news events," (Petition, p. 5) 13/ rather than "to make it possible to cover the political news to the fullest degree ..." and "to give full and meaningful coverage to the significant events of the day." 14/ By departing from these prior opinions, we can aid the broadcaster in rendering a most unique public service -- bringing a political debate "live into the homes of every interested voter."

28. However, we must advert to the legal arguments raised by the Commission in 1962 rulings as to the difficulties posed by loosening the exemptions to Section 315.

(a) It has been argued that giving Section 315(a)(4) a broader construction would render meaningless the other three exemptions to Section 315. By applying our Declaratory Order here to the circumstances covered by the two cases overruled, 15/ we believe we have preserved the essential nature of the exemption. However, to the extent appearances in debates would fall within another exemption, e.g., newscast or news interview, quite obviously that argument is vitated.

(b) As to the argument that a broader construction would render meaningless the 1960 suspension, S.J. Res. 207, P.L. 86-677, that is of little relevance. As we have pointed out in some detail, Congress acted in 1960 16/ because it was uncertain how the Commission would interpret the 1959 Amendments and in order to facilitate the offer by the networks of free broadcast time to the major Presidential and Vice-Presidential candidates. Furthermore, the 1960 exemption did not specify a debate format at all; rather, it provided that free time could be offered by broadcasters for the candidate's use, without subjecting broadcasters to the equal time requirements.

13/ Sen. Rep. No. 562, supra, at 10: "An informed public is indispensable for the continuance of an alert and knowledgeable democratic society. The public should not be deprived of the benefits that flow from this dynamic form of communications during the critical times of a political campaign..."

14/ Remarks of Senator Pastore, 105 Cong. Rec. 14445 (1959) and 106 Cong. Rec. 13424 (1960).

15/ See paragraphs 10-11, supra.

16/ We are aware that Congressional legislation is proposed which would exempt major Presidential and Vice Presidential candidates from the provisions of Section 315 altogether. The Commission has previously proposed to limit the equal opportunities requirement to major party candidates or candidates with "significant public support." See First Report, supra at 51-52 (para. 35) We do not contemplate that this Declaratory Order will obviate the need for more sweeping action by Congress.

(c) It is also suggested that the broader construction of the exemption would permit the broadcaster to ignore the equal time requirement. Thus, it is said, the opportunity to characterize as "newsworthy" any event covered live and on-the-spot would be irresistable to a broadcaster bent upon aiding a particular candidate in a partisan, discriminatory fashion. This argument is answered in part by the fact that we have limited our action on the 315(a)(4) exemption to the circumstances of Goodwill Station, NBC and CBS. This limited holding does not offer the opportunity for broadcaster abuse that already exists in the "newcast" or "new interview" exemptions. Nor does the narrow exemption reviewed here threaten to swallow the equal time rule. Realistically, the likelihood of broadcaster abuse is remote in coverage of more prominent political races (President, Senator, Governor, etc.). While the opportunity for abuse may exist at the less visible political office level (e.g., councilman, school board, district legislative races), we feel that the absence of abuse in the past 15 years of a broad newscast exemption fails to support the doomsayers' thesis - that this narrower exemption will be abused.

29. Most importantly, we believe that when Congress adopted the 1959 Amendments it squarely faced the risks of political favoritism by broadcasters which might be created by the exemptions--and, on balance, Congress preferred to make available to broadcasters the opportunity "to cover the political news to the fullest degree." 17/ Today, these risks are substantially lessened. 18/ Yet, the Commission's failure to accord the appearances in Goodwill and Wyckoff the exemption of Section 315(a)(4) did not give adequate scope to the Congressional action; rather, the Commission took a more cautious position which would insure that the threat of abuse would never materialize. To do so merely to preserve administrative convenience is not an appropriate course on which we will continue.

17/ 105 Cong. Rec. 14444 (remarks on Sen. Magnuson).

18/ Aspen correctly notes that when Congress faced those risks, the fairness doctrine was enforced through the renewal process. Thus, a misuse of an exemption could not be corrected during the critical days of the political campaign. See 105 Cong. Rec. 17782 (remarks of Chairman Harris) (September 2, 1959). Since then, however, additional protection has been afforded candidates through prompt consideration of fairness and Section 315 complaints.

Press Conferences: The CBS Petition

30. The preceding discussion of the Section 315(a)(4) exemption as it pertains to coverage of debates is also relevant to the question of live coverage of a press conference. As we stated in paragraph 23, supra:

> ... [A] program which might otherwise be exempt does not lose its exempt status because the appearance of the candidate is a central aspect of the presentation, and not incidental to another news event.

Under this test, press conferences do not lose their exemption merely because the candidate's appearance is the central aspect of the news event. The Commission allows reasonable latitude for exercise of good faith news judgments by broadcasters and networks by leaving the initial determination as to eligibility for Section 315 exemption to their reasonable good faith judgment. See United Community Campaigns of America, 40 FCC 390, 391 (1964). Congress intended that the Commission would determine whether the broadcaster had made reasonable and good faith judgments as to the newsworthiness of certain events and of individual candidacies, and had afforded major candidates broadcast coverage. See Conference Report, H. Rep. No. 1069, 86th Cong. 1st Sess. CBS's premise is that its judgment as to the newsworthiness of such press conferences, and its consequent decision to afford such conferences live broadcast coverage, are necessarily wholly determinative of whether such broadcasts are exempt under Section 315(a)(4). However, newsworthiness is not the sole criterion to be used in determining whether Section 315(a)(4) has been properly invoked. A question whether the coverage of a press conference was intended by the broadcaster to be for the specific advantage of that candidate would be considered in terms of the licensee's good faith in deciding to cover the press conference. See 105 Cong. Rec. 17782 (remarks of Oren Harris).

31. With respect to CBS's contention that a Presidential press conference constitutes a "bona fide news interview," within the meaning of Section 315(a)(2), we cannot agree with the claim that our perspective in evaluating the criteria for exemption under that subsection has been too narrow. The Conference Report on the bill containing the exemptions to Section 315(a) set forth the criteria for exemption under subsection (a)(2) with clarity:

> The intention of the committee of conference is that in order to be considered "bona fide" a news interview must be a regularly scheduled program.
>
> It is intended that in order for a news interview to be considered "bona fide" the content and format

> thereof, and the participants, must be determined by the licensee in the case of a news interview originating with the licensee of a station and by the network in the case of a news interview originating with a network; and the determination must have been made by the station or network, as the case may be, in the exercise of its "bona fide" news judgment and not for the political advantage of the candidate for public office. H. Rept. No. 1069, 86th Cong., 1st Sess. 4 (1959).

Moreover, Senator Pastore, Senate Manager of the bill, stated:

> We have spelled out in the House Report itself precisely what we mean by bona fide news interview. It is provided, specifically, first of all, that it shall be a regularly scheduled program. Secondly, the content and format must be exclusively under the jurisdiction of the broadcaster or of the network. 105 Cong. Rec. 17829 (September 3, 1959).

32. The legislative history makes it clear that "regularly scheduled" meant to Congress a program which a licensee or network initiates and schedules for regular, recurrent broadcast, rather than a program which covers an event (such as a press conference) which, although possibly "recurrent in the normal and usual course of events," is initiated by a candidate and takes place and is broadcast only at such times and with such frequency as the candidate may specify. See 105 Cong. Rec. 16224-5 (August 18, 1959) (remarks of Representative Brown of Ohio). The legislative history refers to such programs as "Meet the Press", "Face the Nation" and "College Press Conference" as examples of the type of "regularly scheduled" news interview program contemplated for exemption. See, e.g., 105 Cong. Rec. 16224-5 (August 18, 1959) (remarks of Representative Brown of Ohio); 105 Cong. Rec. 17829 (September 3, 1959) (remarks of Senators Engle and Pastore); id. at 17831 (remarks of Senator Scott). "Regularly scheduled" programs were thus thought to be those scheduled by a licensee or network for broadcast . . . say every day at a certain time or every week at a certain time . . ." 105 Cong. Rec. 17780 (September 2, 1959) (remarks of Representative Harris). The legislative history does not support the view that the term "regularly scheduled" encompasses broadcasts of press conferences called by a candidate solely at his discretion and at such times and with such regularity as only he may specify. In light of the foregoing, we are unable to accept CBS's suggestion that we construe the term "regularly scheduled" as meaning "recurrent in the normal and usual course of events."

33. As to the "control over content and format" aspect of the test for exemption under Section 315(a)(2), the legislative history unequivocally mandates that such control ". . . must be exclusively under the jurisdiction of the broadcaster or of the network." 105 Cong. Rec. 17829 (September 3, 1959) (remarks of Senator Pastore). Specifically, ". . . the content and format . . . [of the news interview program] . . ., and the participants, must be determined by the licensee in the case of a news interview originating with the licensee of a station and by the network in the case of a news interview originating with a network . . . ." H. Rept. No. 1069, 4. We are unwilling to impose on this plain language the strained interpretation that CBS suggests, viz., that as long as the control over most of a news interview program is out of the hands of a candidate the "control" criterion for exemption is satisfied.

34. In view of the fact that the broadcasts of such conferences are not "regularly scheduled," within the Congressionally contemplated meaning of that term, we reaffirm our view that the broadcast coverage of Presidential press conferences is not exempt as a "bona fide news interview," within the meaning of Section 315(a)(2). We are not persuaded to alter this conclusion by the network's claim that Congressional concern with respect to news interview programs was primarily directed at the danger of such programs being "rigged" by some broadcaster at the local level to further the candidacy of a local candidate. The fact that there was concern with regard to locally originated broadcasts does not necessarily imply that Congress intended that a more permissive standard for exemption under Section 315(a)(2) be used in connection with nationwide broadcasts, as CBS seems to suggest. Rather, the discussion of the danger of local broadcaster "rigging" of news interview programs appears in the legislative history merely as explanation for the need to include the words "bona fide" in the formulation of the subsection (a)(2) exemption. See 105 Cong. Rec. 17778 (September 2, 1959) (remarks of Representative Harris); 105 Cong. Rec. 17831 (September 3, 1959) (remarks of Senator Scott).

35. CBS errs when it states that "other Republican candidates may announce their candidacies within seven days of the press conference and demand "equal time." (Petition, p. 2 n. 1). Candidates seeking equal opportunities must have become legally qualified prior to the "use" in order to properly obtain the right provided by the statute. See, e.g., 47 C.F.R. §§73.120(e), 73.657(e). Moreover, an early declaration of candidacy is irrelevant to whether or not news coverage of the candidate is exempt under Section 315. Although we recognize that the equal opportunity requirement offers a disincentive to live coverage of appearances by candidates, particularly in such a situation, we could not for that reason alone alter our prior rulings if the legislative history of Congressional intent indicated otherwise.

36. DNC argues that the continued effectiveness of Section 315 depends on its precise, indeed "mathematical" operation. Equal opportunity is required by law only after it is determined that a prior, non-exempt "use" has been made on a broadcast. Congress clearly intended that the Commission had ongoing authority to issue interpretive rulings and across-the-board rules to effectuate Section 315 exemptions. See H. Rep. No. 1069, 86th Cong., 1st Sess. 12, 13 (1959). Equal opportunity still is required when a "use" has been made. The rule will operate as precisely after this decision as before. Indeed, it will operate with greater clarity, and in accord with legislative intent. With respect to DNC's argument that Section 315 vested in candidates a right to broadcast after a Section 315 "use", we point out that Congress modified that right in 1959. At that time, it instructed the Commission to implement this modification. We have determined that the Commission, in 1962, misinterpreted Congressional intent, the result of which was an unsupported construction of the Section 315(a)(4) exemption. In this decision, we have sought to remedy that error of law. The "automatic and mathematical" precision described by DNC, viz., an unwarranted narrow construction, was perhaps more convenient to administer. However, strict limits on the exemption cannot be justified if they undermine legislative intent.

37. DNC's assertion that "irreparable harm" will result to its 1976 candidate, or any candidate opposing an incumbent President, from live broadcast coverage of a Presidential press conference is speculative and conclusory. Free-wheeling, wide-open press conferences do not necessarily yield the kind of favorable publicity for the holder which DNC too easily assumes. Most of all, however, we believe that the intent of Congress was to pursue the "right of the public to be informed through broadcasts of political events." Supra, para. 8. The fundamental concept which underscores this objective is that the continued vitality of a democratic society and its freedoms requires the "widest possible dissemination of information," Associated Press v. United States, 326 U.S. 1, 20 (1945), and that the broadcasters' role is to insure "that the American public must not be left uninformed." Green v. FCC, 447 F.2d 323, 329 (1973). We must always keep in mind that "speech concerning public affairs is more than self-expression; it is the essence of self-government." Garrison v. Louisiana, 379 U.S. 64, 74-75 (1964). We believe that the public's interest in "uninhibited, robust, wide-open" debate on public issues far outweighs the imagined advantages or disadvantages to a particular candidate. New York Times v. Sullivan, 376 U.S. 254, 270 (1964).

38. We reject the network's suggestion that we distinguish between press conferences called by an incumbent candidate in his official capacity and those called in furtherance of his candidacy. Such as approach would, necessarily, place the Commission in the position of deciding, in each case, whether the appearance of the official is political or non-political. We have steadfastly eschewed making such determinations, because to draw such distinctions would require us to make subjective judgments concerningthe content, context and potential political impact of a candidate's appearance. See Paulsen v. FCC, 491 F.2d 887, 890-91 (9th Cir. 1974). 19/

39. Finally, we reject the suggestion by CBS that, in determining whether press conferences are exempt, we consider the unique status of the Presidency and the inherent newsworthiness of Presidential communications with the public. It must be recognized that, although, it is reasonsable to conclude that the President's unique status as Chief Executive makes his communications relative to major national and international events inherently newsworthy, it is equally as reasonable to conclude that, in any given state in the country, the Governor's unique status as chief executive of that state may well make similar communications concerning that state newsworthy for its citizens. In our view there is no rational distinction to be made between press conferences at one level or another, since no such distinction can be found within the legislative history of the 1959 Amendments, nor are there any persuasive indications that the Congress intended to distinguish between press conferences exempt at one level and those at another level of political offices which would not be exempt. Thus, routine presidential press conferences, as well as press conferences by governors, majors, and, indeed, any candidates whose press conferences are considered newsworthy and subject to on-the-spot coverage may be exempt from Section 315 under our interpretation.

40. Thus, for the reasons stated above, we today announce that in the future we will not follow our 1962 decisions in The Goodwill Station, Inc., and National Broadcasting Co. (Wyckoff), and we will thus permit on-the-spot coverage of appearances by candidates in the circumstances covered by those cases. See para. 10-11, supra. We also announce that we will no longer follow our 1964 CBS decision to the extent that it denies an exemption under Section 315(a)(4), for coverage of a press conference by a candidate for public office.20/

19/ The Commission reviews only whether or not the broadcaster intends to promote the interest of a particular candidate in presenting coverage of a news event. Supra, paras. 22-26 and footnote 9 therein.

20/ We believe that MAP's contention that we may not accomplish this end through declaratory relief, supra, para. 20, to be without merit. Although the Commission may not adopt an interpretation which is inconsistent with a statutory term, it has freedom within the guidelines established to interpret the statute in light of its greater expertise. Cf. American

Footnote 20 con't.

Broadcasting Co. v. United States, 110 F. Supp 374 (EDNY), aff'd 347 U.S. 284 (1953). Furthermore, a regulatory agency is not wedded to its past decisions. FCC v. WOKO, Inc., 329 U.S. 223 (1946). When faced with new developments, or on further consideration of a policy, an agency may alter its past rulings and policies. American Trucking Ass'n v. A.T. & S.F. RR. Co., 387 U.S. 397, 416 (1967). When it reverses course, however, the agency must provide "an opinion or analysis indicating that the standard is being changed and not ignored and assuring that it is faithful and not indifferent to the rule of law." Columbia Broadcasting System, Inc. v. FCC, 454 F.2d 1018, 1026 (D.C. Cir. 1971). We have squarely confronted both the legal and policy issues specifically involved, and have articulated our reasons for the change. The choice between rulemaking and adjudicative decisionmaking is largely one of agency discretion. NLRB v. Bell Aerospace Co., 416 U.S. 267, 290-295 (1974); S.E.C. v. Chenery Corp., 332 U.S. 194, 202 (1947). Declaratory relief, in the form of an advisory ruling, is appropriate where, as here, the controversy concerns the correctness of a Commission's interpretation of law. As we point out herein, the Commission's decisions in 1962 and 1964 as to the "on-the-spot coverage of bona fide news event relied upon a mistaken interpretation of law. See para. 22-26 herein. This error of law cannot stand as the proper view in the future. Thus, prompt prospective application of new policy, which is entailed by correction of legal error is properly within the context of a declaratory ruling. Cf. N.L.R.B. v. Majestic Weaving Co., 335 F.2d 854, 860 (2d Cir. 1966). Furthermore, this action is consistent with Congress's intent that the Commission had ongoing authority to make decisions on a case-by-case basis or by rules in interpreting the exemptions. See Sen. Rep. No. 562, 86th Cong., 1st Sess. 12, 13 (1959); Cf. N.L.R.B. v. Wyman-Gordon Co., 394 U.S. 759, 764 (1969). We believe our rulings will resolve these legal issues well in advance of the 1976 election year, are essential to promote the purposes of the 1959 Amendments to Section 315, and will clarify their interpretation for candidates, licensees, and the Commission staff. Hence, we are not persuaded that our discretion to issue declaratory orders is so limited.

As we said above, the undue stifling of broadcast coverage of news events involving candidates for public office has been unfortunate, and we believe this remedy will go a long way toward ameliorating the paucity of coverage accorded these news events during the past fifteen years.

41. Accordingly, IT IS ORDERED, that the petitions of the Aspen Institute Program on Communications and Society and of CBS, Inc., are GRANTED IN PART and DENIED IN PART, to the extent indicated above.

FEDERAL COMMUNICATIONS COMMISSION

Vincent J. Mullins
Secretary

DISSENTING STATEMENT OF COMMISSIONER BENJAMIN L. HOOKS

In Re: Section 315 (Political Equal Time)

The Commission is making a tragic mistake.[1] In an ill-considered rush, the majority has swept aside the clear intent of a vital portion of Section 315[2] which was enacted by Congress to ensure that all political candidates were given media equality with all humanly reasonable exactitude. By exempting two popular forms of political weaponry, the press conference and the debate, the delicate balance of eqalitarian precepts underlying political "equal time" legislated into Section 315 and refined over 15 years of consistent administrative and judicial construction, has suffered a severe and, perhaps, mortal blow. I dissent.

Although the reversal of the principal cases holding that press conferences and debates of political candidates triggered the statutory "equal time" mechanism[3] is superficially narrow as expressly treated in the Majority Order, the irresistable consequence of our action effectively renders nugatory §315(a)(4). By necessary implication, our ruling cannot be limited to the coincidental facts of the pivotal cases (fn. 3); and, ultimately, all manner of possibly preferential broadcast coverage[4] under the guise of "bona fide news events" is the undeniable result of our decision herein.

1/ Lest anyone think otherwise, it is my view that the mistake is non-partisan as the vote in this action tends to affirm. However, as any casual student of politics knows, mistake carries no party label and this action demonstrates that Democrats and Republicans can be wrong at once. (In passing, a good reason--I should think--to guaranty that all candidates of all persuasions receive equal time.)

2/ 47 U.S.C. §315(a)(4) which permits an exemption to equal time for "on-the-spot coverage of bona fide news events. . . ."

3/ See The Goodwill Station, Inc., 40 F. C. C. 362 (1962); National Broadcasting Co., 40 F.C.C. 370 (1962); Columbia Broadcasting System, Inc., 40 F.C.C. 395 (1964).

4/ In case anyone thinks the possibility of candidate favoritism is not an omnipresent threat, see Star Stations of Indiana, Inc., 51 FCC 2d 95 (1975) (Hooks not participating), appeals pending, D. C. Cir. Case Nos. 75-1203, 75-1204, 75-1205. The Star decision and Initial Decision (51 FCC 2d at 114) are rife with instances of a broadcaster agonizing to find ways to favor particular candidates with broadcast coverage. How much more simple, and legal, it would have been had the loophole we now fashion been in effect.

The policy decision engendering the renunciation of our well reasoned inclusion of press conferences and debates (cogently set forth in the fn. 3 cases) is based on the expressed desire of the majority to provide fuller broadcast coverage of the activities of political candidates, unencumbered by Section 315 requirements for opponent equal time. However, I do not consider either a debate or press conference to be the type of spontaneous, apolitical occurrence Congress regarded as a conventional news event. Both, and particularly debates, are a species of quasi-news used as potent devices for the promulgation of the claims of a political candidate in the course of an election; they are staged, structured and premeditated campaign tools imparting very little of news value which cannot now be broadcast within a "bona fide newscast" where such news is already exempt under §315(a)(1). Indeed, both are unlikely vehicles for the formation of hard news. For example, if an official must transmit critical information to the citizenry, there is no assurance in a news conference that questions relating to the critical issue will even be asked. Nor does a news conference provide the opportunity for the sort of extended and well considered response one expects to accompany official reaction to a critical event. 5/ Political debates, on the other hand, are hard to imagine as fast-developing news exigencies, since they are ordinarily scheduled long in advance, with partisan hype and hoopla, and the issues in a debate are framed and restricted by the disposition of the participants. Moreover, and most important from the standpoint of assuring at least a modicum of coverage equality, a candidate not invited to participate in a debate is at a double disadvantage; not only does the uninvited candidate miss the exposure and opportunity provided by participation in the debate itself, our ruling today means that the uninvited candidate is not entitled to any other time to compensate for opponent appearances on debate. The spirit of § 315, ergo, has been separated from the body.

5/ The need of an elected official to report to the public on urgent developments has been recognized and provided for by Commission precedent. See, Republican National Committee, 40 FCC 408 (1964), aff'd by an equally divided Court sub nom., Goldwater v. FCC, No. 18,963 (D. C. Cir., Oct. 27, 1964) (per curiam), cert. denied, 379 U. S. 893 (1964).

To ask the rhetorical question "if a Presidential press conference or a majority party candidate debate is not, of itself, a 'bona fide news event,' what is" begs the issue. The real issue, given our reconstruction, is "what, then, involving important elections, is not news." 6/ That is why I said earlier that the inevitable byproduct of this reversal is nullification of the carefully circumscribed, intentionally limited provisions of Subsections 315(a)(1) - 315(a)(3).

That such provisions have been neutralized by our ruling today requires only simple development. On its face, our ruling exempts only press conferences and debates fitting the factual settings of Goodwill, NBC, and CBS (fn. 3, supra). 7/ A strict reversal on indigenous facts legally means that a press conference or a debate may only be covered if it is (a) broadcast live; (b) in its entirety; (c) not sponsored or controlled by the broadcaster; and (4) not rigged by the broadcast and/or candidate.

Inasmuch as ninety-nine percent of the usual news broadcast is of taped excerpts, the "live" and "entirety" limitations have no plausable relationship to the question of "on-the-spot coverage of bona fide news events." §315(a)(4). These two distinctions are so patently meritless as to make further comment practically unnecessary. If "bona fide news events" are only those covered live and in totality, then there is no such thing as broadcast news currently available. The requirement that the event not be arranged or controlled by the broadcaster (and outside of a studio) is similarly artificial distinction because broadcast of any event requires close cooperation between a broadcaster and participants. Stage direction comes close to control or arrangement. 8/ And, finally, whether or not coverage is rigged

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6/ News is dictionary defined as "reports, collectively, of recent happenings, especially those broadcast over radio or TV. . . ." Webster's New World Dictionary of the American Language (2nd College Ed. 1972). This self-definition syndrone of broadcast news is, obviously, a condition requiring a narrow reading of the statute so as not to render the "news event" exemption meaningless.

7/ Even this limitation is not strictly true, since the Order itself goes beyond the facts in CBS which involved a Presidential press conference. Today's ruling concedes the impossibility of limiting exemptions to Presidents and, sua sponte, exempts governors and mayors as well. Even this limitation is tenuous at best.

8/ See, e.g., Complaint Concerning the CBS Program, "The Selling of the Pentagon" 30 FCC 2d 150(1971); CBS "Hunger in America" 20 FCC 2d 143 (1969).

or preference is being afforded one or more candidates relates to the bona fides of the broadcaster. This is a matter of intent and objective proof of favoritism is all but impossible. 9/

Hence, stripped of the foregoing irrelevant distinctions (which, like oak leaves in October, must fall), the remaining test for exempt coverage of debates and press conferences will come to depend on the subjective newsworthiness judgment of a licensee. Indeed, if logic and reasoned policy play any part in our decisional processes, and if the purpose of our policy reversal is to facilitate broadcast coverage of the utterings and activities of political candidates, how can we consistently limit the exemption to debates and press conferences? Is a policy statement, opinion or other activity of a major candidate any less newsworthy or entitled to coverage because it transpires in a format other than a debate or press conference? If the gravamen is the transmittal of substance to the populace, a statement delivered from a soap box in Times Square--from a legal and policy aspect--is equally deserving of a 315(a)(4) exemption.

We, therefore, have interpreted §315(a) into oblivion. That is why our past interpretation requiring the happenstance of a "bona fide news event" extrinsic to the candidate or the political message was imperative to impart any legislative meaning to §315(a)(4). My view is supported by the statement of Chairman Oren Harris to the House of Representatives, noted at the adoption of 315(a): "appearance of a candidate in on-the-spot- coverage of news events is not to be exempt from the equal time requirements unless the program covers bona fide news events." See 40 FCC at 372-373. 10/

9/ But compare, Star Stations of Indiana, Inc., supra fn. 4.

10/ There are, of course, many other manifestations of Congressional intent, chief of which is the enactment of Subsection 315(a) itself when Congress did not delay at all when it felt the Commission had misconstrued the intent of §315 in the Lar Daly case. The other obvious example is the enactment of Senate Joint Resolution 207 (P. L. 86-677) which specifically exempted Presidential debates in the 1960 Kennedy-Nixon election.

It is abundantly clear that Congress saw the candidate appearance, qua appearance, and the "news event" as separate and distinct happenings unless it is assumed that Congressman Harris was talking in nonsensical circles. While Congress rejected the stipulation that an exempt candidate appearance must be "incidental to" a discretely newsworthy event, it is unreasonable to infer that Congress intended a naked candidate appearance on a debate, press conference or street corner to be the "news event" itself. If any unrigged candidate appearance is inherently newsworthy for purposes of a §315(a)(4) exemption, then there is no equal time requirement for the broadcast coverage of opposing candidates save what a broadcaster decides is equally newsworthy. If newsworthiness is the operative test, then all the other carefully drafted 315(a) exemptions and protections are useless and unnecessary. Without being only "incidental to (or, fortuitously circumstantial to) uniquely newsworthy events, there are endless examples of when a candidate's appearance is entitled to a §315(a)(4) exemption. And no better example can be found than that presented by a companion item to the instant ruling wherein a request was made to determine whether the President could be shown initiating the annual United Way charity drive, and which request the majority ironically rejected. Here is an illustration of an inherently newsworthy event (i.e., initiation of the drive) in which the President's appearance, while not merely "incidental" thereto, was in the context of a separate, apolitical, bona fide news event. Although the line is thin (as are many lines we walk, e.g., Red Lion Broadcasting Co. v. FCC, 395 U. S. 367 (1967), we cannot eradicate by administrative fiat that line legislatively drawn by Congress. The curiosity of our two interpretive rulings is that a purely political event like a debate does not activate equal time whereas a purely apolitical, separately newsworthy appearance (viz., United Way drive) does. Non Sequitur.

Because the effects of our action today are so sweeping and important, and whether or not our prior holdings were of such solidified general applicability as to require rule making for significant alteration, an Inquiry and Rule Making would have been helpful in resolving these issues. At least, I believe, it would have helped open our eyes to the drastic ramifications of our seemingly limited exemptions. The question as to whether, as a legal matter under the Administrative Procedure Act, such rule making is mandatory has been ably argued by all sides and the courts will eventually make that judgment.

Finally, our action here is in excess of necessity because if we wish to assure that licensees are not avoiding legitimate and important political issues because they are required to fairly treat candidate access, we are not powerless to act. A licensee has an affirmative duty "to provide a reasonable amount of time for the presentation . . . of public issues." Report on Editorializing, 13 FCC 1246, 1249 (1949).

The majority may no longer be pleased with the journalistic strictures set forth in §315(a) but we cannot legally strain to interpret that statute so as to annul Congressional Acts.

While I do not doubt the motives of the majority in liberalizing political coverage, and as has been expressed in other ways, the road to Perdition bisects the crossroads of Noble Intention and Muddled Perception. We have taken the wrong fork.

DISSENTING STATEMENT OF
COMMISSIONER ROBERT E. LEE

In a declaratory ruling, the majority has made a major policy change in its interpretation of what constitutes "on-the-spot coverage of bona fide news events" pursuant to Section 315(a)(4) of the Communications Act of 1934, as amended. The reason given for this significant decision is that the three cases defining Commission policy since the early 1960's were based upon an error in the legal interpretation of Congress' intent in amending Section 315 in 1959. [1]

That there was legal error in deciding Goodwill, NBC (Wyekoff), and Columbia Broadcasting System, Inc., is far from clear. What is clear to me is that the majority has sidestepped the very purpose of Section 315 of the Communications Act - that all qualified candidates for a public office be given equal opportunities to present their images and positions to the voters via broadcast media. With the legal interpretation adopted today, the Commission has created a loophole to Congress' intent that allows grossly unbalanced coverage of the political activities of political opponents, so long as the political activities are covered live and in full. Pursuant to the legal interpretation adopted today, a broadcaster may determine that only major candidates are newsworthy and, while covering their debates and press conferences, may ignore similar appearances of other candidates.

A change in policy of this magnitude affects the heart of our political system. At a minimum, it should be made in the context of a rulemaking proceeding where guidelines for broadcaster judgement can be considered. The preferable procedure, however, is to let Congress define the policy.

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1 The Goodwill Station, Inc., 40 F.C.C. 362 (1962); National Broadcasting Co., 40 F.C.C. 370 (1962); Columbia Broadcasting System, Inc., 40 F.C.C. 395 (1964).

During my tenure at the Commission, we have repeatedly told Congress that we are responsible for communications matters, not political decisions. I feel that this role should be preserved.

I dissent.

STATEMENT OF
COMMISSIONER JAMES H. QUELLO
in which Commissioner Robinson joins
Re: Section 315

The action taken by the majority was, I believe, consistent with Congressional intent, common sense and the public interest. There can be no doubt that the prior interpretation of Section 315(a)(4) was acting as a restraint on broadcast coverage of political candidates to the detriment of an informed populace. I refuse to accept the cynical view that incumbent congressmen preferred this limited coverage in their own self-interest.

I do not view this issue as a partisan political one in which one party or one candidate stands to gain or lose by our decision. Political debates--in the limited context in which they will now be exempt from equal time requirements--can only benefit the American people by making us all more aware of the candidates for political office and their stated views. The news conference, too, can serve to inform and educate without the artificial restraints imposed by government.

The direct coverage of an event--such as debates and news conferences--can present to those who will take the time to watch and listen, many of the subtleties and nuances which often escape the paraphrased reports we hear and read. Direct coverage--to my mind--is one of the unique qualities broadcasting brings to public service. It permits each of us to participate directly in the process of selecting our representatives by what they have to say and how they say it, based upon our own analysis. It helps us to better weigh a candidate's qualifications for office according to our own criteria. Journalistic analysis and commentary, too, are important to our understanding. But, such analysis takes on added value when it is compared with the actual event. Therefore, I believe that a better informed American public is an inevitable consequence of our action.

An added benefit to the listening and viewing public is that our action today has removed the restraints from coverage of all political contests, state and local, as well as Federal. For those who believe that broadcast coverage of political events will hereafter be limited to only major party candidates, I hasten to point out that the Fairness Doctrine remains unaffected. Consistent with the Doctrine, I fully expect that all candidates for political office will be accorded a reasonable opportunity to present their views. I do not see our decision as limiting access to political candidates in any way. On the contrary, it is my hope--and my expectation--that broadcasting will now be better able to fulfill its public interest responsibility in covering political events.

September 25, 1975

STATEMENT OF COMMISSIONER ABBOTT WASHBURN
ON TODAY'S ACTION ON APPLICATION OF
SUBSECTION 315(a)(4) OF COMMUNICATIONS ACT

It is clear from the legislative record that it was the intent of Congress in 1959, by means of the "news exemptions" to the equal-time Section 315, to open up and facilitate broadcast coverage of political discussions and events in this country.

However, the Commission's narrow interpretations, in 1962 and 1964, of the Subsection 315(a)(4) exemption ("on-the-spot coverage of bona fide news events . . . including but not limited to political conventions") have had the opposite effect. They have effectively inhibited live on-the-spot coverage of debates between candidates and live coverage of Presidential news conferences.

Under the Subsection 315(a)(1) exemption, these same events may be, and are, covered in newscasts. Our action today, rescinding the 1962 and 1964 rulings, makes it possible for broadcasters to cover these events not just in newscasts but also live and in their entirety whenever these events are considered bona fide news.

The Bicentennial year should be a model of the fullest possible broadcast coverage of political activities for the benefit of the electorate.

SEPARATE STATEMENT OF COMMISSIONER GLEN O. ROBINSON

I agree with Commissioner Quello's views on our re-interpretation of Section 315, but want to add a few additional thoughts of my own. First, as Commissioner Quello correctly emphasizes, the Commission's declaratory order is not a partisan political act; it is precisely what it purports to be--the rehabilitation of Section 315 by correcting an old and embarrassing mistake concerning its interpretation. Admitting mistakes is not something government agencies do often or promptly, but it should be a source of satisfaction that they do it at all.

Inasmuch as our action today corrects a mistake of law, I am clear that the agency is not obliged to go through a notice and comment rulemaking. As I have elsewhere expounded at length, the process of adjudication--and declaratory rulings belong to this genre of administrative action--is an appropriate vehicle for policy decisions such as this (particularly where, as here, the decision turns on purely legal issues--which, it is noted, were earlier decided by adjudication). See Robinson, The Making of Administrative Policy: Another Look at Rulemaking and Adjudication and Administrative Procedure Reform, 118 U. Pa. L. Rev. 485 (1970). The Supreme Court has made it clear that agencies have a very broad discretion to formulate and re-formulate policies outside the formal constraints of rulemaking. National Labor Relations Board v. Bell Aerospace Co., 416 U.S. 289 (1974). Hence, today's action is as sound legally as it is sensible.