

## 3

## APPLYING THE PRINCIPLES OF BROADCAST REGULATION

*[Broadcast licensees must operate] in the public interest, convenience and necessity.*

—Radio Act of 1927

**B**roadcasting is a form of communication and speech that is subject to numerous government regulations. As soon as radio began to develop in the early part of the 20th century, the federal government realized the great potential for broadcasting as a communications medium. The government also recognized a need to place various controls on this rapidly growing industry. One of the first controls came in 1910, when Congress required all U.S. passenger ships to have a radio. However, the sinking of the Titanic in 1912 revealed a flaw in the system. Titanic sent out radio distress signals to nearby ships, but many did not receive the message because it was late at night and many ships had no one monitoring their radios.

The Radio Act of 1912 amended this problem by requiring that all ship radios should be monitored 24 hours a day and that a separate frequency be set aside for distress calls. The act also required that all radio operators had to have broadcasting licenses from the federal government. All radio transmitters were required to be licensed as well, and the Secretary of Commerce was placed in charge of all licensing. However, anyone who applied for a license could get one. The secretary had limited powers, such as making determinations about specific time periods when persons could broadcast or on what kind of radio wavelength. As would soon be discovered, such a system was ripe for abuse.

By the 1920s, people rapidly discovered the convenience and immediacy of radio, and the medium began to grow quickly. There soon were too many stations on the limited radio spectrum. There were, after all, only so many frequencies allocated on the AM dial (FM had not been established yet). There was no government agency to assign frequencies to broadcast stations, so many stations went on the air on whichever frequency they desired. As a result, the airwaves became cluttered with stations overlapping other stations' signals. In the early 1920s, Secretary of Commerce Herbert Hoover held a number of national "radio conferences" to try to get radio broadcasters to work out these problems on their own.

However, more radio stations went on the air each year, and interference problems only seemed to get worse. In fact, by 1926, there were nearly 1000 unlicensed radio stations broadcasting across the nation.

It was a licensed broadcaster in 1926 who tested the limits of Hoover's power. WJAZ radio in Chicago was licensed to operate at 930 AM. However, several other stations also broadcast on 930 AM in that area, so WJAZ's license only permitted the station to broadcast for 2 hours each week on that frequency. WJAZ's owner, Zenith Corporation, applied for a license to broadcast at 910 AM, but Hoover denied the request because only Canadian stations were permitted to use that frequency. Zenith ignored Hoover's denial and began broadcasting WJAZ on 910 AM. Zenith and Hoover took their dispute to court, and in *U.S. v. Zenith Radio Corporation*,<sup>1</sup> a federal appeals court ruled against Hoover. The court said, "There is no express grant of power in the [Radio Act of 1912] to the secretary of commerce to establish regulations."

The *Zenith* case and radio interference concerns led to the Radio Act of 1927. Congress passed this act to create a five-member panel called the Federal Radio Commission (FRC), to bring some order to the burgeoning radio industry. The FRC was granted numerous powers, including the assigning of frequencies to radio stations to alleviate possible interference problems between radio stations. The FRC could also deny broadcasting licenses if there was no more room on the spectrum. The commission said its goal was to make sure that each American could receive at least one radio station and, when possible, a diverse number of radio stations. The FRC also demanded that radio stations' programming serve in the "public interest, convenience, and necessity."

With these guidelines in place, the Radio Act of 1927 helped to end the problems of radio station interference. However, other federal agencies still were given control over other aspects of broadcasting and other forms of electronic communication. Seven years later, though, power over all electronic media would be given to the Federal Communications Commission.

## THE FEDERAL COMMUNICATIONS COMMISSION

---

### The Communications Act of 1934

The Communications Act of 1934 replaced the Radio Act of 1927 and remains the foundation for broadcasting regulation today. The Communications Act also replaced the FRC with the Federal Communications Commission. You can find the text for the Communications Act (and all of the amendments since 1934) in Title 47 of the *United States Code*, which can be found in the *Federal Register*. There you will find the government's purpose for establishing the FCC. The commission was designed to oversee "all of the channels of interstate and foreign radio transmission." The FCC was also given jurisdiction over the telephone industry.

The act established certain principles and rules for the FCC, which follow.

*The "Public Airwaves" and the "Public Interest, Convenience and Necessity."* These concepts had their birth in the Radio Act of 1927. The government was announcing it would not

---

<sup>1</sup>12 F.2d 614 (N.D. Ill. 1926)

treat the broadcast airwaves like other media, such as newspapers or magazines. Instead, the airwaves would be regulated more like a public street. For example, private citizens are allowed to use a public street, but the street still belongs to the government. Therefore, the government has the right to pass certain laws about the use of this street (speed limits, parking regulations, etc.). The government said the public airwaves are similar to a public street and the government has some authority to regulate the “traffic” on that street. However, defining the “public interest” is a fairly subjective process. As a result, broadcasters frequently wage battles with the FCC and the courts over the exact parameters of “public interest.”

*Scarcity Rationale.* This concept says the public airwaves are a “scarce” resource. There are a limited number of channels made available for broadcast radio and TV, and confusion results if the government does not step in as a “traffic cop.” This provides another rationale for allowing the government to regulate broadcasting.

*Licensing.* The FCC handles the licensing for all stations and broadcasters and may reject applicants who do not meet FCC standards. Licenses are granted for specified time periods.

*Allocation of Frequencies.* Like the FRC before it, the FCC assigns frequencies to broadcasters. Broadcasters do not *own* their frequencies. The FCC controls all channels of interstate and foreign radio transmission.

*Fines.* The FCC has the power to levy fines on broadcasters who violate rules.

*No Government Censorship.* The FCC is not allowed to “interfere with the right of free speech by the means of radio communication.” However, as we will see throughout this book, the courts treat this part of the act with great flexibility!

*No Local or State Regulation of the Airwaves.* Even if a radio station signal does not cross state lines and is not an “interstate” signal, the FCC still has the sole power to regulate that station. The Supreme Court upheld this FCC doctrine in 1933 in *U.S. v. Nelson Brothers*.<sup>2</sup> Local and state governments have no jurisdiction in broadcast regulation.

*Regulations.* The FCC has the power to pass rules and regulations affecting broadcasters. Of course, those regulations may be overturned in court cases or changed through laws passed by Congress.

## FCC Commissioners

Today the FCC is made up of five commissioners appointed by the president of the United States and approved by the Senate (until 1982, there were seven commissioners). The president is responsible for choosing the FCC’s chairperson, who establishes the commission’s agenda. As a result, the chairperson has great power in setting the tone for commission actions. In 1981, President Reagan appointed Mark Fowler FCC chair, and he led the fight for deregulation in many areas of broadcasting. President Clinton placed Reed

---

<sup>2</sup>289 U.S. 266 (1933)

Hundt at the helm in 1993, and Hundt focused on issues such as cable regulation and the Internet. President George W. Bush appointed Michael Powell chair in 2001, and Powell has pushed the commission toward more liberal ownership rules and stricter indecency enforcement.

There can be no more than three commissioners from one political party. Commissioners serve 5-year terms, and those terms are “staggered” so there is never more than one term expiring each year. This helps to maintain a level of consistency within the agency. Commissioners are also prohibited from having financial interests in any FCC matters.

## Drafting New Regulations

If the commission wants to draft new rules or amend existing ones, commissioners must follow certain procedures.

First, there is a Notice of Proposed Rule Making. This is a public notice that the FCC or other regulatory agency must issue when it is considering a new regulation. Interested parties may submit comments to the FCC supporting or opposing a proposed regulation. After having received written comments for a specified time period, the FCC will hold a hearing at which interested parties may present their points in person before the commission.

If the FCC or other regulatory agency wants more information on a certain subject or controversy, the agency issues a Notice of Inquiry. For example, if the FCC needs more information about a new technology, the commission must issue a Notice of Inquiry seeking input from broadcasters and the public. This helps to ensure that the FCC is getting valuable and up-to-date information and commentary on important matters. The FCC will then have a public hearing on the issue.

After considering comments received through a Notice of Inquiry or Notice of Proposed Rule Making, the FCC votes on a ruling and issues a Report and Order. This document is published in the *Federal Register*. It explains new rules or how rules have been changed. The Report and Order may also be used to explain why a rule was not changed.

## Important FCC Terminology

*Comparative hearings:* The FCC used to have these hearings to “compare” applicants who were applying for the same specific broadcast station license and then choose one applicant. The FCC no longer holds comparative hearings. It is mentioned here because comparative hearings are mentioned later in this text.

*Auctions:* Today, instead of comparative hearings, the FCC usually just auctions off a new license to the highest bidder.

*Licensee:* The person or company granted a broadcast license by the FCC.

*Title 47:* This is the section of the *Federal Register* that contains the Communications Act of 1934 and related broadcasting regulations. The *Federal Register* is a series of volumes that contain federal laws and regulations. You can find a wealth of information about FCC regulations at the FCC Web site, <http://www.fcc.org>, or through Title 47 on the *Code of Federal Regulation*, which is available through the Government Printing Office Web site, <http://www.gpo.gov>.

*Common carrier:* The most common example is a telephone system. A common carrier is a message delivery system that anyone can use for a fee. The government is not supposed

to interfere with the content of the messages. The FCC has the right to regulate some aspects of common carriers, though, such as rates charged for interstate services.

## FCC Bureaus

The FCC is broken down into six bureaus to handle the various responsibilities of the commission. Very briefly, here are the names and duties of each bureau.

*Media Bureau:* This bureau handles licensing and the subsequent paperwork for commercial TV and radio stations, as well as cable companies. It also oversees issues related to direct broadcast satellite services and other services.

*Enforcement Bureau:* This bureau is in charge of handling complaints, levying fines, and enforcing punishments for broadcasters who violate the rules.

*Wireline Competition Bureau:* This bureau mostly handles issues dealing with common carriers, such as the interstate telephone industry. States regulate telephone services within their borders.

*Consumer and Governmental Affairs Bureau:* This bureau is the public affairs office for the FCC, providing information to the public about FCC matters.

*Wireless Telecommunications Bureau:* This bureau oversees radio services not on the public airwaves. These include amateur “ham” radio, CB (citizens band) radio, two-way radio systems used by fire and police departments, and marine radio services.

*International Bureau:* This bureau regulates satellite transmissions that cross international borders. It also oversees and licenses shortwave radio stations that have signals reaching into other countries.

## FCC Licensing

A person or party may apply for a broadcast license for a new station or, in most cases, for an existing station. The person must fill out the necessary FCC forms and file them with the Mass Media Bureau to obtain a construction permit. Because this can be complicated, many persons hire communication law attorneys to handle this process. The FCC will not consider applications that are incomplete or filled out improperly.

### FAQ

What if more than one person applies for the same license?

The FCC will conduct hearings if there are multiple applications for the same license.

Potential licensees must detail how their station would serve the public interest. They must also hire someone to conduct an engineering study, which provides detailed technical information about such things as the station’s signal reach and tower height and ensures that the new station will not interfere with existing stations.

Once that is done, the FCC will grant the construction permit, and the person may begin construction on the broadcast facilities. Stations then have 3 years from the issuance of the permit to complete construction and file the application for a license (see 47 CFR §73.3598). If the facilities meet FCC standards, the commission will grant the license.

Before a station can begin broadcasting, though, the applicant must meet qualifications in five areas: legal, financial, technical, character, and equal employment opportunity (EEO) rules.

- *Legal*: Must be a U.S. citizen or company with less than 25% foreign ownership. Licenses may be denied or not renewed for violations of FCC rules or U.S. laws.
- *Financial*: Must have enough money to construct and run the station for 3 months (this cannot include any potential revenues from advertising).
- *Technical*: Must have the technical expertise required by FCC rules to run a broadcast station or have employees with such expertise.
- *Character*: Must be of good character. Licenses may be denied to an applicant who has a record of lying to the FCC, has engaged in anticompetitive activities, or has been convicted of a felony.
- *EEO Rules*: The FCC requires that all licensees prove they do not engage in discrimination in their hiring practices. A more detailed discussion follows.

## Broadcast Stations and Minority Employees

The FCC used to require that stations meet certain EEO percentages. Every broadcast station was required to have employees who reflected the population in their community. To achieve this, the FCC required stations to achieve 50% “parity.” This meant if the community was 30% Hispanic, then 15% of employees at the broadcast station had to be Hispanic. Many broadcasters complained about these rules, saying it forced them to hire employees based almost entirely on race instead of on experience or qualifications.

### *FCC’s Old EEO Rules Struck Down*

In 1998 in *Lutheran Church–Missouri Synod v. FCC*,<sup>3</sup> the DC Circuit Court of Appeals tossed out the EEO requirements. The case involved two church-run radio stations that objected to the FCC’s requirement that the stations hire “non-religious” employees for non-air jobs for the sake of diversity. The church argued that the First Amendment’s freedom of religion clause meant the stations should not have to hire people who did not support the church’s beliefs, even if those people were not on the air (secretaries, sales staff, etc.). The appeals court said the church was right, and the FCC’s EEO guidelines were found to be unconstitutional because they mandated hiring quotas.

In 2000, the FCC tried to enforce new EEO guidelines that said broadcasters and cable companies were required to engage in “broad outreach” efforts to ensure a “diverse” workplace. The rules were somewhat vague, and many broadcasters were not sure what types of “outreach” would make the FCC happy. The DC appeals court once again struck down the FCC’s EEO rules in 2001 in *MD/DC/DE Broadcasters Association v. FCC*.<sup>4</sup> The court said the new EEO rules created a “race-based classification” that did not serve any important government interest.

### *Current EEO Rules*

In 2002, the FCC adopted new EEO rules with a three-prong approach. *Prong 1*: Licensees must widely distribute notices about full-time job openings (“full-time” being at

<sup>3</sup>141 F.3d 344 (D.C. Cir. 1998)

<sup>4</sup>236 F.3d 13 (D.C. Cir. 2001)

least 30 hours per week). This requirement may be waived if there are unusual or “exigent” circumstances, but the FCC does not clearly define exigent and says it will analyze exceptions on a case-by-case basis. *Prong 2*: Licensees must provide information about job openings to employment agencies upon request. *Prong 3*: Licensees should engage in recruitment initiatives, such as job fairs and internship programs, or develop their own outreach methods.

Broadcasters must keep records of their EEO compliance. Each year on the anniversary date of the station’s license renewal, the station must place an EEO report in the public file describing recruitment activities for the previous year. This EEO report is required during the license renewal process. For radio stations with at least ten full-time employees and TV stations with at least five, the EEO report is required during a midterm review process. Religious broadcasters may be exempt from EEO rules and hire based on an applicant’s religious beliefs. However, these broadcasters must prove they are not discriminating in areas such as sex, race, or nationality.

## FCC Licenses and Minority Preferences

Historically, in comparative licensing processes, the FCC would often give preference to women and minorities over white males for broadcast licenses. That is because there were few women and minorities in broadcast ownership positions.

White males began to take the FCC to court over the matter, saying that the minority preference policy discriminated against white males who may have been better qualified than minority candidates. In 1990 in *Metro Broadcasting v. FCC*,<sup>5</sup> the Supreme Court voted 5-4 to uphold the minority preference rules, but this did not last long.

### *Minority and Women Preferences Struck Down*

In 1995, the court reversed itself and struck down FCC minority preferences in *Adarand v. Peña*.<sup>6</sup> The court ruled that minority preferences were illegal. The court added that the preferences were a “highly suspect tool” because they ultimately led to discrimination against another group (in this instance, white males).

Several years earlier, in 1992, a federal appeals court had also struck down the FCC’s women’s preferences in *Lamprecht v. FCC*.<sup>7</sup> The court ruled 2-1 that the FCC did not prove that such preferences would lead to “diversity” on the public airwaves. Therefore, the court said, the rules proved to have no other real purpose than to discriminate.

## TV and Radio License Renewals

The Telecommunications Act of 1996 extended TV and radio license terms to 8 years. This lessens paperwork and hassle for stations as well as for the FCC. Stations will basically be guaranteed license renewal if they meet three criteria: (a) The station can prove it served the public interest, convenience, and necessity; (b) the station had no “serious violations” of FCC rules or of the Communications Act; and (c) the station has no “pattern of abuse” of FCC rules or of the Communications Act.

<sup>5</sup>497 U.S. 547 (1990)

<sup>6</sup>515 U.S. 200 (1995)

<sup>7</sup>958 F.2d 382 (D.C. Cir. 1992)

If the station satisfies the FCC in these three areas, the commission will not even consider any competing applications that may have been filed for that station's license. Competing applications would only be considered if a station's license renewal is denied.

(For both commercial and noncommercial TV stations, each renewal application must include a summary of comments and suggestions regarding violent programming.)

Seven months before a station's license expires, the FCC will send a reminder notice on a postcard to the station. Stations must file renewal paperwork no later than 4 months before their license expiration date. The FCC also requires stations to air four "prefiling" and six "postfiling" announcements provided by the FCC. These must air on the 1st and 16th days of the month.

#### *Sample Timeline If a Station's License Expires on December 1*

*May 1:* FCC sends postcard renewal reminder to the station.

*June 1 and 16 and July 1 and 16:* Station is required to air prefiling announcements.

*August 1:* Deadline to file for license renewal.

*August 1 and 16, September 1 and 16, and October 1 and 16:* Station is required to air postfiling announcements.

*Prefiling Announcement Guidelines.* For radio stations, at least two of the announcements need to be made between 7:00 a.m. and 9:00 a.m. or between 4:00 p.m. and 6:00 p.m. (If a station for some reason is not broadcasting between these times, it is required to air the announcements within the first 2 hours of that day's broadcasting.)

For commercial TV stations, at least two of the announcements must be made between 5:00 p.m. and 10:00 p.m. for the Central and Mountain time zones and between 6:00 p.m. and 11:00 p.m. for the Eastern and Pacific time zones.

*Postfiling Announcement Guidelines:* At least three of the announcements must be broadcast between 7:00 a.m. and 9:00 a.m. or between 4:00 p.m. and 6:00 p.m., at least one between 9:00 a.m. and noon, at least one between noon and 4:00 p.m., and at least one between 7:00 p.m. and midnight.

After the last postfiling announcement, the station must place a written record of compliance in its public file within 7 days. This record should list the dates and times of the announcements. If the station could not follow the announcement guidelines for certain dates or times, the station needs to provide legitimate explanations in writing.

As TV stations are broadcasting these announcements, they must also place the FCC's and station's addresses on screen. If for some reason the station cannot broadcast the announcement during a required time (because of an emergency situation), the station must broadcast the announcement the following day during the scheduled time. See Figure 3.1 for examples of how the announcements are worded.

### FAQ

What about a college radio station that might not be on the air during some of these dates?

---

*Prefiling Renewal Announcement*

On [date of last license renewal] Station [call letters] was granted a license by the Federal Communications Commission to serve the public interest as a public trustee until [license expiration date]. Our license will expire on [repeat expiration date]. We must file an application for license renewal with the FCC by [first day of fourth full calendar month before expiration date]. When filed, a copy of the application will be available for public inspection during our regular business hours. The renewal application will contain information concerning the station's performance during the last 8 years. Individuals who wish to advise the FCC of facts relating to our renewal application and of whether the station has operated in the public interest should file comments and petitions with the FCC by [first day of last full calendar month before the month of expiration]. Further information concerning the FCC's broadcast license renewal process is available at [insert address for public inspection file] or may be obtained from the FCC, Washington, DC 20554.

*Postfiling Renewal Announcement*

On [date of last license renewal], Station [call letters] was granted a license by the Federal Communications Commission to serve the public interest as a public trustee until [expiration date]. Our license will expire on [repeat expiration date]. We have filed an application for license renewal with the FCC. A copy of this application is available for public inspection during our regular business hours. It contains information concerning the station's performance during the last 8 years. Individuals who wish to advise the FCC of facts relating to our renewal application and of whether this station has operated in the public interest should file comments and petitions with the FCC by [first day of last full calendar month before the month of expiration]. Further information concerning the FCC's broadcast license renewal process is available at [insert address of public inspection file] or may be obtained from the FCC, Washington, DC 20554.

---

**Figure 3.1** Examples of Prefiling and Postfiling Announcements

Noncommercial stations are required to follow these rules only if they are regularly scheduled to be on the air on the specified dates.

## POLITICAL BROADCASTING RULES

---

Because of such concepts as the scarcity rationale and the "public airwaves," the courts have ruled that various broadcast content regulations are constitutional. For example, the courts have upheld the FCC's right to regulate "indecent" or sexually explicit material on the airwaves. Children have easy access to broadcasting, and the courts say that restricting indecent broadcast programming is a way to protect children from what are considered unwholesome messages and images. The courts have ruled this all of part of serving the broader "public interest."

The courts have also upheld other content regulations for broadcasters. When it comes to political broadcast content, there are rules to ensure that broadcasters do not use the power of the airwaves to favor one candidate over another.

## The “Equal Time” or “Equal Opportunity” Rule

This rule originated in the Radio Act of 1927 and was made part of the Communications Act of 1934. It is known as Section 315 because the rule is included in that section of the Communications Act (for exact wording, see box). The rule applies to radio and TV stations, both broadcast and satellite, as well as community cable systems that originate their own programming. In simple terms: “If a station gives or sells air time to a legally qualified political candidate, that station must also give or sell a comparable amount of time to every other legally qualified candidate running for that office.”

One congressman, at the time the Communications Act was being written, said Section 315 was necessary or else “American politics will be largely at the mercy of those who operate these stations.” Politicians know the power of broadcasting. Hundreds of millions of dollars are now spent every 4 years on the U.S. presidential race alone, and most dollars from candidates’ advertising budgets go to broadcast advertising.

### Section 315: The “Equal Time” Rule

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

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

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

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

- (1) during the 45 days preceding the date of a primary or primary runoff election and during the 60 days preceding the date of general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period; and

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

(c) For purposes of this section—

(1) the term “broadcasting station” includes a community antenna television system [CATV, or cable]; and

(2) the terms “licensee” and “station licensee” when used with respect to a community antenna television system mean the operator of such system.

[In 1993, the FCC ruled that direct broadcast satellite services—satellite TV providers—must also abide by Section 315 and Section 312 (a) (7). In 1997, the FCC said satellite radio providers also have to abide by these rules.]

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

## SECTION 315 ANALYZED

### “Equal Time” Really Means “Equal Opportunities”

Even though Section 315 is frequently called the “Equal Time” rule, it is actually more practical to think of it as the “Equal Opportunities” rule. In Section 315, the FCC explains what it means by *equal opportunities*: If a broadcast station or local cable operator accepts advertising or programming from a legally qualified candidate, it must all allow “equal opportunities” for opposing candidates. This means that a station or cable system operator must give all candidates an equal opportunity to reach the same *potential* audience. For example, it would be unfair for a radio station to offer one candidate ads during the afternoon, when there are many listeners, and offer another candidate ads only late at night, when there are fewer listeners.

This rule applies to all candidates at all levels—federal, state, and local. In all of its practices, the station must not give the appearance that it is favoring one candidate over another.

### Deadlines

#### FAQ

Must a candidate make an “equal time” request within a certain time frame?

A candidate has *7 days* to request equal opportunity from a station or cable system. The candidate must make the request directly to the station within 7 days after an opponent’s ad or program has aired. After the 7th day, that candidate no longer can demand equal time for those spots already aired by an opponent.

This rule was put in place so candidates could not come to a station to demand equal time for ads or programs that aired weeks or months earlier. A broadcast station is under no obligation to notify candidates about the airing of an opponent’s material. The candidate is ultimately responsible.

## Legally Qualified Candidates

The FCC says a person is a legally qualified candidate if he or she publicly announces candidacy for nomination or election to a local, state, or federal office; meets the legal qualifications for that particular office (age, residency requirements, U.S. citizenship, etc.); qualifies to be placed on the ballot or is eligible for legal votes by another method, such as write-in or sticker; *and* has made a substantial showing as a bona fide candidate—or has been officially nominated by an established or well-known political party.

A station is not responsible for verifying whether a person is a legally qualified candidate. The burden of proof falls on the candidate.

### FAQ

What qualifies as a “use”?

Section 315 is supposed to apply only to broadcast ads or other material that constitute a legitimate “use” by a candidate. The FCC says a “use” occurs when a recognizable voice or picture of the candidate appears in an ad or other broadcast campaign appearance.

## Ads Without a Candidate’s Voice or Picture

### FAQ

What about ads that don’t use the candidate’s voice or picture?

In such instances, something called the Zapple Doctrine or Zapple Rule applies. This rule came about in 1972 to address the issue of candidates using spokespersons in their ads to avoid “uses” and subsequent Section 315 obligations.

The Zapple Rule says if a *spokesperson* for a candidate appears in an ad, the station must provide equal access to an *opposing candidate’s spokesperson*. The Zapple Rule applies only during campaign periods and only to spokespersons of major political party candidates.

### FAQ

Can a candidate demand “equal time” to respond to an opposing candidate’s spokesperson?

No. The Zapple Rule only allows spokespersons to respond to other spokespersons. The station would *not* be required to offer airtime to the actual opposing candidate in such a situation.

## Other “Uses”

To try to alleviate confusion, the FCC in 1978 issued a report to detail instances it considers broadcast “uses” by candidates: (a) any time a candidate secures air time, even when not discussing his or her candidacy; (b) an incumbent politician’s “weekly reports” broadcast on radio or TV; (c) a candidate’s appearance on a variety program, no matter how brief; (d) any on-air appearances by actors or broadcast station employees who are also running for public office.

## Celebrity Candidates

### FAQ

So any “celebrity” who’s running for public office puts Section 315 into effect?

Yes. Much to the dismay of many who work in broadcasting, Section 315 does apply to such people as a radio disc jockey, TV weather announcer, or actor who is running for public office. That was not always the case, though.

The 1960 case *Brigham v. FCC*<sup>8</sup> concerned radio and TV weatherman Jack Woods, who had decided to run for the Texas legislature. Woods’ opponent William Brigham said Woods’ radio and TV weather reports were a use under Section 315, and Brigham demanded equal time on the air. A federal appeals court upheld an FCC ruling that Woods’ broadcasts were part of his regular job and not “something arising out of the election campaign.” Thus, Section 315 did not apply to Woods’ weather report.

However, the FCC and the courts changed their minds on this matter more than 10 years later, saying that such “uses” result in a kind of free advertising for a candidate.

### *Paulsen v. FCC*

In January 1972, Pat Paulsen was a legally qualified candidate for the Republican presidential nomination. Paulsen was also a professional entertainer who would soon be appearing on television in Disney’s *The Mouse Factory*. The producer of the show contacted the FCC to see if Paulsen’s appearance would count as a use under Section 315. The FCC said stations airing *The Mouse Factory* would be obligated to provide Paulsen’s Republican opponents with equal time if those candidates requested it.

In *Paulsen v. FCC*,<sup>9</sup> a federal appeals court upheld the FCC ruling. Even nonpolitical uses of airtime constitute use of a broadcast station because they are free public relations for a candidate, the court said. “A candidate who becomes well-known to the public as a personable and popular individual through ‘non-political’ appearances certainly holds an advantage when he or she does formally discuss political issues to the same public over the same media.” Section 315 needs to apply here because a station could subtly endorse

<sup>8</sup>276 F.2d 828 (5th Cir. 1960)

<sup>9</sup>491 F.2d 887 (9th Cir. 1974)

one candidate by inviting him or her to appear on numerous “entertainment” shows and not inviting other candidates.

Also in 1972, NBC broadcast an old Doris Day movie in which Paulsen was seen for 30 seconds. This also qualified as a use, and two of Paulsen’s Republican opponents were given 30 seconds of equal time on NBC in that same time slot.

### FAQ

Did Section 315 apply in 2003 when movie actor Arnold Schwarzenegger was running for governor of California?

Yes. In fact, the National Association of Broadcasters (NAB) alerted its member stations in California and neighboring states about potential Section 315 problems. The NAB warned broadcast stations that airing old Schwarzenegger movies such as *Total Recall* or *Conan the Barbarian* would have triggered Section 315. It was, potentially, a huge problem because this was a special recall election, with more than 100 legally qualified candidates, all of whom could have demanded equal time. Also, Section 315 applied to stations in adjacent states that broadcast to large numbers of California voters.

### FAQ

What about cable channels airing Schwarzenegger movies? Did they have to abide by Section 315?

No. Remember, Section 315 applies only to broadcasters and *local* cable system operators. Therefore, *national* cable channels could have aired these movies without worrying about equal time requests. By the way, there were other celebrities running for governor of California in 2003, including Gary Coleman, who starred in the 1980s sitcom *Different Strokes*, and Don Novello, who played Father Guido Sarducci on *Saturday Night Live*. Local stations were advised to avoid airing reruns of these shows, but national cable channels continued to air them.

Section 315 also applies to local TV celebrities, such as newscasters.

#### *Branch v. FCC*

William Branch was an on-air news reporter for KOVR-TV in Sacramento, CA. He would appear in newscasts roughly 3 minutes each day. In 1984, Branch decided to run for the town council in nearby Loomis. Under Section 315 (a), Branch knew that his on-air reports were a “use of the station by a legally qualified candidate.” As a result, his station determined it would have to give Branch’s opponents 33 hours of response time, even though Branch would not be using his reports for political purposes. Branch’s news reports would still count as a use.

KOVR told Branch to take an unpaid leave of absence during the campaign, with no guarantee his reporting job would still be available if he lost the election. Branch decided to keep his TV job and drop out of the race. He still took his case to the FCC, feeling it was unfair that his TV job kept him from running for political office. He also argued that he was part of a “bona fide newscast,” and he should be exempt from Section 315. In *Branch v. FCC*,<sup>10</sup> a federal appeals court ruled that Section 315 does apply to on-air personalities and performers and that newscasters get no special exemption. The court said that newscasters must *not* be exempt from Section 315 and that this ruling would help prevent “unfair and unequal use of the broadcast media.” The court’s response to Branch’s argument that he had to choose between his TV job and political office was, “Nobody has ever thought that a candidate has a right to run for office and at the same time to avoid all personal sacrifice.”

### FAQ

So, for example, if a local radio disc jockey decides to run for city council, that disc jockey’s time on the air would count as a use?

Yes. If a broadcaster who is running for office chooses to keep a broadcasting job during a campaign, it can create headaches for the broadcast station. The station will have to keep track of how many minutes that broadcaster is on the air each day, including his or her voice work on any commercials and promotions, and then offer comparable time *for free* to all opponents for that political office. It would be free because the candidate-broadcaster is not paying the station to be on the air during these times, and therefore opposing candidates cannot be required to pay either.

### FAQ

Does this apply to the primaries as well as to the general election?

Yes, but there are some important differences to keep in mind regarding how Section 315 works during primaries and during general elections.

## Section 315 and Primaries

*Primaries.* Let’s say Bob Smith is a Republican running for city council, and there are three other Republicans running against him in the primary. There are three Democrats vying for that party’s nomination as well. If Smith buys ads on a station, only his Republican opponents would be allowed to request equal time under Section 315 in response to

<sup>10</sup>824 E.2d 37 (D.C. Cir. 1987)

Smith's ads. The Democrats are not his opponents at that time, so they would not be allowed to request equal time based on Smith's ad. The Democrats *would* be allowed to request equal time if a Democratic primary opponent was given air time.

*General Elections.* By this time, the parties have chosen their candidates. Now the party lines are gone, and Section 315 applies to all candidates from all parties for a particular office.

## No Censorship of Political Ads

Stations are not allowed to censor a use by any political candidate for any reason. Even if the ad is poorly produced, is extremely negative, or is from a radical political party, the station must run the ad as is.

### FAQ

What if the ad contains libel? Can't the station get in trouble for running a political ad that is libelous?

#### *Libel in Political Ads*

Libel involves untrue statements made about a person that damage that person's reputation or harm that person in other ways. Stations are not legally responsible for any libel in political ads that are considered uses. In *Farmers Educational and Cooperative Union of America v. WDAY*,<sup>11</sup> the Supreme Court ruled in 1959 that a broadcast station did not have a right to remove libelous or defamatory material from a political ad that is a use. The court said it did not want broadcast stations to "set themselves up as the sole arbiter of what is true and what is false." Again, those stations cannot be sued if the ad does indeed contain libelous material. However, candidates can be held liable for any defamatory statements made in political ads or programs.

### FAQ

Can a station be held responsible for libelous statements in non-use ads?

Yes. That is why stations are allowed to censor an ad by *spokespersons* for a candidate because this type of ad is not considered a use.

### FAQ

Isn't such an ad considered a use when equal time is invoked?

<sup>11</sup>360 U.S. 525 (1959)

No. Equal time is given because of the Zapple Rule, but that does not make it a use.

Stations are expected to edit any potentially libelous material from such non-use ads. This is important—*stations can be held responsible for airing libelous ads from supporters of candidates.*

## FAQ

Are stations allowed to edit ads that may be distasteful or indecent?

No. The following case is a good example.

### *Aborted Fetuses in Political Ads*

In the early 1990s, numerous politicians across the United States used pictures of aborted fetuses in their TV ads. The visuals were graphic, including pictures of fetuses with severed limbs or fetuses with skin that had been blackened by a process called “saline abortion.” The politicians running the ads said they were showing the pictures to make people aware of what abortion does to a fetus. These politicians were also aware of the “no censorship” clause in Section 315. They knew stations would have to run the ads uncensored.

One such ad by congressional candidate Daniel Becker ran on WAGA-TV in Atlanta early one evening. The station received complaints from viewers, who said the ads were too graphic for broadcast, especially at that time of day. Becker dismissed the complaints and asked the TV station to give him 30 minutes of airtime for a video called *Abortion in America: The Real Story*, which contained more graphic images of aborted fetuses. Becker wanted the video to air late on a Sunday afternoon after an NFL broadcast. The station said the material was too graphic for that time of day and said it would only air the video after midnight, when there would be fewer children in the audience. Becker argued that the station simply did not like his message and was trying to censor his speech.

The FCC agreed that the ad was disturbing and would be harmful to children. Therefore, the FCC gave WAGA the right to air the ad only during late-night hours, from 10:00 p.m. to 6:00 a.m. A district court later upheld the FCC ruling.<sup>12</sup>

However, in 1996, a federal appeals court overturned that ruling in *Becker v. FCC*.<sup>13</sup> The court pointed out that the images in the ads were not indecent. The FCC’s definition of indecency includes only material that has graphic depictions of “sexual or excretory activities and organs.” This was not sexual material, the court said.

Channeling Becker’s ads to late at night deprived him of reaching “particular categories of adult viewers whom he may be especially anxious to reach.” Thus, Becker was deprived of the equal opportunities allowed him in Section 315. The FCC was allowing the station to channel the ads “based entirely on a subjective judgment that a particular ad *might* prove harmful to children.” If stations are allowed to channel graphic ads for abortion, the court said, the FCC would have to allow stations to channel graphic political ads about the death penalty, gun control, and animal rights. The court feared this would lead to “content-based

<sup>12</sup>*Gillett Communications of Atlanta, Inc., v. Becker*, 807 F. Supp. 757 (D.C. Cir. 1992)

<sup>13</sup>95 F.3d 75 (D.C. Cir. 1996)

channeling.” Allowing channeling of such ads might make candidates avoid certain controversial issues. The court concluded that channeling the ads violated Becker’s “reasonable access” to the airwaves.

This ruling upheld the principle that government attempts to censor “unpopular” messages run head-on into the First Amendment.

### Lowest Unit Rate

This is also known as the *lowest unit charge*. You will also hear broadcasters referring to this as LUR or LUC. All candidates—federal, state, and local—are eligible for the LUR. Lowest unit rates for broadcast uses apply only during certain time periods: 45 days before a primary and 60 days before a general election.

#### FAQ

What exactly does lowest unit rate mean?

LUR requires that stations give candidates the cheapest available ad rates. Therefore, a station is not allowed to inflate ad prices for “uses” by political candidates. Stations must charge candidates the lowest unit (per second, per 15-second block, or however that station charges) rate that the station would charge to its most favored advertisers for the same type or class of advertisement, for the same length of commercial, and for the same time of day. Stations need to provide candidates with as much information as they can about classes of ads, rates, terms, conditions, and discounts that are offered to favored advertisers.

Stations should draw up *political rate cards* for politicians so that it is very clear what the station is charging for political ads and for a particular class of advertisement.

#### FAQ

What is meant by “class of advertisement”?

Broadcast stations sell different types of ads at different rates. For example, sponsoring a newscast (a “fixed position” ad) will cost an advertiser more money than just running an ad at random times of the day (“run-of-schedule”). Politicians must be made aware of these various classes and the rates that are charged. Politicians will wind up paying different prices for different types of ads during different times of the day, but they must always be given the best possible rate.

#### FAQ

I work at a radio station. We sometimes have “fire sales” on ads, where we give advertisers some great bargain ad rates, near the end of the month. Do we have to include these rates in the LUR calculations?

The FCC says such “fire sale” ad rates and other “specials” must be included in LUR. In 1992, the FCC tried to alleviate confusion about LUR by issuing these guidelines:

- ▣ The commission recognizes four classes of advertising time: nonpreemptible, preemptible with notice, immediately preemptible, and run-of-schedule.
- ▣ Stations may create subclasses for each of these four areas as long as the subclasses are clearly defined.
- ▣ All classes must be fully disclosed and made available to candidates.
- ▣ Stations may not have a separate “premium period” class of time made available only to candidates.
- ▣ Stations may increase ad rates during an election season only if they have good reason, such as an increase in ratings or seasonal program changes.
- ▣ LUR may be calculated as often as every week.
- ▣ Prices for “bonus spots” given to commercial advertisers must be made available to candidates as well.

### FAQ

Our station also does a lot of barters, or trade-outs, with businesses. Do we have to calculate the values of these arrangements when calculating LUR?

No, as long as the barter or trade-out did not involve any cash payments from the advertiser. If any cash does exchange hands, then the station must calculate the value of such transactions and include it in the LUC.

### FAQ

A candidate purchases ads at a certain rate in July. In August, our station offers an ad rate to another client that is lower than the rate given to the candidate. Must our station give this new rate to the candidate?

Yes. First, the station must apply this rate to future ads by the candidate. Second, for ads that have already aired, the station must calculate the cost of those ads at the new rate and refund the candidate the difference (a “rebate”). That candidate also has the option to use the difference as “credit” and apply it to future ads. It is the responsibility of the station to alert candidates to any new rates, and it must be done in a timely fashion.

### FAQ

Does the Zapple Rule apply to LUR? Can a candidate’s supporters get the LUR for their ads?

No. LUR applies only for “uses” (ads containing the candidate’s voice or image). Ads from supporters of a candidate do not qualify for LUR.

**FAQ**

What if a candidate can't afford to buy ads? In the spirit of fairness, shouldn't the station give that candidate some free time?

Political broadcasting rules do not require stations to give free airtime to any candidate. However, as mentioned, if a station gives one candidate free time for some reason, the station must then grant equal free time to opposing candidates.

Stations may also protect themselves from politicians who try to buy advertising time on "credit" and then never pay their bills. A broadcast station can demand that a *federal* candidate pay for airtime up to 7 days before an ad airs. For state and local candidates, those politicians must follow each station's rule regarding credit or payments in advance. These policies must be reasonable, however, and not unfairly keep a candidate from taking advantage of his or her rights under Section 315.

**FAQ**

For local races, does a station have to honor Section 315 obligations for candidates who are from districts outside of the station's main listening area?

No. Candidates who represent districts outside of a station's "principle service area" may not demand equal opportunities under Section 315.

**SECTION 315 AND NEWS EXEMPTIONS**

When a candidate appears in a "bona fide" news story or any other type of broadcast news event, the station is not required to give opposing candidates equal time in present or future news stories and programs. In other words, a news reporter is under no *legal* obligation to grant equal or comparable time to candidates in legitimate news stories.

**Debates and the Aspen Rule****FAQ**

In 2004, presidential debates on TV only had George Bush and John Kerry. Shouldn't Green Party candidate Ralph Nader and others have been included in these debates under Section 315?

There has been heated debate about whether debates should qualify as "bona fide news events" and thus be exempt from Section 315.

This issue first came up in 1960, with the first televised presidential debate between John F. Kennedy and Richard Nixon. Producers of the debate felt the public was much more interested in hearing from Nixon and Kennedy than from any of the other presidential candidates, who were largely unknown, and Congress agreed. Congress suspended Section 315 for the debates and said the TV and radio networks did not have to include candidates from “smaller” parties. The debates could be treated as “news events” and be exempted from Section 315. There were no presidential broadcast debates in 1964, 1968, and 1972. Then in 1975, the FCC echoed the 1960 congressional ruling in the Aspen Rule: Broadcast debates are bona fide news events and are exempt from Section 315.<sup>14</sup>

However, at the time, the FCC said the debates had to be sponsored by a non-broadcast entity such as the League of Women Voters. In 1983, though, the FCC dropped that requirement and said that broadcasters could directly sponsor and organize the debates and still be exempt from Section 315.

### FAQ

Isn't the Aspen Rule unfair to candidates from smaller parties?

Those candidates certainly think so. In 1976, one small-party presidential candidate named Shirley Chisholm took the FCC to court over the Aspen Rule, but a federal appeals court in *Chisholm v. FCC*<sup>15</sup> ruled that the FCC was justified in exempting broadcast debates from Section 315.

Broadcasters tend to like the Aspen Rule for logistical reasons. For example, there are usually about 25 legally qualified candidates who run for president every 4 years. Broadcasters argue that it would be extremely difficult to have a meaningful debate between 25 people and that such an event would attract fewer viewers than a debate featuring the main candidates. In the next case, the court said the Aspen Rule also helps to avoid a “chilling effect” on broadcasters.

### FAQ

What about state and local races? Does the Aspen Rule apply?

Yes. The Supreme Court addressed such concerns in 1998 in *Arkansas Educational Television Commission v. Forbes*.<sup>16</sup> A public TV station aired a debate between the Republican and Democrat running for Congress in Arkansas' Third District. An independent candidate, Ralph Forbes, argued that he should have been included in the debate, and an appeals court ruled for Forbes. That appeals court caused a public station in Nebraska to cancel a

<sup>14</sup>See *In re Aspen Institute and CBS*, 55 F.C.C.2d 697 (1975)

<sup>15</sup>538 F.2d 349 (D.C. Cir. 1976)

<sup>16</sup>523 U.S. 666 (1998)

candidate debate in 1996. The station said it would prefer to have no debate at all rather than be forced to invite all candidates to participate.

But in 1998, the U.S. Supreme Court said the Aspen Rule applied in this situation as well. It said TV stations, even public stations supported by tax dollars, do not have to include certain candidates. The court reasoned that (a) a broadcast debate is a “nonpublic forum.” It is not a public forum like a park, and candidates do not have an automatic right of access. (b) Broadcasters may exclude candidates based on judgments of newsworthiness (i.e., the candidate is trailing badly in the polls). However, candidates may not be exempt because of their beliefs or stands on issues. (c) Placing such rules on broadcasters creates a “chilling effect.” The court specifically mentioned the Nebraska station canceling a debate after the appeals court’s ruling in favor of Forbes. Justice Anthony Kennedy said such a ruling “does not promote speech but represses it.”

### FAQ

What about press conferences? If an incumbent politician holds a press conference, is this a bona fide news event? Wouldn't this give the incumbent an unfair advantage to use the news media for free publicity?

Incumbent politicians will often hold numerous press conferences in the months before an election. If the news media cover the press conferences, it can be like free advertising for the incumbent candidate. Many nonincumbent politicians say such press conferences create an unfair advantage for incumbents.

A federal appeals court addressed this issue in 1980 in *Kennedy for President Committee v. FCC*.<sup>17</sup> Earlier in 1980, Senator Edward Kennedy of Massachusetts had challenged President Jimmy Carter for the Democratic presidential nomination. Just before the important New Hampshire primary, President Carter appeared on national TV for a presidential news conference, and he used part of the time to attack the views of Kennedy on several issues. Kennedy said such press conferences were inherently unfair because the president can use “the power of incumbency” to get more media attention.

Kennedy’s campaign committee demanded equal time under Section 315 because “millions of viewers were misinformed about Senator Kennedy’s views on national and international issues critical to voters in the campaign for the presidential nomination.” The Kennedy campaign pointed to a 1964 FCC ruling<sup>18</sup> that said news conferences were a use under Section 315. However, in the 1975 *Aspen* ruling, the FCC had reversed course and decided press conferences were not a use.

Thus, in this case, the FCC ruled that the Carter press conference was a “bona fide on-the-spot coverage of bona fide news events” and would not be considered a use. An appeals court agreed and denied Kennedy’s request for equal time under Section 315. Broadcasting the press conference was not an endorsement, the court said. There was not “even so much as a whisper of network bias in favor of the president.” The networks were simply covering a bona fide news event and “had exercised good faith journalistic

<sup>17</sup>636 F.2d 417, 432 (D.C. Cir. 1980)

<sup>18</sup>See *CBS, Inc.*, 40 FCC 395 (1964)

judgment in concluding the event was newsworthy.” Kennedy could not use Section 312(a)(7) to demand “reasonable access” for free; he should have held his own press conference to respond to Carter.

The court said also that a ruling in favor of Kennedy would create a chilling effect: “Broadcasters could never be sure that coverage of any given event would not later result in equal-opportunity obligations to all other candidates: resultantly, broadcaster discretion to carry or not to carry would be seriously if not fatally crippled.”

## Section 315 and Talk Shows

### FAQ

What about candidates who are guests on radio and TV talk shows? More politicians are using such programs as part of their campaigns these days. Do these appearances count as “bona fide news interviews?”

This issue was first addressed in 1959. Congress said the FCC should give exemptions to more types of programs and not only to “standard” news programs. Congress said this would provide the public with more outlets for political discourse.

Eventually, the FCC developed three criteria to determine if a program should be exempt from Section 315:

- Whether the program is regularly scheduled
- Whether the program is controlled by the broadcaster or an independent producer (programs controlled by the broadcaster are often more likely to be exempt)
- Whether producers of the show choose the format, content, and participants based on newsworthiness and not to help or harm any candidate

By the 1990s, presidential candidates had begun to circumvent the national news media by doing interviews on talk shows such as the *Oprah Winfrey Show* and *Larry King Live*. In many instances, these types of interviews qualify as “news interviews,” and Section 315 does not apply. However, it depends on the content and character of the show. If the host of a show is endorsing or “cheerleading” for a candidate, the FCC may rule that Section 315 applies. The FCC has been more lenient in giving exemptions to nontraditional news programs since 1988 and since an appeals court ruling in *King Broadcasting Co. v. FCC*.<sup>19</sup>

King Broadcasting wanted to air two pretaped programs highlighting George Bush and Michael Dukakis, the major party presidential candidates that year. The first program was an hour and gave each candidate 30 minutes to “state his case” to the public. One program was to air at the start of the campaign season and another would air just before the election. King also wanted to air an interview show with both candidates being asked questions by a journalist, and the candidates were allowed rebuttal time.

The FCC ruled the programs did not qualify as legitimate news events because King showed bias by not inviting presidential candidates from smaller parties and because the

<sup>19</sup>860 E.2d 465 (D.C. Cir. 1988)

programs were not regularly scheduled. The FCC also said the format of the programs was more like advertising because it allowed the candidate to make “stump speeches.”

The appeals court overturned the FCC ruling and said the King programs should be exempt as bona fide news interview programs. The court pointed out that the FCC had not applied the “newsworthiness test” to King. (The court remanded the case to the FCC, and the commission then determined that the King programs were indeed newsworthy.) The court felt that the King programs were not “ads” or “stump speeches,” as the FCC claimed, and that the FCC must consider exemptions for “hybrid formats” such as the King format. (The programs were called *hybrid* because they were not just straight news interviews or news stories. The programs contained a combination of candidate speeches, news interviews, and rebuttals.) The court added that the decision in *Aspen* allowed King to treat its programs like debates and invite only the major party candidates.

In 2003, the FCC ruled that even “shock radio” programs, such as the *Howard Stern Show*, were hybrids and qualified as bona fide news interview shows. Using similar criteria, the FCC has determined that the following programs can qualify as “news” interviews and be exempt from Section 315 obligations:

- “Entertainment talk” shows, such as the *Phil Donahue Show*, the *Oprah Winfrey Show*, the *Rosie O’Donnell Show*
- “Entertainment news” shows, such as *Entertainment Tonight*, *Access Hollywood*
- Cable documentary programs, such as A&E’s *Biography*
- News magazine candidate profiles, such as a *Nightline* special “Who is Ross Perot?”
- TV political talk shows that include host commentary, such as *Politically Incorrect*
- Network and cable news interview shows, such as *Meet the Press*, *Face the Nation*, the *Larry King Show*
- Radio talk shows that include listener calls and candidate interviews, such as Rush Limbaugh and Howard Stern’s

## Sponsorship Identification

The following are the basic rules for *local and state races*.

All political ads and programs must be clearly labeled as such with “disclaimers.” For radio ads, there must be a verbal statement indicating that the spot is a political ad. For TV, there must be a visual or audio statement, and it may be placed anywhere in the ad. The ads should contain a phrase such as “sponsored by,” “paid for by,” or “furnished by.” These statements are usually pretty basic: “The preceding [following] ad was paid for by the Jane Jones for Mayor Committee.” Make sure all local and state political ads at your station contain these sponsorship identifications and that the complete name of the sponsoring candidate or organization is accurate.

The rules for federal races are a little more complicated.

## BCRA (FECA)

### Federal Candidate Ads and BCRA

Many members of Congress argued that the FCC’s sponsorship rules were too vague, especially for TV ads. One problem concerned special interest groups that ran “attack ads” against candidates. These “third-party” ads would often contain only a visual disclaimer at

the end of the ad, a disclaimer that was often flashed on the screen very quickly or written in very small print. As a result, many voters did not see the disclaimers and assumed the ads were paid for by opposing candidates or parties, creating confusion about who was delivering these messages.

The Bipartisan Campaign Reform Act of 2002 (BCRA) was a response to such third-party ads, as well as other concerns. The act also is known as the Federal Election Campaign Act (FECA), and it was the outgrowth of legislation sponsored by senators John McCain and Russ Feingold. The act was challenged in court as a violation of the First Amendment, but the U.S. Supreme Court upheld most of the act's provisions in 2003 in *McConnell v. FEC*.<sup>20</sup>

The BCRA provides specific guidelines for disclaimers that must be included in political broadcast spots for federal candidates. The act covers all "public communications" paid for by federal candidates or by any person or group advocating the election or defeat of a federal candidate. It also includes all public communications that solicit funding for political purposes. Public communications include spots or programs on radio, TV, cable, and satellite, as well as articles and advertisements in newspapers, magazines, outdoor advertising, mass mailings, telephone banks, and public political advertising. The Federal Elections Commission (FEC) enforces BCRA.

#### *"Stand by Your Ad" disclaimer*

For federal candidates, BCRA mandates that certain disclaimers be included in all radio and TV ads that are authorized or paid for by the candidate. The FEC provides two examples:

- "I am [name], a candidate for [title of federal office], and I approved this advertisement."
- "My name is [name]. I am running for [title of federal office], and I approved this message."

For radio, either of the above statements (or statements with reasonable variations of this wording) must be delivered clearly *in the candidate's own voice*.

For TV, the candidate has two options. The candidate may appear in a clear, full-screen shot while personally delivering one of the above disclaimers, *or* the candidate may use a recognizable picture or video of him- or herself that fills at least 80% of the screen and is accompanied by a voiceover of the candidate delivering the disclaimer.

Also, TV ads (whether broadcast, cable, or satellite) must have the candidate's name and approval statement *in writing at the end of the ad*. The writing must take up at least 4% of the vertical picture height and be on screen for at least 4 seconds. The wording should also be easy to read with a "reasonable degree of color contrast" between the lettering and the background.

### FAQ

Does the BCRA require disclaimers for political Web pages or e-mails?

No. The Internet is exempt from these disclaimer rules.

<sup>20</sup>124 S. Ct. 619 (2003)

## BCRA and Lowest Unit Rate

Federal candidate ads *that have direct references to an opponent* must contain certain disclaimers to qualify for LUR. TV ads must mention the office being sought and contain an identifiable candidate image at the end of the ad. The image must last at least 4 seconds and must display in writing an approval statement from the candidate. The wording must also tell what authorized committee paid for the ad. Radio ads must also tell the office being sought, along with an audio identification of the candidate. The audio must also contain a statement of approval from the candidate.

If a candidate runs ads that directly refer to an opponent, the candidate's ads will not qualify for LUR if the ads lack disclaimers.

### FAQ

What are the rules for political ads that are not authorized or paid for directly by the candidate?

Such third-party ads are often produced by "527 groups," so named because of rules established in Section 527 of the Internal Revenue Code. These 527 groups can accept unlimited donations from unions, corporations, and individuals but cannot coordinate ads with presidential campaigns.

Third-party ads must have disclaimers. For radio, an announcer must clearly say a disclaimer such as "\_\_\_\_\_ is responsible for this advertising." The blank should be filled with the name of the person or political group paying for the ad. The ad must also clearly state that the message has not been authorized by the candidate or the candidate's election committee.

For TV, the disclaimer may be read as a voiceover by a representative of the ad's sponsor. The representative is not required to appear on screen. The other option is that the disclaimer be delivered through "an unobscured full-screen view of a representative of the political committee or other person making the statement." Such TV ads must also place the disclaimer in writing at the end of the ad, with the lettering filling at least 4% of the vertical picture height and being visible for at least 4 seconds, with good color contrast.

Within 24 hours of the broadcast, a 527 group must provide the FEC with donor names, amount spent, and the names of the broadcast stations or networks that aired the ads.

## Third-Party Restrictions Under BCRA

Third parties are prohibited from running radio or TV ads 30 days before a primary and 60 days before a general election, if the ad names a federal candidate, if the ad is aimed at the candidate's district or voters, and if the ad is paid for with unlimited union or corporate contributions.

### FAQ

What about third-party ads that are funded by unlimited individual contributions?

These ads do not have the 30-day or 60-day restrictions. A 527 group that is funded entirely by unlimited individual contributions may run ads opposing or supporting a candidate up through election day, which happened in the 2004 election campaign. Two 527 groups that gained national attention were the Swift Boat Veterans for Truth, who ran ads critical of Democratic candidate John Kerry, and MoveOn.org, which advertised against President George W. Bush.

### FAQ

Are nonprofit groups bound by these restrictions as well?

No. In 2002, the FEC ruled that these restrictions do not apply to tax-exempt religious, educational, and charitable organizations. Groups such as the Sierra Club had fought for the exemption, saying they should be allowed to run ads prior to an election to inform voters about important issues. The ads can still name a federal candidate but are not permitted to endorse election or defeat of the candidate. However, supporters of the law argued that misleading issue ads by some tax-exempt groups were part of the reason for passing BCRA in the first place. The FEC argued, though, that tax laws already prohibited such groups from directly endorsing or attacking candidates, and the groups risk losing their tax-exempt status if they do so.

### FAQ

Are there exemptions for newscasts?

Yes. News reports, editorials, and commentaries are all exempt.

### FAQ

What about movies or TV shows that mention political candidates?

In 2002, the FEC ruled that late-night comedy monologues and talk shows that discuss or feature federal candidates would be exempt from BCRA guidelines, although the FEC said it would judge such matters on a case-by-case basis. The FEC added that public service announcements featuring candidates would also be exempt.

Controversy erupted over BCRA in June 2004 when filmmaker Michael Moore released his movie *Fahrenheit 9/11*. The film was extremely critical of George W. Bush's presidency and his handling of the war on terrorism. A Republican group, Citizens United, filed a complaint with the FEC, arguing that ads for the film constituted "electioneering communications" that were designed to alter the outcome of the election. In August 2004, the FEC voted unanimously to dismiss the complaint, ruling that the movie ads did not violate BCRA.

## Political File

Stations must keep track of ALL requests made for political ads or programs and place them in a “political file.” This file should be kept with other papers included in the general “public file” and must be composed of information about how requests were handled, including rates charged to each politician, including discounts or package deals given to candidates or organizations; the date and time the ads or programs aired; classes of time bought; number of spots purchased by each candidate or organization; and amount of free time (if any) given to candidates.

The FCC says all of this information should be placed in the political file “as soon as possible.” What does that mean? The FCC elaborates: “As soon as possible means *immediately* absent unusual circumstances.” In other words, as soon as you have the paperwork completed on political ads, place it immediately in the political file.

The station must keep this file for 2 years.

## SECTION 315 VIOLATIONS

---

Failure to follow the FCC political broadcasting rules can result in fines as high as \$25,000 per day for each day violations occur. Stations that are unsure about certain aspects of political broadcasting rules should consult an attorney. It just might be worth the money.

In 1998, for example, the FCC fined WFXD-FM in Marquette, MI, for failing to maintain an accurate political file and for questionable sales practices regarding political ads.<sup>21</sup> The FCC said that the station did not provide adequate details about how it determined the LUR for the 1994 and 1995 primaries and general election. The FCC said the station’s “political rate card did not appear to contain even the most rudimentary elements of [its] sales practices.” The station tried to argue that the problems were because of “employee error,” but the FCC said the licensee is ultimately responsible for the actions of its employees. Someone should have double-checked to make sure the station was compliant with FCC rules.

The station’s political file was also lacking necessary information, such as the dates of advertising purchased by candidates or the rates charged to some candidates. The FCC fined WFXD \$6000 for three distinct violations (\$2000 each): failure to inform candidates about ad rates and classes, inaccurate calculations of lowest unit rate, and failure to maintain a proper political file.

This is just one example. The FCC frequently hands out fines to stations for violations of political broadcasting rules. Politicians know the rules, and they are often very eager to file a complaint with the FCC about a station that does not follow these rules.

## SECTION 315 AND BALLOT ISSUES

---

### FAQ

Are ballot issues covered under Section 315 or Section 312(a)(7)?

<sup>21</sup>DA #98-447, released March 6, 1998

No. Stations do not have to accept advertising for ballot issues if they do not want to. The lowest unit rate does not apply to ads supporting or opposing ballot issues. Stations may charge their standard rates for such ads. The “no censorship” clause also does *not* apply. A station may edit or reject issue ads if the station fears the ads are libelous or indecent (a station can be sued for airing issue ads that are false or defamatory). In fact, a station can reject an issue ad for any reason, just as it is free to reject commercial ads. However, ballot issue ads must have clear sponsorship identification, just like other political ads.

## SECTION 315 AND NEWSPAPERS

---

In 1913, the State of Florida passed a law that was basically a Section 315 for newspapers. It mandated that if a political candidate was attacked in a newspaper editorial or story, the newspaper was required to give that candidate a chance to respond. That law remained unchallenged until 1972.

The challenge concerned Pat Tornillo, a candidate for the state legislature. The *Miami Herald* had printed two editorials in September 1972 criticizing Tornillo, including accusations that he had orchestrated an illegal teachers’ strike several years earlier. Under the 1913 Florida law, Tornillo demanded space in the *Herald* to reply to the attacks, but the newspaper refused. Tornillo took the newspaper to court, saying many large cities had only one major newspaper, and it was unfair that a major information source such as a newspaper did not provide opportunities for response. Eventually, the Florida Supreme Court ruled for Tornillo, saying the state law enhanced free speech.

However, in 1974, the U.S. Supreme Court ruled that the Florida law was unconstitutional. In *Miami Herald v. Tornillo*,<sup>22</sup> the court said that press responsibility or fairness “is not mandated by the Constitution.” The law made newspapers avoid controversy, said the court: “Government-enforced right of access inescapably dampens the vigor and limits the variety of public debate.” Newspaper editors, not the government, must be the ones to decide what opinions and news appear on their pages.

The Florida law imposed *finer* for papers that did not follow the rules. The Supreme Court said this was a “penalty on the basis of the content of a newspaper.” Such content restrictions and penalties are unconstitutional. Broadcasters use the public airwaves and are subject to content regulations. Newspapers are “private,” and government may not regulate their content.

## REASONABLE ACCESS: SECTION 312(A)(7)

---

### FAQ

Section 315 says “if a station offers time.” So, can a station choose to air no political ads? If a station doesn’t provide time for any political ads, then it won’t have to worry about providing “responses” from opposing candidates.

---

<sup>22</sup>418 U.S. 241 (1974)

In 1971, any confusion about this wording in Section 315 was clarified for federal candidates. Congress amended the Communications Act with Section 312(a)(7), which is also called the “reasonable access” rule (see box).

**Section 312(a)(7): The “Reasonable Access” Rule**

(a) The Commission may revoke any station license or construction permit— . . . (7) for willful or repeated failure to allow *reasonable access* to or to permit purchase of *reasonable amounts of time* for the use of a broadcasting station by a legally qualified candidate for *Federal* elective office on behalf of his candidacy. (Italics added)

**FAQ**

What is considered “reasonable access” or “reasonable amounts of time?”

Rules like this tend to frustrate broadcasters because words like “reasonable” are vague. The Supreme Court attempted to define “reasonable” in a landmark ruling on Section 312(a)(7) in the case of *CBS Inc. v. FCC*.<sup>23</sup>

In 1979, President Jimmy Carter and Vice President Walter Mondale announced they were running for reelection. The Carter-Mondale campaign committee, on October 11, 1979, made what it thought was a “reasonable” request of the three major TV networks. The committee wanted to run a 30-minute political ad between 8:00 p.m. and 10:30 p.m. on any day from December 4 through 7, 1979, and it was giving the networks 2 months advance notice to get ready.

The networks were not eager to accommodate the request. NBC said no, arguing that December was too early to air political ads. ABC said it would not start taking sales for political ads until January 1980. CBS said 30 minutes was too much, but it did offer the Carter campaign two 5-minute segments—one at 10:55 p.m. on December 8 and one in the daytime.

In general, the networks said the request for a 30-minute ad was not reasonable because (a) a 30-minute political ad during “prime time” would greatly disrupt their programming schedules; (b) network news shows were already doing a good job of covering the presidential candidates and keeping the public informed on the major issues; (c) there were numerous candidates for president, and the networks were worried about having to provide “response time” under Section 315; (d) it was 11 months before the 1980 election, which, the networks said, was “too early in the political season” for ads. Should the networks have to follow Section 312(a)(7) before the campaign had even started?

The Carter campaign said the presidential campaign was indeed underway, and the networks were not granting reasonable access as mandated by Section 312(a)(7). The Supreme Court later ruled in *CBS Inc. v. FCC*<sup>56</sup> that the broadcast networks should have

<sup>23</sup>453 U.S. 367 (1981)

given the requested time to the Carter campaign. The Carter campaign gave the networks 2 months advance notice. The campaign was being reasonable in this regard. The rights of viewers and listeners are more important than the rights of broadcasters, the court said. Section 312(a)(7) “makes a significant contribution to freedom of expression by enhancing the ability of candidates to present, and the public to receive, information necessary for the effective operation of the democratic process.”

The reasonable access rule does not take effect until the start of the “campaign season,” but the court said that the presidential campaign was “in full swing” by December 1979. How is this determined? The court provided guidelines:

*Signs That a Campaign Season Has Begun Include:* (a) *Announcements of candidacy.* Twelve candidates had already formally announced intentions to run for the Republican and Democratic nominations. (b) *Dates of major political events.* The very important Iowa caucuses were in January, so of course candidates would be campaigning in December. (c) *State delegate selections.* Many states had already begun selecting delegates to the national party conventions. (d) *Fundraising activities.* Most candidates were already actively raising campaign funds. (e) *Media coverage.* Newspapers across the country had been covering the campaign for roughly 2 months. (f) *Campaign organizations.* At the time, many of the candidates had already formed active organizations. (g) *Endorsements.* Candidates were already beginning to get endorsements from various groups and other politicians.

However, many broadcasters were angered by the ruling, saying the Carter campaign’s request for 30 minutes of prime time television was disruptive to TV scheduling and was therefore not “reasonable.” For example, stations could make more money from advertising during a scheduled program than they would make from the Carter ad. In a dissent, Justice Byron White agreed with broadcasters’ arguments, saying, “There is no basis in the statute for this very broad and unworkable scheme of access.”

Section 312(a)(7) does not give candidates an *automatic* right of access to the airwaves, but it appears to be a pretty strong right. The Supreme Court said that broadcasters must show compelling reasons for rejecting a candidate’s request for time, such as a large amount of time already sold to the candidate, a major impact on broadcast scheduling or programming, or the likelihood of a large amount of equal time requests from other candidates.

Important note: Section 312(a)(7) applies only to *federal candidates*—any person running for the U.S. House of Representatives, the U.S. Senate, or the presidency. *State and local candidates are not covered by this rule.*

### FAQ

So stations must accept advertising from federal candidates, but they can choose not to accept any ads from local and state candidates?

That is correct. Section 312(a)(7) applies only to federal candidates, and stations are not required to provide reasonable access—or *any* access, for that matter—to local and state candidates. However, once a station *has* accepted advertising from a candidate for local or state office, Section 315 kicks in. The station must then give equal opportunities for airtime to other legally qualified candidates running for that same office.

## Important Rules Regarding Reasonable Access

These rules apply only to candidates for federal office.

- A station may not limit the length of a political program or ad.
- Candidates are allowed to choose whatever format they want. The station may not demand that a candidate use a specific format.
- A candidate is allowed to choose any time of day for ads.
- However, a station does not have to honor *extremely specific* requests for time (for example, if a candidate asks for an ad to be run at 5 minutes and 35 minutes past the hour and your standard advertising times are at 20 and 50 minutes past the hour, the candidate will have to settle for those times).
- Stations are allowed to restrict political ads during newscasts so as not to give the appearance of favoring a candidate during an “objective” newscast.
- Because of Section 312(a)(7), a station may not place any unreasonable limits on ads for federal candidates. For example, you cannot tell a federal candidate that he or she is limited to six ads per day. There must be reasonable access.

### FAQ

Section 312(a)(7) talks about advertising. How does this rule apply to noncommercial stations?

In 2000, Congress voted to amend the Communications Act to exempt public broadcast stations from Section 312(a)(7). Therefore, public stations have no obligation to provide airtime to federal candidates. However, public stations must still abide by Section 315.

Also, public stations are prohibited from endorsing or opposing any candidate or public office.

## POLITICAL EDITORIAL AND PERSONAL ATTACK RULES

These two rules were codified by the FCC in 1967.

*The Political Editorial Rule.* This rule stated that if a licensee aired an editorial that endorsed or opposed a legally qualified candidate, the station had to notify opposing candidates for the same office within 24 hours. Stations then had to provide a script or tape of the editorial and a “reasonable opportunity” for opposing candidates to respond on air.

*The Personal Attack Rule.* Similarly, this rule mandated that stations provide reasonable response time for persons whose character or integrity have been “attacked” on the air during discussions of controversial public issues.

Broadcasters argued that the rules created a chilling effect and that they avoided airing editorials or controversial discussions to avoid having these rules kick in. Broadcasters said dropping the rules would actually lead to more political discussion on the airwaves.

## Personal Attack and Political Editorial Rules Thrown Out

In 1999, the NAB and the Radio-Television News Directors Association (RTNDA) took the FCC to court over the rules. The DC Circuit Court of Appeals said the FCC had not given good reasons for keeping these two rules. The court asked the FCC for better justifications, and the FCC suspended the rules for 2 months to study the rules and get comments from broadcasters.

A month before election day 2000, the appeals court ruled that the FCC had not provided valid reasons for keeping the two rules. In *RTNDA v. FCC*,<sup>24</sup> the court threw out the personal attack and political editorial rules. The court said the rules were “unsupported by reasoning that would demonstrate to the court that they are in the public interest.”

The courts used similar reasoning in the 1980s when they allowed the FCC to dissolve the Fairness Doctrine.

## FAIRNESS DOCTRINE

---

The history of the Fairness Doctrine (FD) gives valuable insight into how FCC regulations can evolve and the pivotal roles of the judicial, legislative, and executive branches in formulating FCC rules. The FCC enforced the FD from 1949 to 1987. The doctrine was written to ensure that broadcasters served the public interest by allowing for discussion of both sides of controversial issues. The FD required that broadcasters “provide coverage of vitally important controversial issues of interest in the community served by the licensees” and “provide a reasonable opportunity for the presentation of contrasting viewpoints on such issues.”

Broadcasters in general did not like the FD and, as with the political editorial and personal attack rules, said they actually avoided controversial issues so they would not have to worry about airing “contrasting viewpoints.” In 1969, in *Red Lion Broadcasting v. FCC*,<sup>25</sup> the Supreme Court ruled that the FD was constitutional because of the scarcity of airwaves. As a result, the court said the FD did not violate broadcasters’ rights.

By the 1980s, the FCC (under President Reagan) wanted fewer regulations, and the Fairness Doctrine became one target. By 1984, the FCC was arguing that the ruling in *Red Lion* was outdated because there was no longer “scarcity.” Cable and other technologies were allowing more voices to be heard via the electronic media. However, the FCC was not sure it had the regulatory authority to get rid of the FD. In 1986, in *Telecommunications Research Action Committee v. FCC*,<sup>26</sup> a federal appeals court ruled that the FCC had the power to repeal the FD. The FCC just needed a test case.

The FCC got its chance in *Meredith Corporation v. FCC*.<sup>27</sup> The case focused on WTVH-TV (owned by Meredith Corporation) in Syracuse, NY, and the broadcast of several ads supporting construction of a nuclear power plant. The Syracuse Peace Council demanded time under the FD to respond to the nuclear plant ads. When the station refused the request, the Peace Council took the matter to the FCC.

---

<sup>24</sup>229 F.3d 269 (D.C. Cir. 2000)

<sup>25</sup>395 U.S. 367 (1969)

<sup>26</sup>801 F.2d 501 (D.C. Cir. 1986)

<sup>27</sup>809 F.2d 863 (D.C. Cir. 1987)

The commission had just completed a study on the FD, a study it had started in 1985. The FCC said that their study showed the Fairness Doctrine did not serve the public interest and should no longer be enforced. However, the commission said the matter needed further clarification from the courts and Congress. It was apparent, though, that the FCC was anxious to get rid of the FD and was hoping to use the *Meredith* case to do that.

In January 1987, in *Meredith*, the court gave the FCC permission to drop the FD if the commission felt that the doctrine was “contrary to the public interest.” However, in the spring of 1987, the House and Senate passed a bill to override the FCC and make the Fairness Doctrine a law, but President Reagan vetoed it. There were not enough votes to override the veto, and the commission stopped enforcing the FD in August 1987.

Eventually, in 1989, in *Syracuse Peace Council v. FCC*,<sup>28</sup> a federal appeals court solidified the deal and ruled again that the FCC did have the power to get rid of the Fairness Doctrine. However, the court left the door open for future congressional action. The court did not say that the Fairness Doctrine violated the First Amendment rights of broadcasters. As a result, Congress once again tried to get involved, and the House in 1989 passed a bill to make the Fairness Doctrine a law. However, President Bush threatened to veto the bill, and the legislation stalled.

As it stands now, the Fairness Doctrine is dead and has *been* dead since 1987.

## FAQ

Radio talk show host Rush Limbaugh says that if the Fairness Doctrine came back, political talk radio would suffer significantly. Is that true?

In 1993, Congress once again began talking about passing a Fairness Doctrine law (Bill Clinton had just been elected president, and he hinted that he would sign such a law). Limbaugh called the new attempt at legislation “The Hush Rush Law.” The conservative talk show host argued that if radio stations aired 3 hours of Limbaugh, the Fairness Doctrine would require the stations to air 3 hours of “liberal programs.” He said that stations might wind up dropping Limbaugh’s show just to avoid the hassle of meeting Fairness Doctrine requirements.

It is hard to ignore the evidence that talk radio shows began to flourish in the late 1980s, after the FCC dissolved the Fairness Doctrine. Stations no longer had to worry about providing “response time” to opinionated talk radio hosts. In 1985, there were roughly 100 talk radio stations in the United States. By 1992, five years after the repeal of the Fairness Doctrine, there were 500. That number ballooned to 1350 by 1998.<sup>29</sup> Also, “News/Talk” has, in recent years, been the number one radio format in the Arbitron ratings. It is hard to believe that this would be the case if the Fairness Doctrine were still around.

<sup>28</sup>867 F.2d 654 (D.C. Cir. 1989)

<sup>29</sup>The talk radio research project. (2004). *Talkers Magazine Online*. Retrieved November 10, 2004, from <http://www.talkers.com/talkaud.html>

## SUMMARY

---

The federal government regulates the electronic media through the Federal Communications Commission. This five-member panel has the power to pass regulations, but Congress and the courts can always overturn those regulations. The FCC mandates that all broadcasters operate within the “public interest, convenience, and necessity,” a concept that is sometimes difficult to define.

Political broadcasting rules are designed to ensure that candidates have fair and equal access to the broadcast airwaves and cable. Section 315 says that if a station offers time to one candidate for political office, it must make time available to opposing candidates.

However, stations are only required to grant reasonable access to federal candidates under Section 312(a)(7). (These rules do not apply to print media.) Stations are under no obligation to grant any access to state and local candidates.

Political broadcasting rules can be very confusing when one is attempting to determine what counts as a “use.” News broadcasters, disc jockeys, and other broadcast personalities often give up broadcasting careers when running for public office to avoid conflicts with Section 315.

Many rules designed to promote “equal access” to the airwaves are no longer in effect, including the fairness doctrine, the political editorial rule, and the personal attack rule. The rules were found to be outdated and were no longer considered to be serving the public interest.