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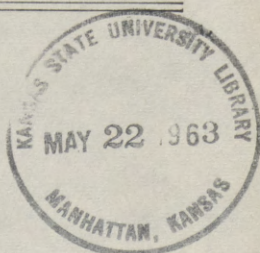
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POLITICAL BROADCASTS—EQUAL TIME

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HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON

INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH CONGRESS

FIRST SESSION

ON

H.J. Res. 247

A JOINT RESOLUTION TO SUSPEND FOR THE 1964 CAMPAIGN
THE EQUAL OPPORTUNITY REQUIREMENTS OF SECTION 315
OF THE COMMUNICATIONS ACT OF 1934 FOR NOMINEES FOR
THE OFFICES OF PRESIDENT AND VICE PRESIDENT

MARCH 4, 6, AND 22, 1963

Printed for the use of the
Committee on Interstate and Foreign Commerce



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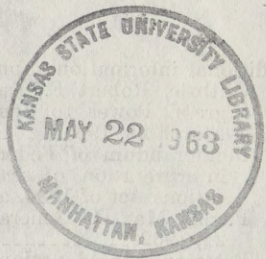
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POLITICAL BROADCASTS—EQUAL TIME

MONDAY, MARCH 4, 1963

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS AND POWER
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 1334, Longworth House Office Building, Hon. Walter Rogers (chairman of the subcommittee) presiding.

Mr. ROGERS of Texas. The Subcommittee on Communications and Power will come to order for consideration of the pending business.

Our business this morning has to do with the beginning of the hearings on House Joint Resolution 247. This resolution was introduced by our chairman of the full committee, Mr. Harris. The purpose of the resolution is to suspend for the 1964 campaign, the equal opportunities requirements of section 315 of the Communications Act of 1934 for nominees for the offices of President and Vice President.

The resolution is identical with provisions of legislation enacted by the 86th Congress (Public Law 86-677) which made possible the Kennedy-Nixon debates during the 1960 presidential campaign.

The resolution is limited to the 1964 campaign and is further limited in its application to the nominees for the offices of President and Vice President. The resolution specifies that broadcasters shall not be relieved from the obligation imposed upon them under the Communications Act to operate in the public interest. This means that the fairness doctrine which has been developed under the provisions of the Communications Act applies to activities under this resolution.

The present resolution—as did the 1960 resolution—provides that the FCC shall make a report to the Congress not later than March 1 following the election with respect to the effect of the provisions of this resolution and any recommendations the Commission may have for amendments to the Communications Act as a result of experience under the provisions of this joint resolution.

Pursuant to the provisions of the 1960 resolution, the Commission submitted on March 1, 1961, a preliminary report and subsequently submitted extensive additional statistical information. The preliminary report of the Commission will be made a part of the hearing record on this resolution in order to make it available to all those who are interested in this legislation. The preliminary report states that the Commission, in view of the limited experience with the 1960 resolution was unable to reach a qualitative determination as to the effect of the resolution. However, the Commission submitted for the consideration of the Congress, several minor suggestions for amendments

which will be considered by the subcommittee in the course of these hearings.

I would like to recall to the members of the subcommittee that during the 86th Congress, this subcommittee did not have an opportunity to conduct hearings on the 1960 resolution. It will be recalled that the other body passed the resolution before the political conventions and after the completion of the conventions it was felt by the leadership of the House that too little time was available to conduct hearings. Therefore, the Senate resolution which had been held on the Speaker's desk was called up under the suspension of the rules procedure and was passed by the House by a two-thirds vote as required under that procedure.

Several Members of the House expressed reservations with regard to this resolution and it will be the purpose of the subcommittee in these hearings to examine carefully into any and all questions which might arise in connection with the reenactment of this legislation for the 1964 presidential and vice presidential campaign.

Now let the record first include a copy of the resolution referred to, together with any reports that we have from the departments.

(The reports and H.J. Res. 247 follow:)

[H.J. Res. 247, 88th Cong., 1st sess.]

JOINT RESOLUTION To suspend for the 1964 campaign the equal opportunity requirements of section 315 of the Communications Act of 1934 for nominees for the offices of President and Vice President

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

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

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., March 1, 1963.

HON. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on House Joint Resolution 247, to suspend for the 1964 campaign the equal opportunity requirements of section 315 of the Communications Act of 1934 for nominees for the offices of President and Vice President.

The equal-time provisions of section 315 of the Communications Act are contained in subsection (a) as follows:

"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 * * *"

Public Law 86-677, approved August 24, 1960 (74 Stat. 544) suspended for the 1960 campaign the equal opportunity requirements of section 315 with respect to nominees for the offices of President and Vice President. This temporary suspension was enacted to permit the Kennedy-Nixon debates without imposing a burden on the television industry to supply free time to all other candidates for that office.

In April 1962, the President's Committee on Campaign Costs recommended a similar temporary suspension of section 315 for the 1964 presidential and vice-presidential campaigns. Thereafter the President submitted to the Congress legislation to implement this recommendation. This submission was introduced as House Joint Resolution 729 in the 87th Congress, the provisions of which are identical with those of House Joint Resolution 247 and the Department recommends enactment of this resolution. However, committee attention is invited to recommendation (b) of the Federal Communications Commission, in the report of March 1, 1961, submitted pursuant to section 2 of Public Law 86-677, as follows:

"(b) The suspension provided for in the resolution related to 'nominees' for President, and Vice President. Technically, therefore, it can be argued that the appearance of an independent candidate or one who is not nominated at a convention or by other means does not come within the provisions of the resolution. It is recommended that in any proposed legislation, appropriate language be used to indicate unequivocally the intent of the Congress."

This recommendation of the Commission is applicable to House Joint Resolution 247.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program and that enactment of House Joint Resolution 247 would be consistent with the administration's objectives.

Sincerely yours,

NICHOLAS DEB. KATZENBACH,
Deputy Attorney General.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., March 1, 1963.

HON. OREN HARRIS,
*Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This will acknowledge your letter of February 21, 1963, inviting the Bureau of the Budget to comment on House Joint Resolution 247, to suspend for the 1964 campaign the equal opportunity requirements of section 315 of the Communications Act of 1934 for nominees for the offices of President and Vice President.

House Joint Resolution 247 would carry out one of the recommendations made last year by the President's Commission on Campaign Costs with respect to financing presidential election campaigns. We recommend favorable consideration of the joint resolution, enactment of which would be consistent with the administration's objectives.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

Mr. ROGERS of Texas. Our first witness this morning is Mr. Robert W. Sarnoff, chairman of the board of the National Broadcasting Co., Inc., 30 Rockefeller Plaza, New York, N.Y.

Mr. Sarnoff, if you will come to the witness chair, you will be recognized.

**STATEMENT OF ROBERT W. SARNOFF, CHAIRMAN OF THE BOARD,
NATIONAL BROADCASTING CO., NEW YORK, N.Y.**

Mr. SARNOFF. Mr. Chairman and gentlemen, in a little more than a year from now, the 1964 national election campaign will begin. Broadcasting again stands ready to function as the most effective means of bringing the candidates directly to the electorate, so that all voters can see and hear and judge those who seek to represent them. And again, broadcasting's ability to perform this vital service will be hampered unless relief is granted from the equal time penalty of section 315 of the Communications Act.

The 1960 suspension of the equal time requirement, which enabled a nationwide public to appraise the views and attitudes of Mr. Kennedy and Mr. Nixon in face-to-face debate, is no longer in effect. House Joint Resolution 247, introduced by Chairman Harris, is designed to reinstate this suspension, so that in 1964, broadcasting can serve the American political process at least to the same extent it did in 1960. This subcommittee is to be congratulated on initiating such early consideration of this question, to permit the various alternatives for legislative action to receive full and unhurried study, and to enable broadcasters to make advance plans for covering the 1964 campaign in the light of the action ultimately taken.

NBC supports the resolution you are considering. Now that we have experienced the benefits provided in 1960 by "The Great Debate," it would be inconceivable that this powerful new instrument for involving the public in the election process should be withdrawn after it has only begun to show its promise.

It seems scarcely necessary to dwell on the contribution made by the debates in 1960. The keen public interest in the encounters between the presidential candidates was demonstrated by the fact that they attracted 120 million different Americans—far larger audiences than either candidate drew in total individual appearances. And they gave each of the two candidates an equal opportunity to speak directly to his opponent's adherents—a circumstance unique in politics and uniquely valuable to voters in a democratic society.

The limited suspension in 1960 not only made these debates possible, but it enabled the Democratic and Republican candidates for President and Vice President to appear in other programs. For example, their appearances on the NBC television networks during the 1960 campaign totaled 10½ hours, apart from appearances in paid political programs. If the candidates had been paying time and program charges for these 10½ hours of network presentations, the bill would have come to about \$1,700,000. This compares with the \$1 million which the major parties spent for all the paid political broadcasts on the NBC television network in 1960. Making time available for nationwide appearances by the candidates without cost to them was not the purpose of the equal time suspension; but it was a byproduct benefit, added to the primary advantage the public gained.

In favoring the resolution before you, which relates only to presidential and vice presidential candidates, I would suggest a revision in its language, so that the suspension is not confined to appearances by "nominees" for those offices. This was the language used in the

1960 suspension, which became effective after the candidates had been nominated. Under those circumstances, the reference to "nominees" was adequate. Now, however, the reference could properly be broadened to include not only "nominees" for the office of President and Vice President, but also those seeking such nominations. This would permit the latter to appear in various types of broadcast coverage, which might otherwise be made impractical by the equal time requirement. It could be accomplished by adding to the title and to line 3 of the resolution the phrase "and to candidates for such nominations."

With regard to presidential and vice presidential candidates I urge the subcommittee to consider a permanent termination, rather than a temporary suspension, of the equal time restriction. The 1960 suspension was in a sense an experiment, and by now there is no question that it was successful, both in terms of fairness and effectiveness. In the light of this experience, I would hope for a congressional consensus that barriers to the presentation of presidential and vice presidential candidates should be removed, instead of being lifted, on probation, only at 4-year intervals.

But regardless of the form of relief relating to appearances by presidential and vice presidential candidates, the central question, in my view, is whether the public would be properly served if modification of section 315 stopped with this limited action. I believe that broadcasting can do more in bringing candidates and issues to the people; that it will do so with responsibility if the present restrictions are removed; and that the public is entitled to the benefits gained from freeing broadcasting to cover all campaigns and candidates to its full potential.

These considerations, to my mind, call for a termination of the equal time restriction in its entirety.

Two objections are typically made to outright repeal of the equal time requirement—first, that broadcasters may unfairly favor one principal candidate over another; and, second, that rising minority parties may be frozen out of broadcast access to the public.

Against the first objection is the record of balance and objectivity of network coverage of the 1960 presidential campaign. There is no basis for believing that individual stations would not be similarly fair in covering local or State candidates. They too have had an opportunity to demonstrate responsibility in political coverage during the past 4 years. For apart from the equal time suspension for presidential and vice presidential candidates—which applied primarily to network broadcasts—all broadcasters since 1959 have been freed of the equal time restriction in connection with designated types of news and information programs; and in these areas, the record for fairness has also been favorable.

Beyond this record, there is the broad experience of fairness in political coverage going back to the beginning of the medium. No equal time requirement has ever applied to appearances by spokesmen for candidates, yet this freedom has not prompted biased or partisan political coverage at either the local or network levels.

As to the second objection, minority candidates and parties are not aided by the equal time provision, nor would they be prejudiced by its removal. It does not operate to provide broadcast coverage for them as much as it tends to defeat coverage of principal candidates.

Terminating the restriction would enable broadcasters to give the candidates of minority parties such exposure as the extent of their following and the measure of their significance in the community warranted, just as other minority interests are reflected in broadcasting.

Broadcasters will gain no profit advantage from removal of the equal time restriction. Rather they may find their costs increased to provide the enlarged coverage it would make possible, and their revenue reduced by a decrease in paid political sponsorship. They will not find their operations simplified by removal of the provision, but will have heavier burdens and responsibilities; for it is far easier to rest on the equal time provision as a barrier to journalistic enterprise than to undertake the initiative for creative political programing that would be encouraged by removal of that barrier. Yet NBC advocates termination of the equal time restriction—as do most broadcasters—so that we can assume a larger responsibility and expand a service that lies very close to the heart of this Nation's democratic process.

Perhaps the subcommittee will regard complete termination of the equal time restriction as too far-reaching in scope and too unpredictable in result to be taken in one step. Although we feel that the balance of consideration strongly favors such action, we would welcome transitional relief that could have many of the same beneficial effects, perhaps without raising the same concerns. A form of such relief, which has been mentioned in previous testimony, would be a permanent termination of the equal time requirement in connection with appearances by presidential and vice presidential candidates; plus addition to debates to the program categories presently exempted from the equal time requirement.

To summarize, NBC believes that adoption of the resolution introduced by Chairman Harris is essential, and represents the minimum action that must be taken to preserve for the public the new instrument of debates between presidential candidates that had such impact in 1960. We would prefer complete termination of the equal time provision, as the step best calculated to serve the public interest in broadcasting's political coverage. And falling short of this, we would welcome any form of relief which would enlarge broadcasting's freedom to present each candidate to the public with the directness and reality of which it alone is capable. The purpose we seek is an improved flow of public information in the crucial area of political judgment and choice; and through it, an opportunity for broadcasting to expand its service to the public and its contribution to the effectiveness of our political system.

Thank you, Mr. Chairman.

Mr. ROGERS of Texas. Thank you, Mr. Sarnoff, for your usual concise and well documented statement. You get this problem down to the point as we knew you would.

The Chair recognizes the gentleman from California, Mr. Moss.

Mr. Moss. I have no questions.

Mr. ROGERS of Texas. The gentleman from California, Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

Mr. Sarnoff, you refer continually to the face-to-face debate which occurred in the 1960 campaign. Do you honestly consider that what was put on the air at that time was a debate?

Mr. SARNOFF. I think in some respect it was a debate, yes.

Mr. YOUNGER. Wherein does it differ from your "Meet the Press" except that there were two people questioned instead of one?

Mr. SARNOFF. I think the ability of one of the candidates to state a position on an issue and then have the opposing candidate state his position on the issue so that, while in some cases there was not a direct confrontation, you might say it was a lateral confrontation. You might say it was somewhat different than Meet the Press.

Mr. YOUNGER. Did you ever hear a so-called debate conducted as those meetings were conducted?

Mr. SARNOFF. I think, sir, that the format of those particular presentations was somewhat unique to the occasion. They were the result of a great deal of discussion and give and take on the part of the candidates and their own representatives. That is how they developed, frankly. They are not debates in the pure Oxford sense of debate, no, but I think they are as close to political debates as we have ever had on the air.

Mr. YOUNGER. That may be, but if you are going to have debates, certainly there should be some guidelines as to what happens.

Now, your "Meet the Press" is already exempt. You could have both candidates on "Meet the Press" and have the press representatives ask them questions the same as they did before and accomplish exactly the same thing on your "Meet the Press" or any similar program.

Mr. SARNOFF. I don't believe that is quite the same, Congressman, because the debates, after all, or the confrontations face to face of the two candidates, were presentations by the broadcasters combined as distinguished from "Meet the Press" which is the program of one network or "Face the Nation," which is a program of another network.

There is a distinction between what was a joint industry effort and what would be a program regularly scheduled by an individual broadcasting organization.

Mr. YOUNGER. That is true. You get all networks covered at one time. But each network has its own program of a similar nature. I am referring to "Meet the Press" because that happens to be your form of interrogation of certain candidates, certain aspirants for office.

Mr. SARNOFF. The fact remains under the law as it now stands it would be possible to present the presidential candidates on such programs as "Meet the Press" but it would not be possible to present them without certain penalties in the form they were presented back in 1960 even though that form may not be a pure debate.

Mr. YOUNGER. That is the point. Personally, having had some experience in debates, I thought we were going to have debates. Instead of having one subject and a debate of that subject, they had everything except the kitchen sink which was proposed to them by the various press interrogators.

Mr. SARNOFF. If you are suggesting that the format of the presentations could be improved, I won't argue that with you. I think they could be.

Mr. YOUNGER. Now one other question. Do you believe that broadcasters ought to have the privilege of endorsing candidates?

Mr. SARNOFF. That is a good question.

Mr. YOUNGER. That is the heart of what you propose.

Mr. SARNOFF. No; I don't think the issue of a broadcaster endorsing a candidate is involved in this at all.

Mr. YOUNGER. Now, when you suggest that we change the rule not only to include nominees but to include those who aspire to be nominees, do you not think it is possible for one network to so frame their program as to virtually endorse one candidate as against another?

Mr. SARNOFF. No; I don't think—well, it may be possible. I would have very serious doubts that such a thing would at all happen. All we are saying here is that where there may be more than one candidate for the nomination, presidential and vice-presidential, that the law should be written, the suspension or the permanent termination should be written in such a way that the candidates for the nomination should be included so that they, too, can be presented in debates, for example, if you want to use that.

I do not see that there would be any more chance of the broadcasters supporting one candidate for nomination against another any more than they would for supporting one nominee against another.

Mr. YOUNGER. I think that is true and I think that is also possible. I think both situations are perfectly possible.

I am not so sure that the format that was used last time did not accomplish that same purpose.

Mr. SARNOFF. Well, the format again was the result of determinations between the broadcasters and the candidates and their representatives. It was not entirely the decision, frankly, of the broadcasters.

Secondly, in terms of equal presentation, there can be no argument that the presentation was balanced as between the two candidates.

Now, as to which candidate performed better or came across better or answered questions better, that is not a matter, really, of broadcasting as much as it is a matter of the candidates themselves.

Mr. YOUNGER. Were the questions that were propounded agreed on by the candidates before the questions were asked?

Mr. SARNOFF. No, sir.

Mr. YOUNGER. Then you know very well that you can get certain results by framing questions. That is a well-known technique.

Mr. SARNOFF. Certainly, but those questions were at the discretion of the interrogators.

Mr. YOUNGER. As I say, this was not a debate in any sense of the word because you could create any kind of situation you want by having the questions framed.

Mr. SARNOFF. There is always that possibility.

Mr. YOUNGER. That is all, Mr. Chairman.

Mr. ROGERS of Texas. The gentleman from North Carolina, Mr. Kornegay.

Mr. KORNEGAY. I do not think I have any questions at this time, Mr. Chairman.

Mr. ROGERS of Texas. The gentleman from Nebraska, Mr. Cunningham.

Mr. CUNNINGHAM. Mr. Chairman, I had not intended to ask any questions but Mr. Younger did bring up something that seemed to me quite important.

I notice the word "debate." These certainly were not debates that were had in 1960 between the presidential candidates. They were joint appearances or joint appearance press conferences.

Would the networks really fulfill their desire for debate by having a pure debate series where the two opponents would have a half-hour program, one would take 10 minutes and the other 10 minutes, and 5 minutes rebuttal on each side, and let it go at that?

Mr. SARNOFF. Speaking personally, I think it would be highly desirable to have confrontations in the classic debate formula, one or more of a series. I don't think the issue as to whether or not there ought to be suspensions for the purpose of election coverage really involves the question of format. I think it involves the ability to present.

Mr. CUNNINGHAM. I am in accord with that.

You used the word "debate," which I thought we would not go along with as far as the 1960 campaign.

Mr. SARNOFF. Some of them, frankly, would say they were neither debates nor great. I think you will get different opinions as to exactly what they were. They were not debates in a classic sense but they were a presentation in a form which gave the public an opportunity to see and judge the two major candidates in action.

As I indicated before, there is certainly room for improvement. Obviously the first time around is not going to be ideal or the final form.

I think there are things that can be done and will be done if we are given an opportunity again to present the candidates.

Mr. CUNNINGHAM. I would like to see the real old fashioned type of debate, myself, because there is always room for prejudice. You said the candidates did not know what the questions were but someone chose the newsmen so someone could choose the right type of news man.

Mr. SARNOFF. In order to have the classic form of debate you have to have the candidates agree to debate that way.

Mr. CUNNINGHAM. You would consider offering time for the real honest to goodness debates without questioning by news people?

Mr. SARNOFF. I would, yes.

Mr. CUNNINGHAM. Your mind would not be closed to that?

Mr. SARNOFF. Certainly not. I would not go so far as to say that I believe that should be the only form of presentation in a series but as to one or more, I would personally be highly in favor of it.

Mr. CUNNINGHAM. Thank you.

Mr. ROGERS of Texas. The gentleman from North Carolina, Mr. Broyhill.

Mr. BROYHILL. I have no questions.

Mr. ROGERS of Texas. Mr. Sarnoff, let me thank you again for your presentation.

I have one or two questions.

I think the matter to which Mr. Younger addressed himself and some of the other members really is the format of this situation.

Who would have control of the format should this resolution pass, and the door be opened for the presentation of these nominees of the parties? Who would choose the format so far as the network is concerned?

Mr. SARNOFF. As a practical matter, the format would be developed in a series of meetings between the candidates or their representatives. That is what happened in 1960.

Mr. ROGERS of Texas. Is it not a fact that there was an area of agreement in 1960 as between the two parties, the Republican and the Democratic parties, as to the format to be employed in this battle of words or debate or whatever you want to call it?

Mr. SARNOFF. Yes, sir.

Mr. ROGERS of Texas. And it was decided this was the best way to approach it. But, as I understand you, you do not feel that the network or anyone else should be wedded to any particular format, it ought to be opened for discussion?

Mr. SARNOFF. That is correct.

Mr. ROGERS of Texas. Suppose the candidates could not agree on it, do you feel that the networks or the stations as far as that is concerned should have the power to say, well, we are going to put it on this way and either you appear or we will show an empty chair.

Mr. SARNOFF. I think ultimately you would have to come to that; yes. But it is hard for me to believe that there can't be ultimate agreement. One side may have to give a little more than the other in reaching an agreement.

It would certainly be preferable to reach an agreement rather than to have to dictate what the form should be.

Mr. ROGERS of Texas. Now, I know you feel this way and I think others in the communications industry feel that this door should be opened all the way even down to the local candidates, the lowest possible public office. Now, Mr. Sarnoff, do you not think that would open the door to a lot of controversy and perhaps possible fraudulent action in some instances, which might bring disrepute on the industry?

Mr. SARNOFF. I think it certainly would open the door to problems and controversy. I don't know that it would result in fraudulent action. I have confidence enough in broadcasters to believe it would not.

But even assuming it did open the door to problems, it is hard for me to understand a distinction between certain levels of Government office in terms of freedom of broadcasters to present the issues.

For example, I don't see why the presidential and vice presidential office is such that it is all right to have freedom to present the issues whereas the office of the Senator or Congressman or State legislator, because there may be more offices and therefore more problems and more opportunity for trouble, should not have the same freedom.

It seems to me there is no justification for that inequity.

Mr. ROGERS of Texas. You understand, I have full confidence in the present broadcasters. I am just thinking that maybe some crook might get hold of a station and use it for his own aims.

Mr. SARNOFF. I think you run the risk of having an occasional situation that would be less than desirable but I think that is a risk well worth taking.

Mr. ROGERS of Texas. You do believe that the section 315 should be completely repealed?

Mr. SARNOFF. Yes, I do, sir.

Mr. ROGERS of Texas. The matter should be left entirely to the broadcasting industry?

Mr. SARNOFF. I do believe that.

Mr. ROGERS of Texas. Now, you refer to candidates for the nomination as opposed to the term "nominees" of the political parties. Now, do I understand you to mean the candidates for nominations to all political parties whether Democratic or Republican as we know them, the two major parties, but any other duly-constituted political parties, constituted in accordance with the laws of the State?

Mr. SARNOFF. Yes. I was thinking specifically this resolution addresses itself to suspension in terms of the presidential and vice presidential nominees. In that case, it effectively limits it to two because there would only be two.

What I am suggesting is that its applicability precede the convention so that if there are two, three or four candidates for the nomination in one or the other party, that the law as rewritten would cover that situation.

Now, the same thing would be true of covering other parties if they are to be covered.

Mr. ROGERS of Texas. So that it would be in the determination of the network or the broadcasting station itself as to which one of those nominees should be given time?

Mr. SARNOFF. That is right. As the law stands now, or as it would stand as proposed, the broadcaster would determine as between the two candidates for the office.

All I am suggesting is that it go back before the convention so that we would have the opportunity to present to the public those individuals seeking that office.

Mr. ROGERS of Texas. We have had so much talk recently about possible candidates. You mean that would include reluctant candidates?

Mr. SARNOFF. It might.

Mr. ROGERS of Texas. A man could be considered even though he said, "I am not going to run." He thought perhaps he would not unless he was forced into it?

Mr. SARNOFF. I think, as a practical matter, you would be speaking of the legally qualified candidates actively seeking it. The others would be covered under the present exemptions.

Mr. ROGERS of Texas. You do not think this would give any unfair advantage at all or the possibility of unfair advantage to anyone under the control of any segment of the broadcasting industry?

Mr. SARNOFF. No, sir. I think the same balance will apply to presenting candidates for the nomination as would apply to the nominees themselves.

Mr. ROGERS of Texas. Thank you, sir.

Are there any other questions?

Mr. Moss. I have just one question, Mr. Chairman.

Mr. Sarnoff, you use the term "freedom to present issues." Actually, you have great latitude in presenting issues. The freedom you seek here is the freedom to present in person the candidates in the presentation of the issues as they see them.

Mr. SARNOFF. That is correct, sir.

Mr. Moss. But on the presentation of political issues, whether during the campaign or in the interim between the campaigns, you have great latitude in presenting the issues.

Mr. SARNOFF. Yes, we have a good deal of latitude, although we are still somewhat hampered by the existing restrictions in 315.

Mr. Moss. Under the revisions made 2 years ago, the presentation of candidates in developing issues incidental to the reporting of the news, you have great latitude there?

Mr. SARNOFF. Yes, we do.

Mr. ROGERS of Texas. Mr. Sarnoff, just one other question.

Do you feel that television as such, standing by itself, can actually mold public opinion?

Mr. SARNOFF. I don't know, Mr. Chairman, that it can actually mold it, but I think it probable, if I may say it with due modesty on behalf of the industry, it is probably as effective if not the most effective medium for presenting issues in such a way that the public is then able to make up its own mind.

I think it has a great influence but I don't go so far as to say it is a molder.

Mr. ROGERS of Texas. If there is any medium of communications that would have that effect, you feel television would be that medium?

Mr. SARNOFF. Yes; I think in terms of its impact and its power.

Mr. ROGERS of Texas. Especially when you move into the homes of 120 million people for one broadcast as you point out in your statement.

Mr. SARNOFF. Its very power and its very influence and impact are the things that make the broadcaster so conscious of his responsibility to maintain balance and fairness.

Mr. ROGERS of Texas. Thank you very much for your very able statement.

Mr. SARNOFF. Thank you, sir.

Mr. ROGERS of Texas. Our next witness is Mr. Frank Stanton, president of the Columbia Broadcasting System, Inc., 485 Madison Avenue, New York, N.Y.

STATEMENT OF FRANK STANTON, PRESIDENT, COLUMBIA BROADCASTING SYSTEM, INC., NEW YORK, N.Y.

Mr. STANTON. Mr. Chairman and members of the subcommittee, my name, for the record, is Frank Stanton. I am president of Columbia Broadcasting System, Inc.

The position of CBS on section 315 has so often been set forth, before committees of the Senate and the House and in speeches and articles, that I am sure I need not take up your time in spelling it out in detail here today. CBS is for the outright, permanent and total repeal of section 315.

The premises of section 315 were simple: during political campaigns, the broadcasters could not be trusted to be fair and impartial in the treatment of political candidates and their parties over the air waves. A statutory device was contrived to impose upon broadcasters a civic responsibility. The device backfired. Far from assuring the execution of that responsibility, it created over the years a chronic situation which has had exactly the opposite effect; it deprived the

broadcasters, by the unworkable, mathematically implausible and substantively self-defeating equal time requirement, of an opportunity to carry out their responsibility. By forcing them, in defiance of all the dictates of relevance and significance, to give equal time to the most trivial and irresponsible candidates of the most bizarre parties, it forced them also to deny time to the busy and distinguished men and women seriously aspiring to serve their Nation, their States, and their communities.

The crippling effect of this was recognized by the Congress in 1959, when section 315 was so amended as to exclude from the reach of its equal time restrictions newscasts, news interviews, news documentaries and on-the-spot coverage of news events. But the amendments went only part of the way in clearing up the difficulty.

In 1960, through the aroused interest of both major parties, of far-sighted officers of the Government, of journalists of all the media, and particularly through the efforts of this committee and your colleagues of the House and of the Senate, at the eleventh hour of the 86th Congress, the provisions of section 315 were suspended with regard to the Presidential and Vice-Presidential offices for the 1960 election.

The suspension proved two things. Contrary to the old implications of section 315, there was proof on a national scale that broadcasters in this country had far too much sense of responsibility, far too much maturity, far too much sheer will to survive, to abuse the freedom granted by the suspension through unfair, partial or partisan treatment of the candidates.

Secondly, it proved that, released from a discredited, unworkable restriction, the broadcast media could spark interest in a campaign, stimulate new interest on the part of other media, and significantly advance voter participation in the election.

The statistics in terms of coverage given the presidential and vice presidential candidates are persuasive evidence of the increased usefulness to the American people an unfettered radio and television can be. In 1960 the CBS radio and television networks devoted a total of 16¼ hours to personal appearances of the Democratic and Republican presidential and vice presidential candidates, at no charge to them. This, compared to 36 minutes in 1956. In 1960, another 16 hours were given supporters of the major candidates. Time costs of these 1960 broadcasts exceeded \$2 million, and additional time worth another \$700,000 was offered to the candidates but not accepted.

There seems to me no question as to the proof offered by the 1960 experiment that section 315 is an unnecessary and crippling straitjacket into which broadcasters, singled out among all the media, are forced. Nobody benefits from it. Nobody is protected by it. We are all better off without it. The very fact that we are today considering a move once again to suspend it for the next presidential election is in itself evidence that we ought not be saddled with it.

The only question is—and to me it's less a question than an unsupportable contradiction—why what has proved so conclusively a great good for a presidential campaign—the unfettering of radio and television to cover a campaign as events and not as prohibitive statutes indicate—is not equally good for contests for the U.S. Senate and House of Representatives, for the Governors of our States and the mayors of our cities.

We in this country live under the most demonstrably workable system of self-government the mind of man has ever devised. Not only do we have, inherent in our constitutional processes, a division of powers in our National Government, but we also have a division of powers with regard to the scope of National, State, and local authority. Nor have these been merely legalistic or academic. They are responsible for the very survival of a democratic experiment that asked of a heterogeneous people living over a vast area, encompassing different geographic, economic and social conditions, the achievement of a free and constructive way of life that far more monolithic societies had failed to accomplish.

Any legislation that seeks to differentiate between either the national elective executive and legislative officers on the one hand or, on the other, between the elective officers of the Federal Government and those of State and local governments, seeks, in my judgment, to diminish the essential distinctions that have made our country the oldest, most successful constitutional democracy on the face of the earth.

What are we doing when we say that it is all right for broadcasters to have freedom, always subject to our general responsibility to be fair, to present the candidates and issues in presidential campaigns but not those in congressional campaigns? Aren't we saying that it is not as important, that we can be content with a mandatory restriction that we no longer consider healthful to the choice of our executive leadership?

Yet the fundamental fact of our national life is that the Congress still represents the people. The Members of this House of Representatives are still more directly and more frequently answerable to the people than any officers in our National Government. They are still more directly in tune with the people, not only of every State but of every region within those States. They are still charged with originating the raising of revenues, without which all other arms of the Government would be powerless. They are still charged with supervisory surveillance over more intricate and extensive governmental machinery than the free world has ever seen. They are still charged with functioning on two levels, representing both the communities which send them here and the Nation to whose interests they are bound by oath.

Similarly, the Members of the U.S. Senate have distinguishing responsibilities that ought to be respected in any legislation that, intentionally or otherwise, evaluates the sources of our national authority. They represent all the people of their States. They must serve a longer term than any other officers of the Federal Government. They must directly confirm or reject presidential appointments of critical importance and responsibility. They must act with the President in the field of foreign affairs. They must act with the House in the allocation of public moneys and in the enactment of the laws that govern our lives.

Is there any logic at all in saying that it is not just as important to have free and full broadcasting coverage of election contests for these offices as for the Presidency? Is there any logic at all in saying there should be more restrictive ground rules for one than for the other? Is there any logic at all in saying that the division of powers is our most priceless constitutional heritage and then by legislative act putting one branch in a separate category from the other?

I am unwilling to concede that we live in an era solely of presidential government—that if we have freedom with regard to candidates for the Presidency we do not have to worry about the Congress.

I am no more willing to concede that if our national leadership is chosen after the freest and fullest dissemination of its views on all our media, we do not need to worry about our State and local leadership. Any such notion flies right straight in the face of our whole experience as a self-governing people.

The Governors and mayors, the legislatures and councils, of our States and municipalities are responsible for spending more than half again what our National Government spends in nonmilitary expenses—well over \$50 billion every year. They are responsible for the health, the education, and the public safety of over 180 million people. They are the guardians of the rights and privileges and responsibilities specifically reserved to their constituencies by the Constitution. We wander on dangerous ground indeed when we distinguish between the freedom of the process by which their actions, their intentions, and their policies are reported to their electorates in campaign time and those by which the President's and Vice President's are.

CBS has a basic uneasiness also about the freedom of broadcasters being conditioned by election year ad hoc decisions about what the ground rules are. Principle is involved here. The principle is simply not what is in the best interest of the candidate and not what is in the best interest of the broadcaster, but what is in the best interest of the people. The 1960 suspension proved what is in their interest. I cannot see how this can vary from year to year. I cannot see how it is even susceptible of constant reappraisal. If it was good in 1960 for the people to have the advantage of unlimited, unrestricted, unprescribed exposure of the candidates in the presidential campaign, it can be no less good, from their point of view, in 1964 or 1968 or 1972—or all the years to come.

Up until 1960 broadcasters repeatedly asked the Congress to accept only their words that they could be trusted to be responsible, to act fairly, without section 315. But with the 1960 suspension they proved that they were responsible and acted fairly. The Congress had the right to a test. We met the test. And now House Joint Resolution 247 proposes that we take the test all over again, though it no longer has the experimental point that the resolution had in 1960.

I am grateful for this opportunity to restate the CBS position. I am grateful that this subcommittee is concerning itself, now, well in advance of the next elections, with this crucial matter. I am deeply appreciative of this subcommittee's efforts to get something specific done about it. I hope that you can see your way clear, however, to urging the Congress to face the fundamental problem and to provide the fundamental solution—and that we can be done with temporizing on a matter that, in principle and in practice, deserves and requires a clean and final resolution.

Mr. ROGERS of Texas. Thank you, Dr. Stanton, for your very able and concise statement.

Let the record reflect at this time that the subcommittee has been joined by the chairman of the full committee, the Honorable Oren Harris, of Arkansas.

Mr. Harris, do you have any statement you wish to make for the record?

Mr. HARRIS. I believe not at this time, Mr. Chairman.

Mr. ROGERS of Texas. The Chair recognizes the gentleman from California, Mr. Moss.

Mr. MOSS. I have no questions.

Mr. ROGERS of Texas. The Chair recognizes the gentleman from California, Mr. Younger.

Mr. YOUNGER. Mr. Chairman, I am always glad to have a fellow Californian, especially one from Stanford, even though you are now a refugee in New York.

What is your view, Mr. Stanton, as to the responsibility and privileges of a broadcaster as against an editor of a newspaper?

Mr. STANTON. If the question has to do with his journalistic responsibilities in both cases—

Mr. YOUNGER. Political, I mean in the field of politics with which we are now dealing.

Mr. STANTON. The basic difference, I believe, sir, has to do with the obligation that the broadcaster has to make a balanced and fair presentation of a political issue or campaign. No such obligation, no such self-imposed practice is present in most of the printed media that deal with the subject of politics. There are other differences to be sure, because of the differences which are imposed because of the nature of the two media but as far as policy is concerned, I think I have stressed the one that I think is the chief difference. Both can editorialize. Both can present both sides of the issues. Both can present the candidates.

The newspaper editor has greater latitude on that latter point than we have.

That is one reason I want to get completely free of 315. But I think the core difference has to do with the fairness and balance point or the public interest point.

Mr. YOUNGER. Do you feel that in the broadcasting field you have the same privilege of endorsement of candidates that an editor of a newspaper would have or the publisher of a paper would have?

Mr. STANTON. Yes, sir.

Mr. YOUNGER. You do?

Mr. STANTON. But we also have the obligation to present the other side in such a situation. If a licensee is to editorialize in favor of a particular candidate or to editorialize in favor of a particular bill that may be pending in the community, he is obligated to have the other side state its case.

Mr. YOUNGER. But fundamentally, you believe that in the broadcasting field, using the publicly owned air waves, you have the same right to endorse political candidates as does a newspaper which is a private enterprise?

Mr. STANTON. Mr. Younger, we have that right now. We had that right restored to broadcasting, I believe in 1949, when the Mayflower rule was rescinded or altered.

Mr. YOUNGER. That poses a little different problem so far as I am concerned. If you now have the right to endorse candidates legally there is no reason why there should be any section 315 as I see it. But that is your feeling on it?

Mr. STANTON. Yes, sir.

Mr. YOUNGER. That is all, Mr. Chairman.

Mr. ROGERS of Texas. Mr. Kornegay.

Mr. KORNEGAY. Mr. Stanton, first I would like to say it was a very splendid statement.

Mr. STANTON. Thank you, sir.

Mr. KORNEGAY. I would like to ask you in your opinion if section 315 were abolished would it tend to increase the amount of time that the industry would give to candidates for offices less than that of President and Vice President?

Mr. STANTON. It would, in my opinion, sir.

Mr. KORNEGAY. You indicate in your statement that in 1960 the television industry donated 16¼ hours to personal appearances for the Democratic and Republican presidential and vice presidential candidates as compared with only 36 minutes, I believe you said, in the 1956 campaign.

Mr. STANTON. I would only put a footnote to what you have just said. The figures I have given are the figures for the CBS radio and television networks. If you took the industry as a whole, the figures would be much larger.

Mr. KORNEGAY. This applies only to your network?

Mr. STANTON. That is correct.

Mr. KORNEGAY. Of course, you spoke only for your network in answer to the question I asked but in your opinion it would tend to free the stations?

Mr. STANTON. There is no question about it in my mind. I know that our company-owned stations in both radio and television would do much more than they have done if they were not under the restrictive limitations of section 315. I am now talking about offices below the office of President and Vice President.

Mr. KORNEGAY. I would like to get your opinion on this, Mr. Stanton. Do you feel that section 315 has a tendency of giving an advantage to the challengers, that is the person who demands the time, on some occasions?

Mr. STANTON. No; I do not believe it has that effect.

Mr. KORNEGAY. In other words, section 315 is a very extensive thing to broadcasters, is it not?

Mr. STANTON. Well, section 315 has for the most part, I believe, operated in direct reverse to its original purpose. Because it is necessary for us to give time to splinter candidates and insignificant candidates, we then do not give time to the principal candidates for election, thereby shortchanging the people because they don't have an opportunity to see the candidates, the leading candidates, for the simple reason that they have no interest in all of the others. So we don't put the others on; therefore we can't put the leading candidates on.

Mr. KORNEGAY. Does section 315 not restrict the licensee in his desire to afford every candidate equal time, therefore he is reluctant to give the principal candidates any time?

Mr. STANTON. There isn't any question but what the potential demand for equal time by fringe candidates inhibits the broadcaster from doing the full job that he could do in a campaign.

Mr. KORNEGAY. Thank you very much.

Mr. ROGERS of Texas. Mr. Cunningham.

Mr. CUNNINGHAM. Thank you, Mr. Chairman.

I think that there are some people, Dr. Stanton, who are apprehensive about the suggestion that the section be eliminated in its entirety.

In your statement on page 3, in the third paragraph, you say—

The only question is why what has proved so conclusively a great good for a presidential campaign, is not equally good for contests for the U.S. Senate and House of Representatives, for the Governors—

and so forth.

The apprehension comes in this way, that in a presidential campaign where you and responsible officials of the network are making the decision, we feel that the public will focus upon your determination as to the fairness of these joint appearance of candidates.

I think the apprehension comes not in presidential elections but in congressional, senatorial, and local elections because we cannot rely on the local people always to be as responsible in making their decisions as you would be as the national head of an organization, a national network, where public opinion and the wrath of the Congressmen could come down on your shoulders if you did not carry this out in all fairness.

I know of instances where in my opinion fairness was not given on the local level but it was such an isolated thing that nothing comes of it except a complaint from one of the contestants.

I think there is a great deal of apprehension as to how fairly this would be carried out through the various sections of the country as contrasted to a nationwide thing such as we had in 1960.

Is there a way that we could feel some security that a local television station would use the same degree of fairness that we know we could depend on you to use in making a decision for a network?

Mr. STANTON. Mr. Cunningham, I agree that a network is more vulnerable than, let us say, a 100-watt radio station in a small community isolated perhaps from any outside observation. I do not make a distinction in my own mind nor can I accept that there is a distinction between the fairness and dedication, let us say, of a network executive and the manager of that same 100-watt station.

There will be differences even among networks, I am sure, and there certainly are differences among the managers of the various stations. There may be an occasional slip but I find it difficult to believe that it is the result of a deliberate or intentional act when something is done unfairly in a political campaign by a broadcaster.

You ask whether there is something that could be done to alleviate this apprehension. In 1960, when we were in a similar situation regarding the presidential and vice-presidential relaxation of section 315, I made the suggestion that we suspend the section, ask the FCC to study the conduct of the broadcaster in that campaign, and then once the experience was behind us, judge the question that you have raised because in 1960 some of the same questions you are asking about at the local level were being asked about the networks.

If I could offer some suggestion that might get us through this trial period, it would be to suspend 315 across the board, then examine what happens, and I think you might have an opportunity under those conditions to check the validity of your apprehension here.

Mr. CUNNINGHAM. I know your anxiety in eliminating the section. I think there is enough apprehension that I would not want to elimi-

nate it entirely until we see what complaints follow because then it would be a more difficult task to reinstate if there were abuses, in my opinion.

But I imagine if a poll were taken of the various Members of or candidates for the House of Representatives, a sizable number would be able to put forth some unfairness in radio and television in their districts as to the coverage of the candidates.

I have one instance in mind where two candidates were nominated, one on the Democratic and one on the Republican ticket. Shortly before the election a gentleman announced through a press release he was going to become a write-in candidate. He went to the television station and demanded that he have equal time. The television station, being very fearful of the consequences of section 315, granted him equal time which some people thought was a bad decision because he was not a qualified nominee. If you give a write-in candidate equal time as you do to duly nominated candidates, you open the door up to every Tom, Dick, and Harry who wants to be a write-in candidate or get some publicity. Now, that is under the section.

If you eliminate the section, what is to prevent every Tom, Dick, and Harry from deciding on issuing a press release saying, "I want to be a candidate, please write my name on the ballot"? What are we going to do? If you give one of those fellows as in this instance some time, you would have to give it to everybody else. The situation would be worse.

Mr. STANTON. We would as the law is on the books today. But under my proposal to remove it, then the broadcaster has the responsibility of selecting the responsible and important candidates.

Mr. CUNNINGHAM. Of course, that raises the apprehension. Who are the responsible and important candidates? Would you limit that to the two regular nominees of the two established political parties?

Mr. STANTON. That would vary by campaign. I happen to come now from New York City. In the last mayoralty campaign we had three very active candidates. If I had had the freedom I am talking about, I would have selected those three. I would not have gone to the fourth because I don't think that he was a significant candidate in that particular campaign.

The thing that you talk about, about the write-in candidate, this is a very real and troublesome problem for the broadcasters today.

Lar Daley has already announced in Chicago that he is going to be a candidate, I believe, for mayor. He received seven votes in Chicago or in Illinois for the senatorial race. Now, under the present regulation, we would have to give him time if we gave time to the principal candidates in the mayoralty campaign.

So we are hogtied right now in Chicago in an important citywide race.

Back in 1952, I believe, there was a man in St. Louis by the name of Schneider, who insisted that Taft and Eisenhower were far too liberal and that he should be given time because we had given time to Taft and Eisenhower before the Chicago convention. We took what we thought was a responsible journalistic evaluation of his position and denied him the right to have network time. He went to New Hampshire and I believe got on the ballot in the primary in New Hampshire and got 230 votes, as I recall. He then came back

and said to the Commission, "CBS won't give me time, equal time with Taft and Eisenhower." The Commission ruled that we had had to give this man time. When he went to the Republican National Convention in Chicago, he was not even given admittance. Yet he got time on two nationwide networks, one on radio, one on television.

This is the kind of thing we are living under today that I think we should be spared in the future.

Mr. CUNNINGHAM. Yes, I understand that, but if section 315 were to be entirely done away with, then you would make the judgment as to who would be on and who would not?

Mr. STANTON. That is correct.

Mr. CUNNINGHAM. Getting back to some way of quieting the apprehension that some people have if the section is eliminated, bearing in mind the local situation in each of our communities, under the section at the present time or, we will say under the present situation, the way the law is written now, this so-called write-in candidate makes a pitch that he wants equal time with the two nominees of the respective political parties, the local station or the manager would make a judgment on that, I presume, or they would contact their legal counsel.

I do not think the Congress needs to legislate this. It ought to be something that the industry should work out. You would make the judgment because you are the responsible head of a great network. Because if this local station sends their problem back here, some lawyer may advise them to give equal time where maybe in my opinion it was not deserved. But if that station which might be, for example, your affiliate, if it could come back to you, you having been the responsible head of the network, feeling the responsibilities that you will have if this section is eliminated, you would make the judgment as to whether this local station need give this time.

Mr. STANTON. Mr. Cunningham, I was with you right up to the end. I am not sure you were saying if 315 were eliminated. Were you assuming it was on the books or off the books?

Mr. CUNNINGHAM. Let us take it with it on the books.

Mr. STANTON. With it on the books, I don't believe that a licensee could, and certainly I don't believe he would, delegate that kind of judgment to a network. I think he has to make that judgment as a responsible licensee.

I would go on to say, however, that I think with 315 on the books there isn't a Chinaman's chance that he can make a judgment as to whether it is desirable to do it. He has no choice but to do it willy nilly, because the Commission would take the position, I am certain, that if it were a write-in candidate and they gave time to one or more of the other candidates, then the write-in candidate would have to have an equal amount of time.

It is the judgment factor that I want to put into the broadcasting equation because we have it throughout the year.

The only time that the Government says we are not up to our job is during the campaign. Under the amendments we got in 1959, which were very helpful, we have the right to do a lot of things now and we have those rights straight through the year, but there are certain things we can't do just at the election time. You trust us for the

entire year but then when the campaign begins you say, no, we don't think you will be fair and that you will act in the public interest at that time, and then you put us in a straitjacket which I think short-changes the American people.

Mr. CUNNINGHAM. I understand your problem. You may recall 3 or 4 years ago, I introduced legislation to modify that section which finally came over to this committee which was passed into law, not under my name but I initiated it.

Mr. STANTON. It was 4 years ago.

Mr. CUNNINGHAM. That stemmed out of the *Larr Daley* case you spoke of. I am sympathetic to the problem. I am just trying to be helpful.

I wonder if we can ever get anything really accomplished in the field unless something is done to still the apprehension that is going to ensue if this section is eliminated.

Mr. ROGERS of Texas. Mr. Hull.

Mr. HULL. No questions.

Mr. ROGERS of Texas. Mr. Broyhill.

Mr. BROYHILL. Mr. Chairman, I have a few questions I should like to ask.

Dr. Stanton, in following through with what Mr. Cunningham has been saying here about this apprehension, I would certainly say that the average candidate for political office is a very sensitive person 2 or 3 weeks before election day. Certainly, Mr. Cunningham's point about apprehension, I think, is well taken. Now, let us assume that 315 were repealed and let us assume that a particular candidate felt that he was abused. What remedy would that candidate have under your suggestions here? Could he go to the FCC to see that his abuses are remedied or that his complaint is taken care of?

Mr. STANTON. He could go to the FCC but I don't know whether the machinery that would be in existence would function quickly enough to solve his particular grievance.

I know that if it came up at the last minute, the chances are that it would not.

That is the way it works today under 315. If we didn't have 315, the time for this to be considered probably would be when the station's license is renewed. If there were pending in the file a complaint about unfair treatment in a political campaign, I would assume that the Commission would take that into account at the time the license was renewed or considered for renewal.

To satisfy the question that you are raising would probably require some special apparatus within the Commission.

Mr. BROYHILL. Well, we could carry this a little further in section 315 itself. If we repeal 315 altogether, then we also are doing away with provisions which state that "charges made for the use of any broadcasting station for any political purposes shall not exceed the charges made for comparable use of the station for other purposes." Your proposal would also repeal the section which says that the licensee will have no power of censorship over the material broadcast by the political candidate.

Now, I wonder if I can have your comments on this?

By repealing these two particular portions, would we have any abuses or do you feel that things would work out all right in this situation?

Mr. STANTON. I think things would work out all right, sir. What I am suggesting is that all of the conditions in 315 would be removed. I would not expect to have the protection that the broadcaster now has under the no-censorship provision in that section of the act.

Mr. BROYHILL. You say you would not?

Mr. STANTON. I would not expect to have the continuing protection that the broadcaster now has. Under the present act, the licensee may not censor the speech or the statement that the candidate wishes to make. With the removal of section 315, I would expect him to have that responsibility.

Mr. BROYHILL. In other words, you would expect the broadcaster to censor the candidate's statement?

Mr. STANTON. Only with sufficient cause.

Mr. HARRIS. As an example, what do you call sufficient cause?

Mr. STANTON. A defamatory statement. That would be one. As it is now, we are not supposed to talk to the candidate about what he says in a prepared statement.

It has been frequent practice, Mr. Chairman, that when we find something that we think is questionable, we will talk to the candidate about it to advise him, hopeful that he might remove it, but we can't censor him.

Mr. HARRIS. Will the gentleman yield on that point?

Mr. BROYHILL. Yes, sir.

Mr. HARRIS. I suppose I misunderstood what you said, Dr. Stanton. Under present law, no licensee is permitted to censor any statement of a candidate; is that right?

Mr. STANTON. That is correct.

Mr. HARRIS. Except, of course, for obscene language, matters of that kind, that you know about in advance?

Mr. STANTON. I don't know the act here but I would even like to check that, whether we have that power.

Mr. HARRIS. I think under the law, you have a prohibition against the use of obscene language, language which could not be appropriately used in public.

Mr. STANTON. This has never been a problem, sir.

Mr. HARRIS. Yes, it has, too. We had a problem right down here in one of our colleague's district in the last few years.

Mr. STANTON. Mr. Harris, I should have added "for us," because we haven't had this problem. I am talking now about the stations we own and operate, not other stations.

Mr. HARRIS. I do not want to get into semantics on the question at all but you did have a little problem at one time when an important speech was being made at West Point and the speaker did not know he was on the air.

Mr. STANTON. Was this a campaign speech?

Mr. HARRIS. No, it was not a campaign speech. In the act there is reference to obscene language. Other than that, you do not have any authority under the present law to exercise censorship over political broadcasts?

Mr. STANTON. That is right.

Mr. HARRIS. You do not even have authority to require political candidates to submit their manuscripts, do you?

Mr. STANTON. That is correct.

Mr. HARRIS. Now did I understand you correctly that you would want the authority to require them to submit manuscripts?

Mr. STANTON. I would, sir, because it seems to me that we cannot ask for freedom on the one hand and then duck responsibility on the other. The no censorship provision which is now in the act, as I understand it, is there because we have no choice under the equal opportunity rule but to carry the man's statement. If we give to one we have to give to another. We may not then censor what he says.

Mr. HARRIS. In other words, then, you would interpret the law that if one candidate can use vile and abusive language, then the law requires the other one to do the same thing?

Mr. STANTON. No; I was not interpreting the law that way. I was interpreting it only in terms of equal opportunity, not in terms of what the man said.

Let me go a little bit further, will you please, because I think we have come a long way from the time when this act was originally written. If you go back historically, in the days of radio, a man worked from a prepared manuscript about 99 times out of 100, certainly as far as my experience with network broadcasts was concerned.

As you come into television, with the joint appearances and with the interview programs and with the types of things that we can do, with the amendments that you got through in 1959, there is no question about submitting scripts any longer because it is an ad lib appearance.

From a practical point of view, the no-censorship provision is almost academic in today's world.

Mr. HARRIS. That is the reason I am imposing on my colleague. I wanted to develop this to see if I understood you correctly.

I understood you to say that you wanted the authority to require the submission of manuscripts and that you wanted even the responsibility for censorship in connection with such manuscript. Then you said something about restriction.

I am a little bit confused in my mind as to just what you do mean. Did you really mean that you want the duty and responsibility to exercise censorship or do you want such authority only for certain type of language that would not be acceptable?

Mr. STANTON. Mr. Harris, what I want, and I think I have to be very careful how I say this so that I am not misinterpreted, I want no protection on the censorship point as it now stands in the act. If a man comes in with a prepared statement I want the responsibility of passing on that before it goes on the air just as I have a responsibility for an interview with that man in a news interview broadcast or any other broadcast that we do.

We have this responsibility for every entertainment program. We have it for every news broadcast, for every public affairs program. I make no distinction here. All I am saying is that I want the responsibility. I am not saying I want to be in a position to come out and demand a script from you in advance because from a practical point of view we do not live that way any more. But if you do have a script, then I feel I have the obligation to the audience, to the people I serve, to read that in advance—not I personally now, but I am talking about duly appointed people in the organization, adequately trained to review that and say whether it should or should not go on the air.

Mr. HARRIS. Thank you very much.

Mr. BROYHILL. Mr. Chairman, I brought up the question because in the statement he is asking for outright permanent and total repeal of section 315 which would also repeal this censorship clause. How about the equal charges portion?

Would this affect broadcast rates at all? Would you find that candidates would be charged more or less?

Mr. STANTON. I wouldn't expect any change in 315 to have an effect on rates. It would seem to me that with the history that we have on that particular point that broadcasters who started to make differences in the rates charged between either so-called regular commercial broadcasts and political broadcasts or differences in rates as between two candidates would be very foolish.

Mr. BROYHILL. I have no other questions, Mr. Chairman.

Mr. ROGERS of Texas. Mr. Moss.

Mr. MOSS. Dr. Stanton, first I think the fact that you are here today discussing the amendment of 315 is the best illustration that the rights of broadcaster and the rights of the press are not the same under our law.

You were talking of the rights of broadcasters. Broadcasters are licensed. They utilize a valuable public resource. Its availability is limited; in some areas far more limited than in others.

I believe that back in 1927 under the first Radio Act that is perhaps why there was some restriction written in regarding the use of this new and significant medium, having great impact on the public, to assure fairness.

Mr. Broyhill brought out two points. I think there is another one in this matter of the repeal of 315.

At the present time, if the station sells to my opponent any time he must, if I desire to buy, sell me equal time. And in the same time category, whether it be prime time or less valuable time, he must sell it to me. That is the law.

I know that I am not the only Member of Congress that even with the law has encountered difficulty in getting equal scheduled spots or equal availability of time on purchase. I have gotten it in some instances because I have insisted on my rights under the law.

Are you advocating that this be repealed?

Mr. STANTON. I am advocating that section 315 be repealed but you would still have the public interest clause in the act and you would still have the fairness provision.

Mr. MOSS. You know as well as I do that all men are not fair, whether they are broadcasters, newspaper publishers, magazine publishers, or politicians. All of them are not fair.

Mr. HARRIS. Or statesmen.

Mr. MOSS. Or statesmen, that is right.

This is a very powerful medium in many areas and closing out a candidate can seriously cripple him in his views to the public, particularly if the station under the repeal of 315 should become partisan to a candidate or an office.

If I can buy time then I have access to his audience. But if I have no assurance of the right to buy, then I am closed out completely and I cannot do the thing I can with the newspaper, go out and print up my own throw-aways and put them in the doors for people to read. I have no way to get the attention of that viewer.

Now, are you advocating if we repeal 315 we do nothing about retaining the right of candidates to at least equal time on purchase?

Mr. STANTON. Sir, I stand by what I have said. That is that I am requesting and urging the repeal of 315. I am not suggesting that anything be put back in place of 315.

Mr. MOSS. Nothing at all?

Mr. STANTON. But even today, if your opponent does not buy, the station then does not have to sell to you.

Mr. MOSS. No; that is right. He does not have to sell to me if my opponent does not buy. He can give my opponent time but he must give me time. If 315 is repealed, he could give my opponent time. If he did that now and I did not choose to use the free time, I could buy it but I cannot buy time under this repeal.

Mr. STANTON. Are you talking about a major opponent, sir?

Mr. MOSS. I am talking about a major opponent. I can assure you that all stations are not at all fair to major candidates or I would not be having any problem to recite to you.

Mr. STANTON. Then I would say that when that station comes up for its license renewal—

Mr. MOSS. That is 3 years later.

Mr. STANTON. It may not be that long but, at any rate, I know it will probably be after the campaign is finished.

Mr. MOSS. I might be finished, too.

Mr. STANTON. That is right. But the only remedy that I see that would be fair would be the remedy of coming up on license renewal under the fairness provision.

Mr. MOSS. I am now out of office because I have been treated unfairly.

Mr. STANTON. Your question supposes there was only one station serving your constituency. That may be true but this is most unusual because in most places in the country there are at least three television stations and more radio stations, and I can't believe they all would do that.

Mr. MOSS. You must admit there are many communities in this Nation when they elect city councils or boards of county commissioners or boards of supervisors, there may be only one radio station. Maybe there is no TV but only one radio. You are not familiar with the western part of the country where we have many areas where service is limited. If you have been closed out, there is little consolation to come up at license renewal with a protest.

What broad public interest is served by repealing the requirement at least that in the sale of time it must be equal? This gives you no more latitude in covering the news, presenting the issues or presenting the candidates as part of station policy, not a bit. What public interest is served by repealing that portion of the law?

Mr. STANTON. There may in the future be candidates, not major candidates, but fringe candidates who would use that provision to buy time and in my opinion it would not be in the public interest to sell them time.

Mr. MOSS. Well, we sell time on television, Doctor, that sometimes is most repugnant, some purely commercial spots.

Mr. STANTON. But there is no law that says we have to do that, sir.

Mr. MOSS. There is no law that says it except the law of economics.

That is what you are in business for and you would be very foolish not to do it. Why should you sit in judgment as a licensee of the Government in determining whether or not you will permit a candidate for elective office to present himself when he is willing to pay the price to the voters of an area?

Mr. STANTON. From a practical point of view, I can't believe that this would ever be a problem.

Mr. MOSS. Doctor, have you ever been a candidate for office?

Mr. STANTON. I have. Not for public office.

Mr. MOSS. You will have some interesting experiences available to you if you ever enter the public arena and seek office. You will find that all men are not fair, all men are not objective, and local licensees can and do become involved in the affairs of the community and they develop very strong convictions as to what is good and what is not good for the community, and theirs may not necessarily be the conviction that becomes the consensus of the community. But they are in a peculiarly powerful position unless there is some legal restraint.

I do not think there has been any showing here that at least in the sale of time the public interest would be better served by repeal.

Now, on this matter of censorship, are you asking to subject me as a candidate to the very thing which you have fought so long yourself, prior restraint on what you can say? You do not now have censorship but if we take away the protection you enjoy as a broadcaster under the law because of remarks of political candidates, make you liable for those remarks, then in many instances the broadcaster is going to demand the script, look it over, and then how do you resolve the differences of opinion between the broadcaster and the candidate?

Mr. STANTON. The broadcaster has to have that right, in my opinion.

Mr. MOSS. Why?

Mr. STANTON. Because he is the one who is licensed, he is the one that is responsible for what goes out over the air.

Mr. MOSS. No, he is only responsible for that which the law says he is responsible for over the year. He is not responsible for what I say as a Member of the U.S. Congress seeking election. He is not responsible for what I say.

Mr. STANTON. I am very sorry; I meant if that section were removed.

Mr. MOSS. I know, but you are urging the removal. I am asking why. Again what public interest would be better served by making you responsible for what I as a candidate, perhaps the nominee of a great political party, might say over your station? You operate under license from our Government, why should you be responsible? After all, I am going to the people. I am asking them to judge me by their free vote. Why should I submit to any man acting under license to tell me whether or not I can say something which I might feel would be controversial? Controversy is very healthy in campaigns.

Mr. STANTON. I haven't said that controversy would be the test.

Mr. MOSS. You have not said it. You have said in your judgment it would be rarely used.

Mr. STANTON. That is right.

Mr. MOSS. But you also admit that the exercise of this judgment would be yours on very infrequent occasions. We are talking about thousands of licensees, radio and television, over a great nation which

spread clear across the continent. Each of these licensees then would be vested with the right and the responsibility to review what I might say. It is censorship because it is prior restraint.

We have heard a lot of talk about broadcasting operating under standards which we call censorship.

Mr. STANTON. This would not be censorship, in my opinion.

Mr. MOSS. Censorship is prior restraint. If I have to be answerable to a broadcaster, he would look at my text.

Mr. STANTON. When you are answerable to the editor, is that prior restraint?

Mr. MOSS. I am not answerable to an editor. He is free to do as he pleases.

Mr. STANTON. That is right. That is the same thing that the broadcaster should have throughout the year. Why do you make a distinction during the campaign?

Mr. MOSS. I can go into any community in this country and if I have enough money and feel reckless enough to bank roll a paper, I can set one up. I do not have to get a license from anybody.

But I can go into an area where I know with certainty that broadcasting facilities would pay great dividends and I cannot set it up unless I first get a license and that is a very important difference, a very important difference.

Mr. STANTON. I didn't deny that there was a difference between the press and broadcasting.

Mr. MOSS. So I do not think we can give you the same freedoms that the press enjoys which we can do nothing about because theirs flow from the Constitution, yours do not.

Mr. STANTON. Then you make a distinction between electronic journalism and printed journalism.

Mr. MOSS. Do not trap me into that.

Mr. STANTON. I am not trying to trap you, sir. I am trying to understand you.

Mr. MOSS. You are here urging that we spell out what you can say in reporting political campaigns but I do not want you to have the power to determine what I might be able to say in a political campaign. I think there is a great difference. I am not trying to tell you what to say. You tell me I do not have a right to because you feel that censorship, and that is prior restraint on—

Mr. STANTON. Are you saying, then that we should allow anybody to come to our station and put anything on the air that they want to put on and that is not our responsibility?

Mr. MOSS. I do not say that.

Mr. STANTON. Why do you make the distinction?

Mr. MOSS. You are making the distinction in urging repeal.

Mr. STANTON. I am not talking about what the law says. I am trying to understand why, if we set the clock back to 1927 and we were having this discussion, you think there should be a distinction between what we are responsible for at one time of the year and what we are responsible for the rest of the year. I am not denying that that is in the law today.

Mr. MOSS. I am only a candidate every 2 years. I am only a candidate every 2 years. It is in campaigns where you usually develop the most heat and the greater controversy between politicians.

Mr. STANTON. Not necessarily, sir, but if you trust us for almost 2 years to be fair and to take our judgment in the handling of political news—

Mr. MOSS. That is an assumption that I have not agreed to. I do not say I trust you. I say at the present time the law trusts you. I am not urging any change in the law. You are. I think you have to make the case, not me.

Mr. STANTON. I make the case, sir, in the name of the people. I don't think this is a matter of what is good for the candidate or what is good for the broadcaster.

Mr. MOSS. Are you more responsible to the people than I am?

Mr. STANTON. I think I am.

Mr. MOSS. I do not think you are because you never go to them to have them approve what you are doing and I have to go to them every 2 years to get their approval.

Mr. STANTON. I am not setting myself up now as a public officer when I say that. What I meant was that we are judged about 24 hours a day 365 days a year.

Mr. MOSS. We have difficulty getting registration of the judgment if we do not quite know what it is. You offer something that is not too competitive in an evening. Even here in Washington I only have about three or four TV shows I can look at. That is not looking at content. That does not give me great variety. There is little I can do if I want to watch it. I have to watch whatever is available.

But this right and this need of candidates when they are going to the people to seek their vote to be able to speak as candidly on television as they do from the public platform I think is a most important one.

Mr. STANTON. I agree with you completely.

Mr. MOSS. I do not want any one between me and my audience telling me what I should say. And I do not see where the public interest is better served if there is a possibility of that occurring.

Mr. STANTON. May I go on with this dialogue, because I find it very helpful.

Mr. MOSS. Certainly.

Mr. STANTON. I believe that the joint appearances in 1960 did more to move information about the candidates and the issues than if we had had separate direct presentation by each of the candidates. You obviously don't agree with me on that.

Mr. MOSS. Oh, no, I have not said a thing which would indicate that I did not agree with you.

Mr. STANTON. But, sir, you said you did not want anybody between you and the use of television and yet the broadcast—

Mr. MOSS. I understand two candidates agreed on the format of that program. Now, if I am going to appear with my opponent, I am perfectly willing to agree with him on the format, but I have protested bitterly when I have had a station manager call me and say, "Congressman, we are setting up this program on Friday. We want you there." Sometimes Friday is not convenient.

Mr. STANTON. That is right.

Mr. MOSS. And sometimes we have argued about this. On occasion I have even had to say, "Let me make it clear to you. You are not dictating my campaign duty. I have other commitments. I am not

going to walk out on them. But if you do that on the basis of the notice you have given me, I am giving you notice that on the following Friday I will be there for my equal time." And I have that right now. I would not have if we repealed it.

Mr. STANTON. But now we are back—

Mr. MOSS. You see, I had a peculiar problem this last campaign. We stayed here and worked until mid-October. They started scheduling some programs out my way. This was not for my convenience. I had to protest a few of them to insure that I would have the right to use equal time. I think if this had been repealed they would have said, "Well, we are sorry, it is just your tough luck." I do not want them to tell me it is my tough luck.

Mr. STANTON. To come back to the point I was trying to make, though, about the position of the broadcaster in this process. I believe that the 1960 campaign was a more meaningful campaign for the man in the street.

Mr. MOSS. So do I.

Mr. STANTON. But this did not come about, sir, as just two candidates agreeing. Obviously we could not have it in the event the two candidates did not agree, but this was a broad agreement among the broadcasters and the candidates and I think this is the way it should be done.

But as a result of that kind of practical agreement which could happen at the local level just as well as the national level, I think you had a better campaign in terms of moving information. I believe that when you bring both sides to the same meeting you get cross exposure that you never get when you resort to the kind of thing that you referred to, of coming back the next Friday night.

Mr. MOSS. You want me to believe at the local level, talking to both the candidates, that you are going to have the same interest on the part of the broadcasters in programming that type of appearance between two candidates for city council than you had between two candidates for the Presidency of the United States. When they get two candidates for the Presidency of the United States, they are perfectly willing to move into prime time. You would be surprised at the odd hours you are invited to appear on television locally because they do not want to lose the revenues, they do not feel they are going to hold the listening audience with purely local candidates. The public is not interested.

Mr. ROGERS of Texas. Dr. Stanton, will you be available at 2 o'clock this afternoon?

Mr. STANTON. Yes, sir.

Mr. ROGERS of Texas. I think it is very interesting.

I think there are some more questions.

The House will be in session and there are two veterans' bills which I think some of the members ought to be present for.

If you can be here at two, suppose we recess the subcommittee until 2 o'clock.

(Whereupon, at 12 noon, a recess was taken until 2 p.m., the same day.)

AFTERNOON SESSION

Mr. ROGERS of Texas. The Subcommittee on Communications and Power will come to order for further consideration of the pending business.

Mr. MOSS was questioning the witness at the time we recessed.

Mr. MOSS. Mr. Broyhill also mentioned the fact that this provision would repeal the requirement presently in 315 for protection of two candidates charged for broadcast time. In repealing that provision, what public interest do you feel would be served?

Mr. STANTON. Mr. MOSS, I did not examine the repeal of 315 on a clause by clause basis, but rather, from my point of view, looked at getting rid of the whole structure of 315.

It seems to me that the benefits in the round by that move outweigh any possible difficulties or problems that might be created by doing it.

There certainly is nothing to prohibit or to keep the committee from reinstating those things they think they need as protection. What I am most concerned about is the freedom to put on broadcasts with the major candidates without having to put on equal time or equal opportunity broadcasts with the fringe candidates.

Mr. MOSS. I asked the question because after Mr. Broyhill directed his remarks to you, he asked whether you felt it should be repealed, and you indicated yes.

Mr. STANTON. I still feel that way, sir, because it seems to me if you are going to take this out of the act, you take it out in toto.

Mr. MOSS. Why?

Mr. STANTON. Why? Well, because I think that some of the features, or some of the conditions that are in the act, will no longer be operative if you have freedom from the equal opportunity of requirement of the act.

Let me go back. And I do not mean to reopen our long discussion this morning on the censorship point. But on the censorship point, it seems to me that if you are not compelled to give time, under the equal opportunity part of it, then the censorship provision should no longer maintain.

I cannot make as tight an argument, it seems to me, on the rate situation.

Mr. MOSS. Is not the fact that it is in the public interest to keep the cost of campaigns at a minimum?

Mr. STANTON. Well, if I did not believe that, I would not be asking for the opportunity to give you free time.

Mr. MOSS. You are talking about the giving of public service time to a candidate, and I am talking about the sales time.

Mr. STANTON. I recognize that, sir. I am taking it again in the round and putting the two together, so that I am not suggesting for a moment that rates be raised. I am simply saying, "I want to give you some time."

Mr. MOSS. Do you think they might be raised, if this—

Mr. STANTON. I do not. With the interest, as I said this morning, that exists on this very point in this committee, I do not think it would be raised.

Mr. Moss. Where does the history exist on this? The history on this is that it has been a part of the law since 1927.

Mr. STANTON. I do not believe that is correct, sir.

Mr. Moss. It has been a part of the law for a long time.

Mr. STANTON. I think it came in the 1950's, if I am not mistaken. And I think there were two different occasions on which this was dealt with by this committee.

Mr. Moss. It has been in the law as recently as 1950, and this was considered as a separate thing. Is that right?

Mr. STANTON. I am not familiar enough with the history on this to answer that question, but I suspect that it was a separate item.

Mr. Moss. You have watched this committee operate, and does it not normally have to have a fairly persuasive case before it, before it acts?

Mr. STANTON. I think that generally, I would have to give you an affirmative answer.

Mr. Moss. Was not the previous committee act to place into law this requirement equality of pricing for time? And must that not at some point justify the action of Congress? Just because you say this is an uncomfortable garment, I say we should not willnily repeal the whole thing. We ought to look at it. It is made up of many parts. It is a many-faceted provision of the law.

And if the principal concern is freeing the broadcast industry to present to the American public the fuller discussion of political issues, that would be in the public interest. But these other parts of the section have nothing to do with that. They will not make it easier for you to prevent it. In fact, they might make it more difficult for a candidate to present his views of it.

The problems are not the same, and because you may have a case for one move does not mean you have a case to wipe out the entire section.

Do you not think we have to look at each of these provisions of 315 and evaluate them, rather than just wiping them all out, claiming it will give more flexibility in providing the opportunity for political broadcasting?

Mr. STANTON. Well, just as I said this morning, I believe, in answering Mr. Cunningham's apprehension about doing away with section 315 because of some of the fears that he had—I suggested that perhaps, rather than go all the way at this junction, the thing to do would be to make a test.

I am so determined to want to have the opportunity to do more in political campaigns than we have been able to do before because of 315 that if we can take this in steps, in preference to taking it all the way, fine.

My traditional position has been, and I still stand by it: We should be completely free of section 315. I am practical enough and desirous enough of getting what I think is perhaps nine-tenths of the objective, to say you should consider it in two steps and separate the things that give you cause for concern, such as the question of rates and the selling of time, if those are the two questions that come out of this discussion we were having before lunch that troubled you.

Mr. Moss. The only thing that you are limited on now is the broadcasting of the appearance of the candidate himself on television or radio during the campaign. You can report the news. You can deal

with the issues. You can even show the candidate, as long as it is incidental to the reporting of the news.

The only thing you cannot do is to put the candidate on himself, without having some news excuse. And this is really what you want to have removed, is it not? The requirement of equal time where the candidate is the sole attraction?

Mr. STANTON. That is right.

Mr. MOSS. He may be a part of a panel of candidates, but nevertheless you do not want to be required to put on the air what you characterized as the insignificant candidates. And relating it to the presidential campaign in my mind presents no great problem, no insurmountable problem.

What happens—because you have urged that this go to all offices—in a campaign for council, in a city where we will say they have seven members, and five decide to seek reelection, five incumbents. And 20 file for the office. Who decides? Do you think the broadcaster at that time should decide which of the 20 are significant candidates?

Mr. STANTON. Yes, sir.

Mr. MOSS. You do. And his decision should be unappealable? No one can override him?

Mr. STANTON. I see no ready mechanism that could be developed for appeal.

Mr. MOSS. Do you envision, there, the opportunity for abuse?

Mr. STANTON. I believe you said this morning that there was unfairness in all levels of society, in all professions, and I would be foolish to sit here and tell you that there would not be absolutely any abuse at any point.

All I would say to you, sir, is that I believe that by and large there would be no abuse, but there may be abuse in certain specific instances.

I would also say that having the freedom that I am asking for does not mean, at least in my evaluation of the future, if we had this freedom, that we would put on all candidates for all offices, all leading candidates for all offices.

I believe you will agree, or at least I will make it as a flat statement, since I do not want to draw you into my position on this, that there are some races in a section of the country that can be very hot, and there are others that can be very dull and can in many cases be taken for granted.

We approach this as journalists and as news-oriented broadcasters, so that we would try to bring exposure and give time to the people that were in the tight, controversial races.

Some stations in television—and this would also be true in radio—cover I believe as many as 24 Congressional districts, perhaps more. If you gave a half hour to the two leading candidates for all 24 of those races, and you did it in prime time, you would probably be doing a disservice to the man who was coming up in about the third broadcast, because the audience would be largely dissipated, I believe, by that kind of overloading of exposure.

I would leave it to the responsibility of the broadcaster to pick those races and those contests, whether it be for the board of education, for mayor, for governor or, for Congress, that in his mind were most of public interest.

Mr. Moss. You would base that on news judgment and news value of the candidates, in the race involved?

Mr. STANTON. Yes, because I believe that news judgment is not just a sensational news judgment. I am talking about illumination of the issues. And while I recognize that you can talk about issues without having a candidate, I believe you know that the issues become alive when they are expounded by the particular man who is supporting them.

It is not enough, it seems to me, to just be able to talk about the issues. It is much more important to have the man who is involved with the issues.

Mr. Moss. Well, I am glad you said that, because I think that focuses the problem more clearly than almost anything else.

You can get into campaigns where a candidate can make an awful lot of copy and not really be a significant candidate.

This is strictly from the idea of, maybe, stimulating a little controversy, or creating news?

Mr. STANTON. I think that perhaps my definition of news judgment is broader than the one that you have just employed. I would not base the judgment as to whether the particular contest was significant solely on what the candidates said, but the thing that they stood for in terms of, let's say, the record, or in terms of statements that they had made prior to the campaign. I do not see this as something that is judged on the basis of whether or not you have a lot of sensational razzle-dazzle.

Mr. Moss. Of course, in TV, we are dealing with larger operations, usually, than we are in radio. There are many more radio broadcasters than there are TV broadcasters. Many of these stations are small. The owner is not trained in news. It is my understanding that some of them have no real news departments, as such. They take wire service for their local newscasts, a wire service which an announcer can read, or they take some of their newscasts from the networks.

So you are talking here, now, of the exercise of a news judgment at the local level. And who is going to make the news judgment? The owner of the station, who may have had absolutely no background of any kind in news judging or evaluating? But he is to make this decision?

Mr. STANTON. There is more than news judgment involved in the judgment of this kind of an operation. I would expect that the manager, or the news director, if there is one, would be aware of the issues and the important campaigns in the community served by that small station.

If it is a small station of the kind you describe, then it does not have, probably, a very large service area. And I would expect the manager of that station to know the townspeople and the issues fairly intimately. It is difficult for me to see how he could be doing his job as a broadcaster unless he did.

I would much prefer to have someone who is familiar with the issues make the judgment, than to have that judgment made outside of that community.

Mr. Moss. That is all the questions, then.

I would much rather rely on the law to give me a little assurance that I am to be fairly treated, than someone else.

Mr. STANTON. What happens under this today, then, is that you are driven virtually to paid time, because if there are more than two candidates, then the law works against you. That is my fear.

Mr. MOSS. I would rather have it work against me under those conditions than work against me under conditions where I could do nothing about it.

Mr. STANTON. Each of us has to speak from his own experience, and I respect your position.

Mr. MOSS. I would be very happy to yield to my friend from California.

Mr. YOUNGER. I think your feeling that the broadcaster should have the same rights as a journalist from a newspaper or magazine is the root of this whole question. And that is what disturbs me, at your testimony, because I can see many opportunities in television and radio if they have unlimited right to use the public domain for endorsing candidates, giving them preference on time, without limitation, we are going to get into a lot of trouble, and we are going to go right back and enact some law, just the same as we did to start with, when there was no control over the cost of time, and we found that the candidates were charged double for their time during the campaign, as opposed to a regular commercial broadcast at the same hour.

And we had to enact a law preventing the stations from charging a different rate to a candidate. And I can see all kinds of future legislation if we ever dropped these controls.

Now, one other question: I notice you very carefully avoided calling the affairs that we had in the last presidential election a debate. Do you think in any sense of the word that those events could be called debates?

Mr. STANTON. I choose to refer to them as joint appearances. I think that "debate" was a label that was put on them by our friends in the press, and I think that for the public generally they were a form of debate. But certainly they were not the form of debate that I am sure you refer to when you use the word "debate."

Mr. YOUNGER. Was there anything in these joint appearances that could not be accomplished by your news panel in having both candidates appear on the same broadcast and your panelists asking questions?

Mr. STANTON. Yes, I believe that if we were to have taken—

Let me start again, because at this particular point we do not have "Face the Nation" on the air, so it would not count as a regularly scheduled program if we now brought it back and used it for this purpose. For the sake of this discussion, let me assume that we had "Meet the Press."

If we had put two candidates on Meet the Press, I believe that this would have changed the ground rules, and I do not believe that this would have been permissible under the 1959 amendments, because this would not have been conducting Meet the Press the way it was regularly conducted.

In other words, what I am saying is that by making it a special "Meet the Press," or by putting on a special interview program at

campaign time, we would have been running afoul of the 1959 amendments.

But, Mr. Younger, I think too much emphasis has been put on debates and joint appearances, because there were other things that we did, and there are other things that I think we should try to do in the future.

It seems to me it is very helpful to be able to take the television camera into the home of the candidate and introduce the members of the family to the audience. This we did in 1960, with the freedom we had with suspension. This we could not do in 1964, without the suspension or removal of that part of 315 as it applies to presidential and vice presidential candidates.

There are a whole host of formats that could be employed to discuss the candidates and the issues that are not necessarily debate or debate-type programs. All of these would be wiped out, unless they were regularly scheduled series qualifying under the 1959 amendments.

I do not know whether you will ever get, at the presidential and vice presidential level, the Lincoln-Douglas type of debate. I am convinced, however, that if the broadcaster is intelligent enough, and creative enough, and works with the candidates, between them, or among them, they will be able to devise formats which will be helpful to the public in letting the public see the candidate and know more about what the candidate stands for.

The 1964's campaign, if we get the freedom we are asking for at the presidential and vice presidential level, may not resemble what 1960 was like at all.

I think it would be a mistake if we tried to write into the act just how the broadcast had to take place. Different men, different times, will require different solutions.

In 1960, when the suggestion was made about the joint appearances, no one was absolutely sure just what form that was going to take. I thought we made a lot of progress in 1960 by the techniques that we did develop.

Personally, I wanted to see a different thing done. My original idea was that if we had 8 hours for the presidential and vice presidential candidates, the first hour would be a direct statement by each candidate, setting forth the issues in the campaign as he saw them. No journalists, no questions, no debate, no confrontation. They would be back to back, and would open up the series with that kind of a direct statement.

Then you would go through these discussions, either on a face to face basis, without the journalists, or with the journalists asking the same questions of both men; and then finally, the weekend before the election, without benefit of journalists or questions or moderator or anything else, I would have the two principal candidates summarize the campaign as they saw it and ring down the curtain.

But I would look at that whole thing as 8 or 6 hours that were programed from beginning to end with a structure and a panel that gave you a variety of approaches.

Now, we could only have the freedom to do that kind of thing if we were free of this 315 regulation.

MR. YOUNGER. And if you could get the agreements from the candidates.

Mr. STANTON. All of this that I am saying presupposes an agreement among the broadcasters and among the candidates.

Mr. YOUNGER. That is all, Mr. Chairman.

Mr. ROGERS of Texas. Doctor, to go back to the remarks I was making at the beginning of this session this afternoon, I observed this morning, while I was questioning Mr. Sarnoff, that he was shaking his head one way, and you were shaking yours another, regarding the impact of television and its ability to mold public opinion.

Now, would you address yourself to that for just a moment? I would like to get the record clear on it. I think it is very important.

Mr. STANTON. I think there is a tendency for all of us to think of the medium doing something. I think it is the man who is on the camera that does it. Television is a conduit. Television is a medium of distribution. It happens to be more efficient, because I believe it involves more of the sensory organs than any other medium, and it can be distributed into the home very conveniently.

But when I was shaking my head, whichever way I was shaking it, I believe I was saying to myself, "This is like saying that letterpress is a better way to print something than offset." I do not think the editorial or the news is changed when you change your means of printing.

In television, it is not the electronics that gives you the impact or does the molding. It is the use to which the instrument is put. It is a very efficient conduit.

Mr. ROGERS of Texas. Yes. That is what I was speaking of; the medium.

Now, is it your opinion that the medium of television, the communication media, is probably the most forceful weapon we have ever had in the communications industry?

Mr. STANTON. Yes, sir. It is.

Mr. ROGERS of Texas. Now, Mr. Sarnoff, this morning, in his statement, referred to 120 million people listening to the debates, the joint appearances, or whatever we want to call them, between Mr. Kennedy and Mr. Nixon in 1960.

Now, if those figures are correct, that means that two out of every three people in the United States of America were watching television sets. And to me, that is a medium that could have a very telling effect on controlling the thought processes of the people in the United States.

Would you agree to that, Doctor?

Mr. STANTON. Pardon me, Mr. Chairman, but I will have to go back, because I would like the record to be clear on the 120 million. I believe that what Mr. Sarnoff was talking about was 120 million different people who saw one or more of the debates.

Mr. ROGERS of Texas. Yes.

Mr. STANTON. I would doubt that 120 million saw any one, or, obviously, all of them. We are talking of a figure substantially under 120 million as the average audience for the four joint appearances.

As to the second part of your statement, I think that the television exposure of the two candidates was effective because of the candidates, and because of what they were talking about, but not because television could control anything.

One thing we have learned is that if there is something on the air that the audience does not want to see, or if there is something on radio

that they do not want to listen to, it is pretty difficult to get them to hold still for it or to try to shove it down their throats.

Mr. ROGERS of Texas. But if you had an attractive candidate and an unattractive candidate, and the attractive candidate did not even get on the air at all, do you think that the unattractive candidate, by the use of this medium, would have a much better chance of being elected? Or do you think people will say, "This fellow is so unattractive that I will take anything besides him"?

Mr. STANTON. I do not feel that way about my fellow man.

I think we put too much emphasis on appearance. One thing about television that I have discovered is that if you have something to say, it does not make any difference how you are made up or how you look. It is the one medium I know of that comes as close to being able to sit down and look at you squarely in the eye and let you judge the person directly on the basis of a face to face interview.

Mr. ROGERS of Texas. Yes. Well, of course, we are addressing ourselves to the medium itself, in this whole hearing. And section 315 has to do primarily with the use of that medium, or, we will say, the availability of that medium, on a fair basis, to all parties seeking the same thing.

Now, that, to me, is what 315 is for. It is to see that the people are protected against abuses, discrimination, favoritism, being shown, in favor of one party as against another, by the ones who have control of that medium under the license issued by the Government.

Now, I believe you said that if this was turned over to the broadcaster himself, or the owner of the station, the protection of these people would still be intact, because it is under the public service requirements under the law, and under the fairness doctrine.

Is that correct?

Mr. STANTON. Yes, I said that if a broadcaster was unfair in the handling of a campaign, I thought that in the process of reviewing his license at the time of renewal his unfair treatment would be judged at that particular time.

Mr. ROGERS of Texas. Well, now, Doctor, if this Congress should see fit to repeal 315, what would you be willing to support as doctrine that these people be brought under from the standpoint of public interest?

Mr. STANTON. From a practical point of view, we are operating under those conditions right now. I have a great deal of difficulty, sir, in finding what it is that you are licensing here when you license a network. But from a practical point of view, as long as networks operate stations, and as long as they have facilities—and by definition they have to have almost both—then I do not think we have any problem.

Mr. ROGERS of Texas. Well, I understand that. I should have put in the word "directly"—directly regulate. The networks themselves would be directly answerable to the Federal Communications Commission insofar as the application of the public interest and the fairness doctrine are concerned?

Mr. STANTON. Well, as I say, this raises a whole host of very fundamental questions. I have never been able to satisfy myself that it was proper to license a network.

I have said on the record before that I would be perfectly willing to be regulated for those things that are now being regulated indirectly. But when you start talking about licensing a network, I am not quite sure just what is involved here. I would like to examine that at much greater length.

Mr. ROGERS of Texas. I am not talking about licensing. I am talking simply about subjecting them to regulation.

Mr. STANTON. I think the reason I fell into the trap, sir, of using "license" is that I am not sure what device you would use to regulate them, and I think it is the licensing that would give you the mechanism. And I am not sure I see how to bring the licensing about.

Mr. ROGERS of Texas. But it would be difficult to regulate unless you did license them.

Mr. STANTON. That is right.

Mr. ROGERS of Texas. We are speaking of nationwide networks insofar as the application of this resolution is concerned. That is, this rule is being suspended insofar as the nominees of the parties for the office of President and Vice President are concerned.

Now, of course, that is the primary interest to the networks, as distinguished from lesser offices, is it not, Dr. Stanton?

Mr. STANTON. Yes, it is of primary interest to the networks. But I thought something that you said as you were asking that question indicated that this was applicable only to networks, this suspension that is called for here. As I read it, it is applicable straight across the board.

Mr. ROGERS of Texas. It is applicable straight across the board; but the network would not be interested in putting on a nationwide program concerning the race of, we will say, Mr. Moss or Mr. Younger, so that we can be bipartisan in California. The people in Maine would not be interested in seeing that program, would they?

Mr. STANTON. I wish you would have used two other examples. [Laughter.]

No. Occasionally in the 1962 campaign we had a great deal of interest in the race in Massachusetts. This was of national interest. There was a great deal of interest in the California race for Governor, because it involved the candidate who had been defeated in 1960 nationally.

You will on occasion find those special races which the networks will report and treat on a network news basis; but not for the purpose that we are talking about here.

Mr. ROGERS of Texas. Yes. The decision, however, as to whether or not a man should be allowed free time in discrimination against his opponent, or his opponents, as the case may be, would usually be a matter for the local station owner, would it not, Dr. Stanton?

Mr. STANTON. Yes, sir.

Mr. ROGERS of Texas. If you repeal section 315, it would be a matter for the local station owner?

Mr. STANTON. It would be a matter for the licensee, yes, sir.

Mr. ROGERS of Texas. And the network officials would have only a part to play when you had a matter of nationwide interest?

Mr. STANTON. Yes. Again, though, from a practical point of view, because the three companies owning television networks also are licensed, with five stations each, there is a station interest in that same management group.

Mr. ROGERS of Texas. Yes. But then those stations that you won—you would not want to use one of those, if that station was in New York, to advertise a race in Texas, would you, for county judge?

Mr. STANTON. We are very proud of the coverage that New York has, but it does not quite reach Texas.

Mr. ROGERS of Texas. Doctor, the situation appears to me to be this: that it is placing a tremendous amount of power in the hands of one man, or one small group of men, to simply say to them, "You determine whether or not A or B or C or D, who are candidates for the office of district judge, or for State senator, or for Congress, as far as that is concerned—you determine how much free time they should have." And whatever your decision is, there is no appeal from it.

Mr. STANTON. I think in this discussion we are losing sight of the fact that the broadcaster has much of this freedom right now. Let us for the moment assume that the licensee in a particular town has a regular "Meet the Press" or "Face the Nation" type series. He can favor one candidate over another now, if he so chooses.

I am not saying that anyone is doing it, or that he would do it. But if you are concerned about that, you have a situation at hand right now where there is much more freedom than I think you realize.

Mr. ROGERS of Texas. Well, I do not think it is much more than I realize is in existence. I realize it full well. And I realize full well that even under the news confinements, broadcasters can drop the name of a candidate or a man and can put on shows that are an abuse of what this committee and this Congress intended when we passed that law.

As a matter of fact, there have been several complaints that have come to me about this, and I hope that we can get into the hearing sufficiently this year to go into those matters, because I think that honesty in this business is essential to proper conduct.

I think you agree with me. I think when we get into a situation where we get dishonest, no matter what we call it, it is going to ruin the business. It will destroy the industry.

Mr. STANTON. I could not agree with you more, sir.

Mr. ROGERS of Texas. It is my hope that the industry itself, and the stationowner, will try to work again on this thing with the Federal Government. No one abhors Federal regulation any more than I do; but I think we both realize that laws are passed, using a trite statement, not because of situations when a good man might do something or would do something, but situations where a bad man could do something that would be detrimental to the country.

I think that is what this situation boils down to. I think you would have a very good case, as you put it, for repeal of 315. We look at it only from that standpoint. But I think there are many other facets to the problem. I think that we should go into exhaustive hearings on the matter before we even consider repealing it.

Mr. HARRIS, do you have any questions?

Mr. HARRIS. Yes, Mr. Chairman, I would like just a very few questions. The time is passing rapidly, and we want to get to the Chairman of the Federal Communications Commission this afternoon.

But I think, Dr. Stanton, you can see, in view of the questions that have been raised, why it was suggested that we limit the suspension

of this act to candidates for President and Vice President for 1964, as we did for 1960. If we should get involved with these other matters relating to other offices, we may come up with nothing. We did that one time before, in the 1950's.

You would prefer that we considered only permitting suspension of the act for 1964 for President and Vice President, rather than that nothing be done at all?

Mr. STANTON. Yes. And I do not want to prolong the discussion, either, but it seems to me that we have met that test. And what I do not understand is why, having met the test of the 1960's, at the least (there would not in 1964 be permanent repeal insofar as the equal opportunities section applies to the President and Vice President.

Mr. HARRIS. I know that that is difficult for you to understand, but you also have heard the questions that have been asked and the statements made by members of this committee, have you not?

Mr. STANTON. Mr. Harris, I perhaps did not understand the questions or the other statements, but I thought they were pertaining to offices below that of the President and Vice President.

Mr. HARRIS. They were, because what you propose to do is to repeal section 315 for all purposes, is it not?

Mr. STANTON. That is correct.

Mr. HARRIS. Well, I suspect we would have been on a little more practical ground if you had limited yourself to exempting the President and Vice President at this point. I think, being perfectly realistic about it, industry should make up its mind that the Members of Congress are in this business of politics, and if anybody has had any experience in this field, it is the 435 Members of Congress and the 100 Senators. And if the industry would take a little hint out of this vast experience, we probably would not have too much difficulty in meeting this problem to the limited extent that is proposed in my resolution.

I would be willing to consider extending it to such offices as Governor, and U.S. Senator. But I am not convinced it should go beyond that. Not because there would be distrust of the broadcasting industry, not because there would be people that would abuse it, not because it is recognized that there would be unfairness, but from a practical standpoint.

You take the city of New York, where you operate yourself. There are about 18 or 20 Members of Congress in and around New York, is it not true? And suppose the television industry would start putting on a program and being fair to everybody, where you had, say, a minimum of 40 candidates. Now, there is not time to have the facilities used for such purposes.

Mr. STANTON. I believe that if you were to go to that extreme, there would be time and facility in New York City; but as I said earlier, I would not encompass, under the freedom that I was asking for, that we would take all 24 of the campaigns for the House in any one year and put them on the air.

Mr. HARRIS. That is precisely the truth. And that is the reason in my judgment why you have not gotten any more favorable reaction here. You said to Mr. Moss this morning that you had never run for a political office. Well, now, from experience, I can say that one of the things that a candidate feels as deeply about as anything is to

try sincerely to get elected and to get the confidence of his people, to serve his people. Therefore, he is deeply concerned having an opportunity to have his candidacy mentioned, and not to be completely ignored while others are being publicized all over the lot.

I am not saying that there is any intention to be unfair. But if you have 2 or 6 out of those 24, or 20, what are the other 18 or 22 going to think about it? They are left out.

And for that reason, from a practical basis, I think you had better approach this thing on the basis of what might be recognized as realistic at this time.

Congress has gone a long way, and I call your attention to the report of this committee in 1959. I think you can do a lot more, Dr. Stanton, under the provision of the amendment, than you have indicated here today that you can do or have done during an election.

Take the recent election to the U.S. Senate in Massachusetts. The two Democratic candidates were very well exposed over national network programs and the Republican candidates were, too, under the provisions of this amendment.

You did this even though you indicated a moment or two ago that if you set up a program just for that specific purpose of broadcasting it, it would not be keeping within the spirit of the act.

You have been carrying these programs as public service. I am glad to say, in recent times broadcasters have become a little more conscious of the public need for such programs. I think under the 1959 amendments to the act, you have wide latitude in connection with bona fide newscasts, bona fide news interviews, bona fide news documentaries, and on the spot coverage of news events.

So I do not know what the real basis is for your complaint. Why do you want to go beyond what the Congress has done considering all the facts and circumstances that are involved here? I think you have not explored all the evidence.

You mentioned the test of 1959-60. You did what the American people wanted, and that was commendable, and that was to bring about what has been referred to as the great debate. I suppose it got about the biggest audience that probably we have had in the field of television at any time, and it was a wonderful service.

But other than the debates you had very little broadcasting of the two major candidates.

Mr. STANTON. That is not correct, sir. May I read them to you?

Mr. HARRIS. Have you put them in the record?

Mr. STANTON. No, sir; I have not.

Mr. HARRIS. I wish you would put it in the record at this point.

Mr. STANTON. There were, as you pointed out, four presidential debates, 4 hours in prime evening time. There were 2 half hours in prime evening time involving the Democratic vice presidential candidate. There were 2½ hours and parts of 2 other half hours involving Mr. Nixon. All of these are in prime time.

There are 2½ full half hours involving Mr. Lodge. And I mention the figure here, because it is a shorthand way to give you the relationship—

Mr. HARRIS. You are speaking about your own network, now?

Mr. STANTON. Oh, yes. These broadcasts that I have just read had a time value of \$424,000. The presidential debates on our facilities had a time value of \$633,000.

So you see when you take the ratio roughly of 6 to 4, we have gone beyond.

But this is not all. We had two Kennedy appearances on "Face the Nation." We had two Johnson appearances on "Face the Nation." We invited Mr. Nixon, but he declined. We had two Lodge appearances on "Face the Nation." We had one Kennedy appearance on "Person to Person"; one Nixon appearance on "Person to Person." We had one "CBS Reports," part of which touched on the campaign.

I should stop here, because you were confining yourself to the individuals themselves.

But the figures run something like this: \$633,000, \$424,000, \$168,000, \$209,000. Those are all beyond the \$633,000 of the debates alone.

I think that we did much more in 1960, sir, than most people generally recognize, and we got that opportunity to do it because you had the wisdom to give us that suspension.

Mr. HARRIS. I am glad to get that in the record, because I must confess that there have been a lot more broadcasts than I thought when I read over the statement which you and Mr. Sarnoff had this morning relating to the total amount of money involved. Certainly this is commendable on the part of the broadcasting industry.

I think the service to the people is one reason why many of us feel that the exemption should be extended to the next presidential election in 1964. That is one reason.

The other reason is that so many of us have to go out and try to get up the money to pay for political broadcasts, speaking very frankly about it, and this relieves a little of the financial pressure.

Anyway, I know how dedicated you are, and how interested you are in this. But I believe for the time being, if we did not stay pretty close to what is in the resolution now, we would be in trouble. And I hope that because of that, and because of the importance of it to the American people, we will not get bogged down on these programs when we try to broaden the exceptions and get into candidates for other offices.

I did indicate to the chairman of this committee that if the committee wanted to consider broadening it into other fields of political life, that in my judgment, should be done by a separate resolution.

But I hope we do not get this one held up until it is too late.

Mr. STANTON. Well, I meant what I said when I applauded the committee for having got into this question early rather than waiting late, because you know better than almost anyone in this room how close we came to the 11th hour in 1960 in getting it through.

But I do want to say that I respect your experience and your point of view about the practicalities of the situation. At the same time, my experience leads me to believe that the public could be better served by the freedom than they can under the existing situation.

I am not here for something for the broadcaster, because the broadcaster will only be penalized financially by what I am proposing. I think it is in the public interest to do it. I think I can demon-

state that the public will be better served with this freedom than without this freedom.

I respect your judgment as to the practicalities, and see no point in my taking up any more of your time on this now.

Mr. HARRIS. Well, I respect your judgment, too.

Just one other thing about it. I think it should be kept in mind also that where there are so many offices and candidates, when you limit this to the offices of President and Vice President, there is also a degree of protection to the broadcasters.

Thank you very much, Mr. Chairman.

Mr. ROGERS of Texas. Dr. Stanton, one further question, now. As I understand you, and I think the record ought to be clean on it, there were no sponsors for these programs that you were speaking of with regard to the Presidential and Vice Presidential nominees in 1960?

Mr. STANTON. Yes, sir; there were.

Mr. ROGERS of Texas. Sponsors?

Mr. STANTON. Yes. The four joint appearances, loosely called debates, were not sponsored; but some of the other programs that I read did have sponsorship.

Mr. ROGERS of Texas. Even the broadcasting people were paid for those other broadcasts?

Mr. STANTON. We were paid for the time. I am not certain that we were paid for the programing expense.

Mr. ROGERS of Texas. Yes. Well, now, do I understand that the \$400,000 and \$600,000 figures that you read—did the broadcasting people get that money, or was that given, in time?

Mr. STANTON. So that the record is absolutely clear on that point, the \$633,000 is the value of the time for the joint appearances. This time was not sponsored. The broadcaster, in our particular case, did not recover any of that money.

I will have to refer to some information that I think perhaps one of my colleagues has, on the other programs. And if you like I can supply that for the record, so that I do not take up your time now.

But some of the other programs had sponsors; not all of them, but some of them.

Mr. ROGERS of Texas. Then all of the money that you referred to was not given. That is, the broadcasters collected for those, or for some of them?

Mr. STANTON. For some of them. And even in the case of those where we collected some money from the advertiser, we did not collect all of our costs, I am certain.

Mr. ROGERS of Texas. There is nothing to interfere with that sort of operation in the future as the law presently stands, is there?

Mr. STANTON. No; there is not.

So that the record may be complete, I have these figures here.

On "Person to Person," the two broadcasts involving President Kennedy and Mr. Nixon were sponsored. On "CBS Reports," in which a part of the time was devoted to the candidates, 1 minute and 43 seconds on the one and 2 minutes and 13 seconds on the other, there was one sponsor involved in that program. All the rest were unsponsored broadcasts.

Mr. ROGERS of Texas. Thank you very much, Dr. Stanton. That was very helpful testimony.

Now, in order to keep the record straight, and without objection, the Chair will now insert in the record, immediately following the testimony and the statement of Dr. Stanton, a letter and statement by the American Broadcasting Co., over the signature of Mr. Leonard H. Goldenson, president.

(Letter and statement referred to follow:)

AMERICAN BROADCASTING CO.,
New York, N.Y., March 1, 1963.

Hon. WALTER E. ROGERS,
Chairman, Subcommittee on Communications and Power, House of Representatives, Committee on Interstate and Foreign Commerce, Washington, D.C.

MY DEAR MR. ROGERS: The announcement concerning the hearings by the Subcommittee on Communications and Power commencing on March 4, 1963, on House Joint Resolution 247 to suspend the equal-time requirements of section 315(a) of the Communications Act for President and Vice President in the 1964 campaign, suggests that this subcommittee would be receptive to the filing of a statement for the record on the proposed joint resolution.

I should like very much to have had the opportunity to appear in person before this subcommittee to present the views of the American Broadcasting Co. on House Joint Resolution 247, but regret that prior commitments make it impracticable for me to do so.

In the circumstances, I am submitting herewith a copy of my statement before the Subcommittee on Communications of the Interstate and Foreign Commerce Committee of the U.S. Senate on July 10, 1962, wherein the views of the American Broadcasting Co. were expressed concerning proposed legislation dealing with the waiver of section 315(a) not only with respect to candidates for President and Vice President, but also for congressional nominees and Governors of the States.

We support House Joint Resolution 247, but we would again urge for the reasons set forth in the statement above referred to, that the exemption from the requirements of section 315(a) for presidential and vice presidential candidates be made permanent by appropriate amendment of the Communications Act.

The views set forth in the statement as to why we do not believe that a suspension or permanent exemption of the provisions of section 315(a) should go beyond the presidential and vice presidential candidates may also be of interest.

It is respectfully requested that this letter and the attached statement be made a part of the record of your hearings on House Joint Resolution 247.

Sincerely yours,

LEONARD H. GOLDENSON.

STATEMENT OF LEONARD H. GOLDENSON, PRESIDENT AMERICAN BROADCASTING CO.

We appreciate being invited by your subcommittee to express our views on proposed legislation to amend the provisions of section 315 of the Communications Act of 1934 requiring equal broadcast time for candidates for the same political office as follows: S. 204 exempting the candidates for President and Vice President from section 315; S. 2035 exempting candidates not only for President and Vice President but also for U.S. Senator and Representative and Governor of any State from section 315; Senate Joint Resolution 193 to suspend for the 1964 campaign the equal opportunity requirements of section 315 for nominees for President and Vice President; Senate Joint Resolution 196 to suspend for the 1962 congressional campaign the equal opportunity requirements of section 315 for nominees for U.S. Senator and Representative; and S. 3434 to eliminate the statutory requirement of affording equal time for use of broadcasting stations by candidates for public office.

On December 16, 1960, in a statement to the Special Committee To Investigate Campaign Expenditures for the House of Representatives, I expressed the hope and view that as a result of our experience under the provisions of the joint resolution suspending the equal-time requirements for the 1960 presidential

and vice presidential campaigns, the Federal Communications Commission and Congress would find that the interest of the public was best served by this experience and that the temporary relief from section 315(a) which was granted for the 1960 presidential and vice presidential campaigns would be made permanent for presidential election years.

In his appearance on February, 1961, before this subcommittee on behalf of the American Broadcasting Co., to report to you on the effectiveness of the 1960 temporary suspension of section 315(a), Alfred R. Beckman, Vice President in charge of our Washington office, took occasion to support S. 204 which would make permanent for presidential and vice presidential campaigns the temporary relief from section 315(a) which was granted for the period of the 1960 presidential and vice presidential campaigns.

We would like to take this opportunity again to support S. 204, as well as Senate Joint Resolution 193.

The President's Commission on Campaign Costs in its report on "Financing Presidential Campaigns" dated April 18, 1962, which recommended that section 315 be suspended for the 1964 general election campaign in the same form as in 1960, gave recognition to the contributions made by the networks and stations under the suspension of section 315 during the 1960 presidential campaign, as follows (on page 26) :

"During the presidential campaign of 1960, exercising the freedom granted by the temporary suspension of section 315 of the Federal Communications Act, the networks and radio-television licensees contributed important public information about the campaign by providing for a variety of broadcasts in which the candidates participated without charge to them."

In his letter dated May 29, 1962, transmitting certain bills (on election campaign practices) to the President of the Senate and Speaker of the House, the President stated:

"Radio and television broadcasts are an essential but expensive means of reaching a vast electorate. To help reduce costs for presidential candidates I propose the temporary suspension in 1964 of the 'equal time' provision in section 315 of the Communications Act with respect to presidential and vice presidential candidates. A similar suspension in 1960 worked well and the broadcasting industry is eager to provide free time and facilities for such political uses. I believe temporary suspension, rather than permanent repeal, desirable, so that the Congress can periodically review broadcasting and campaigning practices that occur under everchanging conditions."

While both President Kennedy and the President's Commission recommended only a temporary suspension for 1964 of section 315 with respect to the presidential and vice presidential candidates, we believe that the experiences and contributions of broadcasters under the 1960 suspension fully justifies and has demonstrated the desirability of going beyond their recommendation for temporary suspension and making the exemption permanent for presidential and vice presidential campaigns. On the other hand, we believe that permanent exemption should be limited to the presidential and vice presidential candidates.

We are sure this committee is aware that the suspension of 315 for the 1960 presidential election was for the primary purpose of providing and permitting the face-to-face meeting of the candidates in the 2 major parties in a series of great debates on national issues following the pattern of the historical Lincoln-Douglas debates.

When we depart from the national campaign level, and propose to eliminate the requirements of section 315(a) either in whole or in part, there remain substantial considerations and problems which require, in our view, further study by the Congress before any changes are made. As this subcommittee is aware, section 315 was conceived and enacted as part of the original Radio Act of 1927 (as section 18 of that act), the predecessor of the Communications Act, and except for certain amendments from time to time, that section has been continued over the years. Its legislative history will, we believe, establish that the concern and purpose of Congress, even after liberalizing amendments, was avoiding discriminatory treatment of and the continued protection of all qualified candidates for public office, whether on a national, State or local level, and whether the major or minor parties were involved. We believe that such assured protection is still in the public interest and that it should not be whittled away without appropriate safeguards.

The repeal of section 315, in whole or in part, would not, as recently stated by the Chairman, "diminish or affect the Federal Communications Commission's policy or existing laws. This holds that a licensee's statutory obligation to serve the public interest still includes the broad encompassing duty of providing a fair cross section of opinion in the station's coverage of public affairs and matters of public controversy." We submit that this suggests the desirability of retaining the current equal opportunity provision because, as a practical matter, it would be extremely difficult for the FCC to determine during a campaign whether a licensee was complying with the general fairness doctrine. Only after an election could the FCC make such a determination; by that time there would be no satisfactory remedy for a losing candidate who might possibly have been treated unfairly. Under the present provision, all candidates can be assured of minimal fairness during the course of the campaign.

Further, if section 315(a) is revised in whole or in part below the national level, the responsibility of the broadcaster in each local community will be to provide the opportunity, as a matter of fairness, for legitimate candidates to express their views. However, even with every good intention the broadcaster may not recognize the development of a significant third party movement, and the final decision as to whether a third party candidate should be granted the opportunity afforded to the major party candidates may be overlooked.

In the same vein, the broadcaster in each community would face the problem of fair treatment with differing factors involved. While "insubstantial candidates" may reasonably be disregarded in contests for national offices, in the State and local levels there may be no way to distinguish between major and minor candidates. There may be an additional problem in States or in localities where elections are nonpartisan as in States such as Minnesota. When the number of candidates is small, fair treatment could be accorded to all candidates without seriously burdening the licensee. When there is a large number of candidates and time could not possibly be granted to all of them, the station might well be compelled to make a discriminatory choice as to those candidates which it feels should not be granted broadcast time and thus risk a charge of unfairness.

In the light of the foregoing, the American Broadcasting Co. respectfully urges that any action of this Congress be limited to a consideration of S. 204 and S.J. Res. 193, to the end that qualified persons who wish to run for office will be assured of fairer treatment, and that any action encompassed by the other bills before this subcommittee be deferred pending further consideration of the problems involved.

Mr. ROGERS of Texas. Our next witness is the Chairman of the Federal Communications Commission, the Honorable Newton N. Minow.

Mr. Minow, it is good to have you here.

You may proceed.

STATEMENT OF HON. NEWTON N. MINOW, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION; ACCOMPANIED BY COMMISSIONER FREDERICK W. FORD, AND MAX D. PAGLIN, GENERAL COUNSEL

Mr. MINOW. Mr. Chairman and members of the committee, we are very glad to be here.

Commissioner Ford is here with me, together with some members of our staff.

I must say, after observing Mr. Stanton's questioning, Mr. Chairman, I make no request for equal time.

I think our statement has been distributed.

We are here today to present the views of the Commission on House Joint Resolution 247, a joint resolution to suspend for the 1964 campaign the equal opportunity requirements of section 315 of the Com-

munications Act of 1934, for nominees for the offices of President and Vice President.

In its original form, section 315 was applicable to all uses of broadcast facilities by any legally qualified candidate for any public office. In 1959, Congress amended section 315 to provide that appearances by a legally qualified candidate on certain specified bona fide news-type programs shall not be deemed a use within the meaning of section 315.

As a result of this amendment, broadcast licensees are better able to carry out their functions of reporting the news concerning political candidates without being bound by the equal opportunity provision of section 315.

However, in the 1959 amendment, Congress also added a caveat that such exemption would not relieve broadcast licensees from the obligation imposed upon them by the statute to operate in the public interest, and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

The latter provision is a statutory recognition that broadcast licensees must observe the Commission's "fairness doctrine" in presenting the types of programs exempted from section 315.

In 1960, Congress adopted Senate Joint Resolution 207 (Public Law 86-677) and suspended the equal opportunity provision of section 315(a) with respect to nominees for President and Vice President during the 1960 campaign. That resolution included a caveat that such suspension should not be construed as relieving broadcasters of the obligation imposed upon them under the Communications Act to operate in the public interest. This was interpreted by the Commission as a reference to the responsibilities of broadcasters under its "fairness doctrine."

The purpose of the 1960 suspension was to permit wider and more comprehensive radio and television coverage of the presidential campaign. On the basis of elections prior to 1960, it was clear that a great number of presidential candidates would qualify for equal opportunity under section 315(a), thereby inhibiting coverage of the major candidates in the campaign.

As the Commission previously indicated to the Congress, the 1960 suspension did result in wider and more effective coverage of the major presidential and vice presidential candidates, particularly in connection with the so-called great debates.

Our experience with respect to the operation of the 1960 suspension disclosed no serious administrative problems flowing from it. Our experience and the information we collected as to the 1960 suspension were set out in a report to the Congress on March 1, 1961.

I believe, Mr. Chairman, that copies of that have been distributed to the members of the committee.

I might add, Mr. Chairman, that we are in the process, at the request of the Senate Subcommittee on Communications of the Commerce Committee, of preparing a similar report for the 1962 election, that is now in the IBM machines, and our staff is working on it, and as soon as it is complete, I will supply a copy to each member of the committee, here, as well.

In addition to suspending the equal opportunity requirement of section 315(a) as S.J. Res. 207 of the 86th Congress did, H.J. Res. 247

would also direct the Commission to require broadcast stations and networks to make such reports as may be necessary to enable the Commission to make a detailed report to the Congress not later than May 1, 1965, on the effect of such suspension on the 1964 presidential and vice presidential campaign.

It would require that information be furnished concerning requests for time, amount of time made available (including amounts of free time, time paid by candidates or other political organizations, and time paid for by others), total charges, rates, editorializing, distribution of time during various phases of the campaign, and clearance by individual stations of network programs concerning the candidates or the issues, and the role of broadcast stations and networks.

Like the 1960 suspension, H.J. Res. 247 contains the caveat that the suspension should not be construed as relieving broadcasters of the obligation imposed upon them under the Communications Act to operate in the public interest.

Finally, as we construe H.J. Res. 247 and its effect on section 315, the prohibition in section 315 against censorship by station licensees with respect to broadcasts by candidates would remain unaffected, and would apply to the use of broadcast facilities by presidential and vice presidential nominees. This was also true in the case of the 1960 suspension. (The Senate Committee Report on S.J. Res. 207 stated that "the prohibition against censorship contained in section 315 would remain intact as it applies to the presidential and vice presidential candidates who appear on any program made available as a result of the suspension provided by this joint resolution. This legislation does not affect that provision." (S. Rept. 1539, 86th Cong., 2d sess., 6; also CF S.J. Res. 207, 86th Cong., 2d sess.))

The Commission believes that the question of whether broadcasts by certain nominees for public offices should be exempt from the equal opportunity provision of section 315(a) is basically a policy decision for determination by the Congress. We do have certain observations to offer, however, which we believe may be helpful to you in your consideration of this joint resolution.

The most important effect of this proposal is that it would replace the equal opportunity provision of section 315(a) with the fairness doctrine insofar as political broadcasts by nominees for the offices of President and Vice President in 1964 are concerned.

Although the less precise standards of that doctrine will make its application more difficult for licensees in the first instance and for the Commission in reviewing complaints under it, we believe that it will not cause any serious problems for the Commission or our licensees in view of our experience with the same suspension in 1960, and the fact that the suspension is limited to nominees for President and Vice President.

We do wish to repeat one recommendation we made in our report of March 1, 1961, to the Congress with respect to the experience under the 1960 suspension. In that report we recommended that in any future proposed legislation appropriate language be used to indicate unequivocally the intent of Congress with respect to who are "nominees."

Technically, it can be argued that the appearance of an independent candidate, or one who is not nominated at a convention or by other means does not come within the provisions of the proposal.

(Section 1 of H.J. Res. 247 uses the term "nominee," whereas section 2 requires the Commission to furnish certain information with respect to "candidates." Appropriate language clarifying the term "nominee" should also remove any doubt as to just what information the Commission would be required to furnish.)

Thus, if a candidate who has not been nominated by petition or convention, and who under such construction is not a nominee, appears on a broadcast, such an appearance would not come within the scope of the suspension resolution, and other candidates would be entitled to equal opportunities.

The point I want to make is that whatever the Congress intends in this regard is a matter of legislative policy, on which we express no opinion, but we do recommend clarification of this matter. Since the suspension is limited to "nominees," the question is also presented whether Congress intends to limit the suspension to the general election phase as against the primary phase of a campaign—a matter again for legislative judgment, but one which we urge should be clarified.

(For example, in the absence of clarification, it is arguable that a candidate who had won a primary election in a State where the electors are bound to vote for him on the first ballot of a party convention is the "nominee" of the party of that State, and accordingly comes within the suspension. Appearance of his rivals, who may not have entered or won such a primary election, would, however, still come within the equal opportunity provision of section 315. This possibility might well result in a rather crazy-quilt application of the suspension resolution.)

While these problems did not arise under the 1960 suspension—largely because it was enacted after the major parties had held their nominating conventions—enactment of House Joint Resolution 247 at a comparatively earlier date could add to the problems of interpretation in the absence of a clear definition of "nominees" or the substitution therefor of another explicit phrase.

In conclusion, let me say again that the 1960 suspension resulted in a wider and more effective coverage of the major candidates for President and Vice President, and did not present any serious administrative problems for the broadcasters or the Commission.

A similar suspension in 1964, as provided in House Joint Resolution 247, would afford another opportunity to evaluate the effect of the temporary removal of the equal opportunity requirements of section 315 as to those offices, and would enable the Congress periodically to review broadcasting and campaigning practices that occur under ever-changing conditions.

MR. ROGERS of Texas. Thank you, Mr. Minow, for your statement. Any questions?

MR. KORNEGAY?

MR. KORNEGAY. Thank you, Mr. Minow.

Let me ask you for any comments you would like to make on broadening the exemption to include the campaigns in the several States and the candidates within those States.

MR. MINOW. Congressman Kornegay, I can only look at it from the point of view of the operating problems it presents for the Federal Communications Commission. As you know, we now have in the

United States about 5,000 radio stations, and we have about 650 television stations. We have a very small staff.

Even in campaign periods, we have less than a half a dozen people working on equal time and fairness problems. During the last campaign, I might add, they practically worked around the clock to keep up with the load.

If this was extended to all candidates, with 5,000 radio stations and 650 television stations, and let's say you just took congressional candidates throughout the country, we would have to tell the Congress that we would think we would have some very, very difficult problems of administration. And that is without going into the merits of it. It is just from the point of view of how we would have to handle it.

Mr. ROGERS of Texas. Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman.

We have had quite a bit of testimony, Mr. Minow, in the hearing so far about the question of electronic reporting as against the newspaper or publication reporting.

In your experience on the Commission, do you see that there is a difference between the two as to their rights?

Mr. MINOW. Well, I think there has to be, Congressman Younger, because of the electronic facts of not having enough channels for everyone who wants them. And I think as long as that is the case, as long as technologically we are limited to having to confer only upon certain members of the public the right to broadcast, denying that right to others, certainly there will have to be some difference in the rights that are accorded to particular public interests.

I do.

Mr. YOUNGER. There should be a different concept in regard to the broadcasting than would be found in regard to reporting on newspapers and their right to endorse and oppose candidates?

Mr. MINOW. On the editorializing and endorsing candidates, the Commission is actively encouraging that positions be taken, provided that if they do, the other side has a chance to be heard, too. But we do think there is a difference just in the nature of the media; yes, sir.

Mr. YOUNGER. Would you, in your experience, be willing to endorse 315 in its entirety?

Mr. MINOW. My view would be that most broadcasters, certainly a very high percentage, without 315, would endeavor to be fair. But broadcasters, like all the rest of us, are human beings, and there are some who would not. Given that situation, I think my judgment would be to keep some provision in there to assure equal opportunity to candidates.

I think with respect to President and Vice President, there it is pretty self-regulating, because it is so conspicuously apparent to the whole Nation that if no one was mistreated, this would be very apparent.

But if you are talking about all the candidates for public office in the United States, on all of the broadcasting facilities, I am just as sure as that people are human that there would be opportunities for abuse of it.

I say that personally. The Commission is of the view, and I want to emphasize it, that we think what you are debating here today is a policy issue for your determination. The best we can do is give

you some factual information and judgments, rather than policy statements.

Mr. YOUNGER. I think that is recognized; but from your experience in regulation, your advice is very much worthwhile in determining policy. You have to have hearings to get the facts before you can reach a sound policy.

I was not satisfied, in the campaign of 2 years ago, because as the resolution came to us, and as we passed it, the result was to be a debate and as presented to the public was so far from a debate that it could have been handled under the present exemptions.

That is all, Mr. Chairman.

Mr. ROGERS of Texas. Mr. Cunningham?

Mr. Broyhill?

Mr. BROYHILL. Mr. Younger was asking Mr. Minow questions concerning editorializing by broadcasters, and that they presently have this right.

Do you have any information as to how many television or radio stations actually endorsed candidates in the past election or two? This would be interesting to me. I have never seen or heard a broadcaster in my part of the country endorsing a candidate. I have seen them editorialize.

Mr. MINOW. There are some, Congressman Broyhill. I can give it to you exactly.

In 1960—I can give it to you for 1960—the number of stations reporting broadcast of editorials in support of or against a political candidate: AM radio, 53; AM-FM, 7; FM only, 4; and television, 2.

Mr. BROYHILL. In these cases, the opposing candidate has a right to be heard; is that right?

Mr. MINOW. Yes, sir.

And I can also give you the figures of the number of stations which reported to us the broadcast of reply statements. In AM it was 23. That was out of 53. In AM-FM, it was two, out of seven. In FM, it was two out of four. In television it was zero.

Now, to complete that, another category is number of stations reporting no broadcast of reply statements, but reporting encouragements of efforts to promote reply. They offered to make the reply available. That would be 28 out of 53. So that leaves a balance of two which either reported no reply or no effort to encourage a reply. Four AM and FM, leaving a balance of one—no effort to encourage a reply.

That leaves a balance of zero. And on television, one.

I would like to ask Dr. Goldin to amplify that, if I could, because he is our expert on that.

Mr. ROGERS of Texas. Let him be identified.

Mr. MINOW. This is Dr. Hyman Goldin, of the Federal Communications Commission staff.

Dr. GOLDIN. Subsequently, sir, we had correspondence with some of these stations, in which they amplified their replies and explained some of the statistics. We could make copies of those replies available, if you wish.

Mr. BROYHILL. This is just something new. Several of us up here were interested in those statistics.

There was another area brought up this morning, Mr. Chairman. I would like to ask one more thing.

This was on the question of buying time; that if two opposing candidates are offered time, and if one refuses to take the time, it has been my understanding that this, then, means that the other candidate may not be offered time.

In other words, if two candidates are offered time, and one says, "I don't want to be on the radio; I don't want to be on television," then this freezes out, so to speak, the other candidate. Is that correct?

Mr. MINOW. No, I do not think it is. I think it is the opposite. As long as he has the opportunity, the same opportunity, either to buy time or have free time, that the other fellow had, then the law is satisfied.

Now, this gets complicated. Let me tell you the kind of thing we run into. What happens if a station sends a telegram, let us say, to both candidates, and says, "We are offering free time for a debate Saturday morning, and if you don't come, your opponent will go on, and we will announce that you can't be there." We have run into that, during the last campaign.

And our answer has been always to try to work this out with good will with the broadcasters and the candidates. And in nine times out of ten, we can.

But you see the excruciating problems this presents for a Federal agency in the heat of a campaign, when the candidates start arguing with each other about should it be Saturday or should it be Sunday or should he come at all.

And so my answer to your question is a little more complicated than that. But as a generalization, as long as both candidates have the same opportunity to buy time, or both accept free time, then the law is satisfied.

Mr. BROYHILL. Well, let me phrase this a little differently. What if the station decides as a policy that they will not offer any time for sale?

Mr. MINOW. We had an experience or two like that last year, where a candidate or two complained to us that the station was selling no time to any candidate.

Under the Supreme Court decision in the WDAY case several years ago, the Supreme Court said that one of the basic obligations of a broadcaster was to carry some political discussion. Accordingly, when we inquired of the station how it justified carrying no political discussion, and whether that operation was in the public interest, the stations then sold time to all candidates.

Mr. ROGERS of Texas. I think that is all.

Mr. BROYHILL. I think that is an interesting point.

That is all I have.

Mr. ROGERS of Texas. Mr. Chairman, I believe your statement was to the effect that you had no difficulty with the suspension in 1960.

Mr. MINOW. That is correct, Mr. Chairman, and I think generally that is agreed to by almost everyone.

Mr. ROGERS of Texas. I might also say that I think everyone is for this resolution. The question involved, and it really should not be a question here, is whether or not this should be amended to include all other State and local offices.

Do you have any records of the number of complaints that were registered for unfair treatment or violation of the fairness doctrine?

Mr. MINOW. I can give you a rundown, Mr. Chairman, and then I would like to supply for you in about a month a really comprehensive report we are working on. But I can give this to you for general scope.

In 1962, talking now only about 315, equal time—the Commission received a total of 342 complaints under 315. And if you are interested in the offices, I can give that to you. Sixty-nine involved the office of U.S. Senator. Sixty-seven involved the office of U.S. Representatives. Forty-four involved the office of Governor. Forty-two were all other offices. And 111 were general inquiries, without reference to any specific candidate or office.

As to the number of problems that arose with respect to the exemptions under the 1959 act, I can give you that. Sixteen involved inquiries relating to bona fide newscasts; 5 involved inquiries relating to documentaries; 16 involved inquiries relating to news interviews; 2 related to injuries involving on the spot coverage, and 16 were general inquiries.

Now, turning to fairness, as opposed to equal time, for the first 6 months of 1962, or the first 5 months, January 1 to June 1, 1962, we had 418 complaints involving fairness. They broke down as follows: 63 complaints of slanted newscasts, 70 of slanted documentaries. Twenty-five were with respect I think to one program, involving Medicare. Sixteen were broadcasts involving methods of combating communism. And 200 were all others.

Now, in addition, for the first 5 months of 1962, there were two separate instances of editorials involving public offices, neither of which related to Senator or Representative or Governor. And there were eight instances in which editorial positions were taken with respect to issues relating to a current campaign.

Now, from the period of June 1, 1962, through November 1962, I cannot give you the totals, except I can tell you that we had 41 involving candidates and 12 relating to ballot issues.

I can further tell you that roughly, during the latter part of the congressional campaign of 1962, we were getting about, would you say, 15 to 20 a day, toward the end. Fifteen to twenty a day.

Mr. ROGERS of Texas. Would those be included in the 300 some odd?

Mr. MINOW. Yes.

Mr. ROGERS of Texas. Now, is there any indication, Mr. Minow, that there were a lot of, well, let's say, complaints that were not voiced, not filed? I know sometimes the winning candidate may be mad about something, but as long as he won, he does not feel too mad about it.

Mr. MINOW. I think that may be true. The only ones we have are the ones we hear about.

And the point I would like to make: It does the candidate no good to have us decide this the day after the election. We must act on this immediately.

Mr. ROGERS of Texas. Yes.

Mr. MINOW. And we do. We act on them sometimes on the phone and usually by return telegram at once. And the hard ones are brought to the seven Commissioners. And I am proud to say that

almost every one of these is decided unanimously. Not always, but usually.

Mr. ROGERS of Texas. You mean that immediately after the election the question becomes moot?

Mr. MINOW. It does not do anyone any good; that is right.

Mr. ROGERS of Texas. You have no method of fining them, or penalizing them if you find them as guilty as sin, because the horse is out of the barn and you cannot close the door?

Mr. MINOW. Well, I think if there were a really outrageous case, we could take it up at renewal time. But it does the candidate who may have been defeated no good, because there is no redress to him.

Mr. ROGERS of Texas. Were there any cases not decided before the election?

Mr. MINOW. We have one I would like to tell you about, to show you how difficult this is.

The Friday before the election, we had a complaint from a candidate for Senator, who said that his opponent was either unwilling or unable to debate with him; and therefore he wanted to put on a program which consisted of film clips of his opponent and himself. In other words, he would go on, and he would say, "My opponent is not here, but here he is on film."

And then he would have his view on the issue. He would say, "Here is what I think, and here is what my opponent thinks."

And he wanted to put this program on some stations.

Well, there are two applicable provisions of the Communications Act. One says—I think it is 325—no station may put on a program from another station, without the first station's permission; that is, rebroadcast. He had received this one by rebroadcast from another station, and it did not have the first station's permission.

So, of course, we asked the candidate about that, and he said:

Well, there is another provision of the Communications Act, in 315, which says no station can tell me what to put on, and no station can interfere with what I put on even if I libel somebody. It is none of the station's business what I do.

And we had a square conflict, I believe, on two provisions of the act. Our own staff divided on it, and as it happened that day we had an even number of Commissioners. That is the only instance where we split evenly.

And we had to write the candidate and tell him we could not resolve this one before the election.

Now, as it happened, Mr. Chairman, that was not a close race. But if it had been a very close election, let's say it had been in Minnesota or North Dakota or somewhere, where it was decided by a hundred votes—then you can see how treacherous this area is.

Mr. YOUNGER. Will the gentleman yield?

I would like the record clear. I think you mentioned about the 300 cases prior to June?

Mr. MINOW. 315 complaints during the year of 1962.

Mr. YOUNGER. The entire year? Oh, yes. I understood it was to June 30.

Mr. MINOW. June 1 was with respect to the fairness complaints.

Mr. ROGERS of Texas. Mr. Minow, do you have any cases pending in this particular category that have not been decided, that you are presently working on?

Mr. MINOW. Commissioner Ford just tells me we got one this morning. It is just like the one I told you about, exactly like that one. And two are up for reconsideration.

Mr. ROGERS of Texas. Yes. Now, suppose you decide that and determine that there was a violation. What can you do?

Mr. MINOW. We could take that into account at a renewal time, if it was a very serious thing.

Mr. ROGERS of Texas. I mean other than that.

Mr. MINOW. Other than that? We during the campaign had—I remember distinctly we had one where we had to advise the station that we felt they had to put on the other side. This was before the election. And they did.

Mr. ROGERS of Texas. I mean after the election. Are there any civil penalties available under the law?

Mr. MINOW. I would like to have our general counsel handle that.

This is Mr. Paglin, our general counsel.

Mr. PAGLIN. Mr. Chairman, if I understand your question with respect to the possible things that the Commission could do insofar as enforcing the law, if you will, is concerned, and I understand you are not talking about effectiveness in terms of usefulness to this particular candidate—

Mr. ROGERS of Texas. That is right.

Mr. PAGLIN. The election is over?

Mr. ROGERS of Texas. That is right.

Mr. PAGLIN. In the first place, the least harmful would be, I guess, as Commissioner Ford has suggested, that we would attempt to include it in our political broadcast primer, so as to give guidance to the broadcasters if this case should come up again.

We have used the technique also of putting on the press table, so-called, a letter, in which our interpretation is contained, again for the purpose of guiding the industry insofar as the Commission's interpretations are concerned.

However, with respect to the actual enforcement of the provisions of the act, the act does contain sections which give the Commission power to sue for compliance with the act, where the Commission determines that there has actually been a violation of a particular section of the act.

Particularly I refer to section 401 of the act, in which the Communications Act provides that the United States can go into court and sue to require compliance with the act.

Also, if the Commission were to determine that there was a violation of section 315, the Commission could issue an order requiring the licensee to cease and desist from violating the section, under the expanded provisions and sanctions given to us by Congress by an amendment.

If, after issuing this order in accordance with the procedure in section 312, the licensee did not comply with the Commission's order—and mind you, I am still talking about a situation where it is still effective; I have to speak in terms of a situation where it is still effective;

tive. I should perhaps have expressed it by stating it is a situation where time is still as a meaningful thing—it would then be possible to go into the district court and apply for enforcement of its order.

These are specific sanctions given to the Commission within the confines of the Communications Act, among others, for the purpose of carrying out an order which is issued by it.

However, I refer again to the fact that if, under the premise of your question, the election was gone, and this is an academic thing more or less, then I believe the Commission would have only the remedies available to it in terms of the renewal application, if it were, as the Chairman said, a particularly outrageous situation; or if it were not an outrageous situation, if it were a situation they did not want to come up again, they could use the primer or a letter on the press table for the guidance of the industry.

Mr. MINOW. We have endeavored to publish our rulings, in that connection, and keep them up to date, for the guidance of candidates and the guidance of broadcasters. This has been published in the Federal Register.

And as we decide a matter, we restate the question and try to give a very short summary of our answer. And we find that with respect to many inquiries, this will dispose of it, because the same questions, as you understand, will repeatedly arise.

So this has had wide circulation to all the broadcasters and to most of the candidates as well.

Mr. KORNEGAY. What is the date of that?

Mr. MINOW. The last publication of it was October 12, 1962.

Mr. ROGERS of Texas. The fact of the matter is, then, that the answer to my question is simply this: that there is no way to enforce this, or there are no possible penalties to be visited on either the station or the candidate that is in violation, except the consideration of this at the time of license renewal.

Is that right?

Mr. PAGLIN. There was one other provision I failed to mention. That is, if the Commission could find in the circumstances of the case that there was a willful violation, it is possible that the Commission could impose its forfeiture provisions.

Mr. ROGERS of Texas. Forfeiture of the license?

Mr. PAGLIN. No. Fine and forfeiture. An actual monetary fine, if it could be found that this was a willful violation.

Mr. MINOW. I would say, Mr. Chairman, that as a general proposition, we do not find defiance of our rulings. We find that in almost every case, when we have issued a ruling, there is immediate compliance, or we go to court.

Now, the last year I do not think we have gone to court on anything. Since 1960, I do not think anyone has appealed one of the rulings.

Mr. ROGERS of Texas. And by publishing these rules as you published them in the Federal Register, you hope these stations will abide by them and be informed of what your findings have been, which as I understand it are by questions and answers in the Federal Register. In other words, you take questions that have been directed to you by some person that you identify and simply answer that question and then include that in the Federal Register.

Mr. MINOW. That is correct, Mr. Chairman.

I would like, Mr. Chairman, if I might, to suggest that Commissioner Ford, who has really done a comprehensive study of the history of 315, and who has some observations about it—I would like to request that he be permitted to say a few words about what he thinks about this.

Mr. ROGERS of Texas. Commissioner?

Mr. FORD. Mr. Chairman, a day or two after the last election, I as you know had been studying this problem for some time, and I had completed a summary of the legislative history of this section and how we got where we are. And I put that in this paper that I delivered. I have not converted it to testimony before the committee. I do have sufficient copies here of the paper that I will be glad to furnish and then, with one copy corrected, make a statement out of it, if the committee is interested in a summary of section 315 and the development of it.

Mr. ROGERS of Texas. How long is that statement, Mr. Commissioner?

Mr. FORD. Oh, it is 10 pages.

Mr. ROGERS of Texas. And that is a summary of the legislative history?

Mr. FORD. It is a summary of the legislative history. It gets into the problems which have never been reached. And I do have at the end: "A Method of Finding a Solution."

I do not offer the solution, but I think I know how to get there.

Mr. ROGERS of Texas. Is there objection to this being included in the record?

If not, it will be included as a part of the record.

Mr. FORD. Thank you.

(The statement referred to follows:)

STATEMENT OF FREDERICK W. FORD, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

BROADCASTING POLITICAL AND CONTROVERSIAL ISSUES

In 1962, we completed one of the most trying political campaigns that the broadcast industry has yet experienced. Many new and difficult questions arose during this campaign which involved not only the more or less rigid mechanical formula governing the use of broadcast facilities by candidates contained in section 315 of the Communications Act of 1934, as amended, but also the imprecise formula of the "fairness doctrine" contained in the Commission's report on editorializing by broadcast licensees. This "fairness doctrine" was incorporated in section 315 by the 1959 amendments to the Communications Act. The interplay of these two concepts fanned by the ingenuity and resourcefulness of campaign managers have combined to present broadcasters with their most recent biannual headache. It has also pointed up to me the necessity for reconsideration of this complex problem looking toward a solution which can be more readily understood and applied by broadcasters and candidates as well.

I would like, therefore, to review briefly the history of section 315 and our report on editorializing by broadcast licensees. Perhaps then some of the problems raised can be considered. Finally I would like to suggest a new approach in seeking a solution for this vexing problem.

The beginning of the control of political broadcast material was in section 18 of the Radio Act of 1927. The original provision in H.R. 9971, 69th Congress, which became the Radio Act of 1927 was contained in section 4 which reads in pertinent part as follows:

"SEC. 4. * * * If any licensee shall permit a broadcasting station to be used as aforesaid, or by a candidate or candidates for any public office, or for the

discussion of any question affecting the public, he shall make no discrimination as to the use of such broadcasting station, and with respect to said matters the licensee shall be deemed a common carrier in interstate commerce: Provided, That such licensee shall have no power to censor the material broadcast." [Italic supplied.]

Thus, in its origin, it was proposed that controversial issues and political broadcasts by candidates be treated on the same basis by broadcasters as common carriers. This provision caused more objection to the bill than perhaps any other provision. It was to meet these objections and at the same time limit the freedom of broadcasters with respect to political broadcasts than Senator Dill apparently proposed an amendment which struck this language from the bill and substituted the following:

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

Immediately upon introduction of the amendment (which you will note omitted reference to controversial issues) controversy arose as to the meaning of the language (67th Congressional Record, 12502 et seq.). However, a study of the debates, I believe, leads to the inevitable conclusion that the primary and dominant purpose of Congress in enacting section 18 was to put it beyond the power of a licensee to determine which legally qualified candidate for a particular office should be heard on radio, once the station had permitted one candidate for that same office to use its facilities. No legislation was adopted with respect to the use of broadcast facilities by the supporters of such candidates nor with respect to controversial issues.

In the 72d Congress an amendment designed to extend the requirements of section 18 was passed by both Houses. This amendment originated in the Senate Committee on Interstate and Foreign Commerce which offered the following explanation:

"The purpose of the amendment is to extend the requirement of equality of treatment of political candidates to supporters and opponents of candidates, and public questions before the people for a vote. It also prohibits any increased charge for political speeches."¹

This amendment did not become law because of a pocket veto by President Hoover. However, in the next Congress the identical proposed amendment to section 18 of the Radio Act of 1927 was incorporated as section 315 of the bill² which became the Communications Act of 1934. The bill was passed by the Senate in this form but the House struck the provision out. In the conference between the two Houses it was agreed that section 315 should be included, but in exactly the same form as the existing provisions of section 18.³ Thus, the second and last attempt by the Congress to deal with the problem of political broadcasts by supporters or opponents of candidates resulted in no congressional action. The problem remains in ever-increasing intensity today.

In 1952 the Congress recognized the wisdom of adding subsection (b) to section 315 which required that charges for facilities to candidates for political office not exceed those for comparable use for other purposes, but no action was taken with respect to the problem of supporters or opponents of candidates nor with respect to controversial issues.

Many questions of interpretation of the provisions of section 315 were submitted to the Commission during the years following its enactment. In 1954 the Commission compiled the rulings on these questions in what was referred to as a "Political Broadcast Primer," the latest revision of which was published in the Federal Register last month.⁴

Perhaps the most significant of these rulings was the one in 1959 involving a fellow in Chicago who was running for mayor. I am sure you all remember his name although it escapes me at the moment. This fellow claimed equal time in connection with the appearance of his opponent on a regularly scheduled newscast. It was urged that newscasts were exempt but I could find no basis in law

¹ S. Rept. 564, 72d Cong., 1st sess., p. 10.

² S. 3285, 73d Cong., 2d sess.

³ *Feltz v. Westinghouse Radio Stations, Inc.*, 186 Fed. 2d 1 (1950).

⁴ Federal Register, pt. II, pp. 10063-10073, Oct. 12, 1962.

for such an exception. Therefore, I joined the majority of the Commission which ruled in his favor.⁵ As a result, many suggestions were made for the repeal of section 315 and for its amendment, including an amendment to the law which I suggested⁶ to permit a reversal of this ruling in future cases of this kind. Hearings were held on this matter before congressional committees which resulted in the 1959 amendments. This section now reads as follows:

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

(1) bona fide newscast,

(2) bona fide news interview,

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

(4) on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto), shall not be deemed to be use of a broadcasting station within the meaning of this subsection. Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this 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 for any of the purposes set forth in this section shall not exceed the charges made for comparable use of such station for other purposes.

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

It was hoped that these amendments would end all of our problems although the Congress indicated its skepticism by asserting its intention to review the results of these amendments from time to time. It seems to me that the amendments have only added problems to those previously resolved. We are now called upon to decide whether various types of talk or variety shows are bona fide news interview shows; whether debates by candidates before nonpolitical conventions are on-the-spot coverage of news; whether issues arising between a candidate on a section 315 broadcast with an outside political group entitle the later group to an opportunity to reply under the fairness doctrine; whether the use of film clips of a candidate's picture and voice in simulated debate is "material broadcast" over which there is no censorship; whether the master of ceremonies on a variety show who regularly attacks one candidate and supports his opponent entitles the offended candidate to an opportunity to have a spokesman reply under the fairness doctrine; and so on. To decide these issues requires hair-splitting, rapid-fire statutory interpretation of section 315 and policy determinations under the fairness doctrine. The wonder is that there is not more bitterness toward the Commission on these issues, but somehow most of the time we seem to find fairly reasonable solutions to these problems.

There are two important and significant problems in this area, however, that we never reach. The first of these involves election returns. Polls close in some Eastern States at 6 or 7 o'clock eastern standard time. Polls in Western States close about the same time, but because of the time difference a 3- or 4-hour time lag in poll closing exists. During this period the networks pour the returns of Eastern States into Western States. A good many voters like to be on the winning side and will follow an early trend which could have a decisive effect in a close election. To me, the practice of the industry in broadcasting election returns can easily open them to the charge that the industry, in its desire to be helpful in disseminating news, in fact, is interfering with the election processes in numerous Western States.

⁵ 18 Pike & Fischer, RR. 701.

⁶ Hearings before Senate Communications Subcommittee, 86th Cong., 1st sess., on S. 1585, et al., p. 297.

I recognize that the news services will continue to transmit news and broadcasters will quote it and newspapers will print it, but that does not have the immediacy of on-the-spot coverage of the tabulation of results or of interviews on how the election is going.

The second problem we do not reach is that of money. The philosophy of section 18 of the Radio Act of 1927 carried forward into section 315 of the Communications Act of 1934 was probably best stated by Senator Howell when he said:

"We furthermore provided in this bill that if one candidate was allowed to address his constituency his opponents should be allowed to make address also, and if all could not have this privilege then no one should have the privilege. Is not that fair and just?"

Yet the truth of the matter is that in practice the candidate with the most money gets the most time. The candidate whose supporters have the most money at the present time get the most spot announcements and other types of commercial time.⁷ This is all proper under the provision of section 315 but if it continues we may soon be selecting all of our public officials from those with large bank accounts who are willing to spend it rather than from those who can best serve the public interest. Perhaps equality of time for supporters and opponents of candidates must be considered in order to achieve the fairness we all desire in the use of broadcast facilities in political campaigns. It, therefore, appears to me that section 315 should be repealed or revised in such a way as to correct these inadequacies which the present language does not reach. Moreover, more specific guidelines are needed to reduce the number of questions submitted to the Federal Communications Commission during election campaigns and to enable the Commission to more quickly resolve those which it does receive.

I would like to turn now to our report on editorializing by broadcast licensees and develop a little of the history of the fairness doctrine contained therein and our policy on the broadcast of controversial issues. In this area, in the absence of specific congressional action, the Commission has the authority under the broad standard of the public interest, convenience, and necessity to fill in the gaps which it has done very well. In 1941 the Commission had under consideration the application for renewal of license of station WAAB, Boston, Mass., which was owned by the Yankee Network, Inc., and a competing application for the frequency of station WAAB by the Mayflower Broadcasting Corp. The latter application was denied because it was found not to be financially qualified.

In considering the renewal of station WAAB, the Commission noted the fact that beginning early in 1937 and continuing through September 1938 it was the policy of the station to broadcast editorials urging the election of various candidates for political office or supporting one side or another of various questions in public controversy. No pretense was made at being objective, impartial, or at impartial reporting. The Commission found these practices had ceased and renewed the license of station WAAB. In its decision, however, the Commission stated:

"Radio can serve as an instrument of democracy only when devoted to the communication of information and the exchange of ideas fairly and objectively presented. A truly free radio cannot be used to advocate the causes of the licensee. It cannot be used to support the candidacies of his friends. It cannot be devoted to the support of principles he happens to regard most favorably. In brief, the broadcaster cannot be an advocate."

No useful purpose would be served by reviewing the heated discussions which the Mayflower case provoked during the ensuing years. As in many other areas, the wide differences of opinion on the subject led to a reappraisal of this problem. Thus in 1948 the Commission, on its own motion, ordered a hearing because of its belief that further clarification of the obligations of broadcasters in the field of news, commentary, and opinion, was advisable.

In its report of June 1, 1949, in this matter, the Commission concluded that the expression of editorial opinion by broadcast licensees within reasonable limits and subject to the general requirements of fairness was not contrary to the public interest.

⁷ I wonder what would happen if the spokesmen for one candidate demanded an opportunity to reply (free) to paid spot announcements by his opponent's supporters on the ground that they raised controversial issues not covered by sec. 315, but by the fairness doctrine. This one problem not yet raised before us, points up how inextricably entwined broadcasts by candidates and the fairness doctrine have become.

The Commission was careful in its report to point out that broadcast editorials were only one of many facets of the larger problem; namely, fairness in the presentation of news, comment, or opinion.

The report then reviewed the principles of fairness and the treatment of controversial issues. In the course of considering this question, the Commission stated:

"It has been suggested in the course of the hearings that licensees have an affirmative obligation to insure fair presentation of all sides of any controversial issue before any time may be allocated to the discussion or consideration of the matter. On the other hand, arguments have been advanced in support of the proposition that the licensee's sole obligation to the public is to refrain from suppressing or excluding any responsible point of view from access to the radio. We are of the opinion, however, that any rigid requirement that licensees adhere to either of these extreme prescriptions for proper station programming techniques would seriously limit the ability of licensees to serve the public interest."

In paragraph 9 of this report, the Commission stated:

"We do not believe, however, that the licensee's obligations to serve the public interest can be met merely through the adoption of a general policy of not refusing to broadcast opposing views where a demand is made of the station for broadcast time. If, as we believe to be the case, the public interest is best served in a democracy through the ability of the people to hear expositions of the various positions taken by responsible groups and individuals on particular topics and to choose between them, it is evident that broadcast licensees have an affirmative duty generally to encourage and implement the broadcast of all sides of controversial public issues over their facilities, over and beyond their obligation to make available on demand opportunities for the expression of opposing views. It is clear that any approximation of fairness in the presentation of any controversy will be difficult if not impossible of achievement unless the licensee plays a conscious and positive role in bringing about balanced presentation of the opposing viewpoints."

The Commission's report stands for the major proposition that broadcast licensees have the duty to devote a reasonable percentage of their broadcasting time to the discussion of public issues of interest in the communities served by their stations—that such programs should be designed so that the public has a reasonable opportunity to hear different opposing positions on the public issues of interest and importance in the community—and that such discussion of public issues can include the identified expression of the licensee's personal viewpoints. The standard prescribed by the Commission for a fair presentation of controversial issues which would also apply to editorials of a controversial character is "an affirmative duty generally to encourage and implement the broadcast of all sides of controversial public issues over their facilities."

Many members of the Commission since this report have sought in various ways to encourage the broadcast of controversial issues and of editorials by broadcasters. It should be observed, however, that as this industry matures, as it more and more forges into positions of leadership in communities throughout the country, more problems involving the fairness doctrine will arise. We at the Commission have recently decided to rule immediately on fairness cases rather than hold them over until renewal time. Our purpose is to further encourage the broadcast of editorials and controversial issues and to build a body of precedent. This will enable us at some time in the future to issue a "Controversial Issue Primer" as a companion to the "Political Broadcast Primer." During this past campaign, as I have stated, a number of fairness questions arose in connection with section 315 broadcasts which would seem to further complicate this dual approach. Upon reflection, therefore, I have come to the conclusion that these two matters—broadcast facilities for political campaigns and controversial issues should all be handled together in the same way.

I would suggest the repeal of section 315 (which I did once before as a second choice)⁸ and the enactment of a new section which would give the Commission the authority to make rules, regulation, and interpretation on the use of broadcast facilities for political campaigns, and for affording a reasonable opportunity for the discussion of conflicting views on issues of public importance. I would

⁸ Hearings before Senate Communications Subcommittee, 86th Cong., 1st sess., on S. 1585, et al., June 18, 1959.

further urge that an appropriate congressional committee convene representatives of the networks, political parties of national importance (so as not to exclude splinter parties), the National Association of Broadcasters, the Commission and such other groups as seem appropriate into a working group under the committee staff for the purpose of writing into a committee report as many examples as possible of rulings on the various questions presented to achieve fairness in political campaigns and in the broadcast of controversial issues.

This procedure of convening interested parties was used with great success to solve the many vexatious problems involved in the payola legislation, and I believe it can be equally effective in solving these problems. It will permit the people most experienced with political broadcasts and controversial issues to write guidelines for committee approval in the legislative history of such a law for the exercise by the Commission of this new authority and yet not freeze into inflexible statutory language all of the details. Moreover, this would provide the means for clarifying the confusion that exists today between the statutory requirements of section 315 on the use of broadcast facilities by candidates and the fairness doctrine imposed by the Commission in its report on editorializing by broadcast licensees.

I appreciate the the opportunity to present to you today what I consider a very practical program for finding a solution for this 35-year-old problem.

Mr. FORD. The difficulty principally that I have found with 315 as it exists is that originally they undertook to cover all this controversial matter in one section. This just did not work. And it was confined to the candidates, as the history of it will show.

And then we added the amendments. We put in a flexible fairness doctrine, and combined that with the mechanical doctrine. And so you have got the ingenuity of campaign managers, that have just about driven broadcasters wild during the last election. And it is a résumé of the kind of problems that were almost insoluble, created by the present form of section 315.

And so, to make it short, I was very hopeful that since this was not an election year, the committee would feel justified in spending a little time on this particular problem and going into it in depth.

I support enthusiastically the statement of the Commission on the particular bill that is before the committee, so that the committee may not want to involve this problem in the consideration of this particular bill. But I would be hopeful that—and just to summarize the means of finding a solution that I came up with after studying this problem, is to borrow from Senator Harris' technique in solving the payola problem.

There the Commission had authority to make rules and regulations; but if the committee would convene the three networks, the National Association of Broadcasters, representatives of the political parties, and put them in a room as Chairman Harris did with the payola problem, to come up with around a hundred examples of what you can do and what you cannot do, then the Congress would have control of the rule that you would have, and what was fair in these hundreds of different situations.

And then it seems to me the broadcaster would be fully informed; the candidates throughout the country would be fully informed; and we would solve this 35-year-old problem.

I do not see any other way, because every time that I have tried to draft—and I have drafted a section, I think, that perhaps was the forerunner of the present amendment of 1959—every time I try, I find that an across the board rule just causes all sorts of problems.

You cannot be inconsistent in a statute; but you can be inconsistent in examples. And I think one of our problems, here, is that we are dealing with something that does not have a degree of consistency throughout.

So if this sort of a mechanical means were adopted, I believe that probably the broadcasters could bring in dozens of problems, like the 20 candidates raised this morning. When you give a man 3 minutes, how much do you give the others? Do you have to give them 3 minutes, or what do you do?

It seems to me these particular problems that the members of Congress have been faced with in campaigns, and the answers to those problems, in a committee report, which we could then incorporate into our rules, would be the means of our ultimately solving this problem.

And I would do this by repealing section 315(a) and substituting for it that the Commission shall have the authority to make rules, regulations, and interpretations for the use of broadcast facilities for political purposes.

And then the Congress would give its guidance with all these examples, and the Commission then could fill in the gaps on the unusual situations and report those to Congress as they arose.

Mr. ROGERS of Texas. Mr. Commissioner, do I understand you to say that you are for the repeal of 315(a)?

Mr. FORD. Under the conditions which I specified. That is right.

Mr. ROGERS of Texas. So long as there was a substitution in the law giving the Commission authority to make rules and regulations to govern political broadcasting—

Mr. FORD. That is right. But with a committee report that spells most of it out.

Mr. ROGERS of Texas. Well, I get letters every day saying that Congress is delegating all of its powers downtown. What would you say in that case?

Mr. FORD. You could say in that instance, sir, that you had spelled out in 100 examples exactly what you could expect the Commission to do, and that you had not delegated it, but merely told them what to do.

Mr. ROGERS of Texas. Would that not vest the Commission, though, with the power, and once you gave it that power, would it not vest it with the power to make its own interpretation?

Mr. FORD. With a legislative history of that sort, sir, I do not think this Commission has ever been guilty of a violation of that sort.

Mr. ROGERS of Texas. I am sure of that. But I am not thinking of the present Commission.

Mr. FORD. I do not think anybody has ever been on the Commission downtown that is going contrary to an example that is in a congressional report specifically telling them what to do, adopted by both Houses of the Congress.

Mr. ROGERS of Texas. That is very interesting. As a matter of fact, as I say, I think we are all pretty well for suspending this rule, insofar as the presidential and vice presidential nominees are concerned. I think the big problem is one of how far we should go in the overall picture.

Mr. FORD. In this particular instance, I would stay with the bill that is before the committee. But I was hopeful that you would go into this major problem, which I think is going to get more complicated in the next election, since we have a little experience.

For instance, I will give you one example only, in which a public service group, which had a political tinge to it, took offense at a statement made by a candidate in a 315 broadcast, and demanded an equal opportunity to present its side.

So the question is: Does the fairness doctrine come in conflict with 315? All sorts of questions of this sort.

Mr. ROGERS of Texas. What kind of an organization did you say that was?

Mr. FORD. Well, it was in Pennsylvania. I do not remember the name of the organization up there.

Mr. ROGERS of Texas. You said it was a public service organization tinged with politics?

Mr. FORD. With a political tinge. Actually, it was a political organization.

Mr. ROGERS of Texas. I think there are several of those running around the country. I will not press you for a name.

Mr. FORD. It was not a pink organization, so far as I know. I do not even remember the name of it. But they took positions for and against political candidates.

So here I hope the committee can see its way or find time to set up this sort of a solution.

Now, I do not think—in the studies I have made, I have found nothing else except going back to the rigid mechanical formula which was found unsatisfactory.

Thank you.

Mr. ROGERS of Texas. I think this: I think we have a situation where we are going to have more controversy coming out of a noncontroversial subject than we have had in a long time.

The matter before us is not controversial. I have never seen anything controversial about it. I think you are exactly right. I think an exhaustive study must be made.

I think Mr. Harris had some questions he wanted to ask.

Mr. Harris.

Mr. HARRIS. Do you agree, Mr. Ford, that in order that there would be no delay, we should go ahead and again suspend section 315, so that the industry would know what to expect next year?

Mr. FORD. Yes, sir, very definitely.

Mr. HARRIS. I think there is some merit to your suggestion on a long-range basis that a lot more attention should be given to this subject.

Mr. MINOW, had you given any thought to specific suggestions to meet the problem that you raised?

Mr. MINOW. Yes, Mr. Chairman. We would suggest one of two things. If you want to have this apply to nominees only, then we have worked out some language which we can supply to your staff which would put a time period on it. Make the suspension apply, let us say, only after September 1 or September 15, 1964. By that time, the major parties will have selected their nominees. So that would be one way of solving it.

If, on the other hand, it is the congressional desire to have it apply prenomination, then we suggest that the word in the statute, rather than the word that presently appears, which is "nominees," be replaced with the term "legally qualified candidate," which has an accepted meaning now under the act, and on which we have had a number of rulings using that term, "legally qualified candidate."

So, in other words, we have a specific suggestion to go in either direction, as the committee wants to go, in the way of policy.

Mr. HARRIS. I believe Mr. Sarnoff suggested this morning that this suspension be extended to candidates prior to the convention.

Do you have a suggestion that would meet that?

Mr. MINOW. We could. If that is the direction the Congress wants to go, we have some specific statutory suggestions to accomplish that.

Mr. HARRIS. On the other hand, should it be limited to the nominees after the conventions have acted?

Mr. MINOW. As I say, this is a matter of policy that I do not think we are experts in.

Mr. HARRIS. Before, it was applicable to those nominees after the convention?

Mr. MINOW. Yes. You see, it was not passed until a time subsequent to August, I believe. It was after both nominees for President and Vice President had been selected by the two major parties.

Mr. HARRIS. Mr. Minow, you get your authority from the provisions of the act?

Mr. MINOW. Yes, sir.

Mr. HARRIS. You do not intend at any time that the Commission or any commission should go beyond the provisions of the act which they are charged with administering?

Mr. MINOW. No, sir.

Mr. HARRIS. Do you get involved with ambiguity from time to time in interpreting the act?

Mr. MINOW. Yes, sir, we certainly do.

Mr. HARRIS. Is there any ambiguity in section 315, as Commissioner Ford seemed to indicate a moment ago?

Mr. MINOW. Well, I can tell you that in deciding specific cases, for example, as to what is a bona fide news program, you get into some areas that reasonable people could differ about in judgment.

As to whether that is a bona fide news program, or whether it was not.

Mr. HARRIS. The committee report of 1959 describes that pretty well, I think.

Mr. MINOW. Yes, sir, and I would say our experience in the last election, even though we had a lot of problems, was that we were able to decide them almost unanimously. But speaking personally, I can tell you sometimes I could have gone one way or the other and felt that I was consistent with the act.

Let me give you an example of what I mean. In California, the wire services—I think it was either the UP or the AP—invited the two candidates for governor, Mr. Brown and Mr. Nixon, to appear in a debate. Then, if I am not mistaken, all three television networks televised this, and put it on.

This was at a convention of newsmen, or a business group. I do not remember. It was something that was not scheduled, in other words,

by the broadcasters. It was at some business group, and the networks televised it.

The candidate of a minority party—I think it was the Prohibitionist—then said, “I am entitled to have a half an hour of time.”

And the networks said, “No, that was a bona fide news program that we put on.”

And the Commission decided it was not a bona fide news program; although I tell you frankly I could have voted either way, I think, with equal confidence, because I thought it was a very, very close question.

Mr. HARRIS. It was not a news interview, then?

Mr. MINOW. No, but it was not something that the broadcasters had created. It was something that was going on, that they chose to cover.

Mr. HARRIS. Well, now, do you feel that the amendment to the 1959 amendment is limited only to what the broadcasters themselves originate?

Mr. MINOW. No. I do not. But that is I think one of the factors that you take into account.

I would like, Mr. Chairman, to submit to you, if I could, all of the rulings that we had in the last election. And I would very much welcome it if the committee would review them and tell us whether we were consistent with the act, because some of them were very, very close.

Mr. HARRIS. Well, now, would you say that this incident that you referred to was a bona fide news event?

Mr. MINOW. We felt, under the particular circumstances there—and when I say “we,” I mean all the Commissioners and also our staff recommended to us, that it was not within the spirit of the 1959 amendment.

Mr. HARRIS. What do you think is meant by “on-the-spot coverage of news, including but not limited to political conventions and activities incidental thereto?”

Mr. MINOW. Could I ask Commissioner Ford to comment on it?

Mr. HARRIS. Yes.

Mr. FORD. Our difficulty here was—and I can tell you that it was a very tough choice for me to make—that if we had held that this was on the spot coverage of a bona fide news event—that is, section 4, subsection (a) (4)—then we would open the door immediately so that any time you wanted to get two candidates on, in the situation, for instance, where 20 were running, then you would get a convention together of news men or of any kind of a business group, and get the two candidates you wanted before that business group, and you have got an on the spot coverage of news event exempt from equal opportunities.

And it seemed to us that this was not the kind of thing that the Congress had in mind when they said “on-the-spot coverage of news.” They did not mean a contrived news event, but they meant, for instance, a political convention, something of major importance.

You could have all sorts of things to escape the provisions of 315. And consequently, we arrive at the conclusion that it was not within the exemption.

Mr. HARRIS. Commissioner Ford, I do not think there is any question but what the Congress had in mind political conventions at the

time this particular item was included. We had one other thing in mind, too, which I think is fundamental, which Dr. Stanton and others have argued at great length here today: That is as to whether or not the Government, under our system, here, should be deciding what is a news event and what is not.

It seem to me that we are going pretty far toward censorship if we are going to take away from the broadcaster the right to determine, with reference to the provisions of these exceptions, as to what is a bona fide newscast, or what is a bona fide news interview, documentary, on the spot coverage.

Now, when we get into the business of the Government itself and the Congress trying to decide this, I just wonder if we are not getting into an area which under our system will be impossible to define.

Mr. FORD. Section (c) of 315 provides that the Commission shall prescribe appropriate rules, and regulations, to carry out the purpose of this section. We have a few regulations under it. But under that regulation, we publish this primer.

Now, in the event that the Commission—it was not intended, as I remember the legislative history, it was intended that we rule specifically—but if it was intended that we do not rule specifically, and then there is no power under the sun that can stop a broadcaster from calling it any time he puts a candidate on, under any circumstances, a news event. And you have no section 315.

Mr. HARRIS. I don't know whether I see it that way at all, Commissioner.

Mr. FORD. I may be wrong.

Mr. HARRIS. Is not the bringing together of two major political candidates in a hall where there is a large crowd present, is not that a bona fide news event? Perhaps, I do not appreciate the definition of a bona fide news event.

Suppose, you have a political gathering out here in community X. You have got one candidate that is going to go out there and make a speech. The meeting itself catches the attention of the people—Does it then not become a news event?

Are we going to deprive the people under this strict interpretation which you suggest here, of the broadcasting of this event?

Mr. FORD. Well, as I have said earlier, if that is correct, we did not believe it to be, but if that is correct, then any speech by a candidate seems to me to be a news event, and there is no section 315. If the Commission is not going to make that determination, and the broadcaster makes that determination, there is no control, and again I think that the section is totally ineffective.

Mr. HARRIS. Well, I am not trying to argue with the decision that you have already made. I am just trying to find out how you interpreted provisions of law which were adopted by the Congress.

Mr. FORD. May I add that one of the most difficult problems we had throughout the campaign—and as Chairman Minow read you the statistics—we had numerous complaints and questions with respect to these four categories. And one of the difficulties we had was obtaining sufficient facts.

There was a program in New York on one of the independent stations up there, and they contended that it was a news interview. And so we got into the question of whether it was. And we had a terrible

time getting the facts, as to what kind of a program it was, and we would write and ask them, and they would write back with a lot of description, but really did not give us the essential elements. And ultimately we found out what the program was.

Sometimes it was a news interview. Sometimes it was something else. The master of ceremonies would get a man on the program, and if he was interesting, he would let him talk, and if he was not, he would take over and do all the talking himself; thrust him aside, maybe get rid of him, and go on to all sorts of things that really were not in a news interview type program.

Mr. HARRIS. I was under the impression that we acted rather specifically on that in connection with these amendments. I think on the basis of the language of the act itself and the language of the Committee and of the conference report, it was clearly understood that should a man go out and have a little political gathering of his own constituents, sort of a private affair to promote his own campaign, that would not be bona fide at all.

If such a program was arranged, and you call it a news interview, that is an effort to get around the provisions of the statute itself.

But where you have events, as for example in my part of the country, in northeast Arkansas, where every year they have a cotton picking contest, are these not public events. And are you telling me that if a candidate happens to appear on these programs, under the interpretation you placed here, that is in violation?

Maybe this comes in the category of the hundred questions I talked about which we should sit down and discuss.

Mr. FORD. You beat me to the answer. You saw it coming.

They have a big Ford family reunion in West Virginia, and I will remember this maybe some day.

No; that was the answer I was going to make, sir. I think the discussion we have just had exemplifies the necessity for the Congress to review all of these situations and come up with their political judgment and their Congressional judgment on what the solutions in these situations should be.

Now, we take a statute, and we take the legislative history of it, and we probably put two or three lawyers working on this, and we dig and dig to try to find out exactly what Congress intended us to do. We are up here, and we read the reports and use our best judgment, and I think the Chairman presided at those hearings, and here we have a difference of opinion on what the results should be.

Whereas if we had these spread out, as you did in the payola situation, in which we have had no difficulty in interpretation, then I think perhaps we might solve this vexing problem.

Mr. HARRIS. I think one of the things there that was the crux of the whole thing was that we wound up ultimately with a penalty, too. If you provide for a penalty the Constitution requires that you get down to points and to be specific, because people cannot be in doubt and take a chance on being in violation.

Mr. FORD. Mr. Chairman, there is one thing your statement suggested to me, and that is that at the end of the Communications Act, section 503, there is a penalty for the violation of the Communications Act, a willful violation. So if the Commission were to make a ruling, and assuming this ruling was legally correct, and the station

deliberately refused to comply with what the law required, then he would in fact be subject to 503, which is a criminal penalty.

Mr. HARRIS. But I do not think, Commissioner, by any stretch of the imagination, you would feel the Congress ought to impose that kind of a burden on the Commission, to try to use the penalty section where there are great differences of opinion not only among Commissioners but among other people.

Mr. FORD. No; this would have to be a court matter. This would be criminal with respect to a court; not a small fine situation.

Mr. HARRIS. The Commission gets its broad general authority from section 307(a): "The Commission, if public convenience, interest, or necessity will be served thereby, subject to the limitations of this act, shall grant to any applicant therefor a station license provided by this act."

Is that the broad general authority that you have, that you referred to, the public interest standard?

Mr. MINOW. Yes, sir.

Mr. HARRIS. Is there any other authority in the act with reference to the public interest that you rely on?

Mr. MINOW. Well, I think the first section of the act, Mr. Chairman, which establishes the purpose; and I believe also that there are other sections which make the public interest, convenience, and necessity the guiding standards of the act.

Mr. HARRIS. Now, when you have these broad general provisions of law, then you try to provide rules and regulations to carry out the intent of Congress?

Mr. MINOW. Yes, sir.

Mr. HARRIS. But if the act, then, in some particular section, includes a very definite and positive statement on any particular problem, then do you try to follow the specific statement in applying it to the facts at hand, or do you then still apply the broad general rule?

Mr. MINOW. Well, Mr. Chairman, I think we can read the act as a whole, but wherever there is something specific, we try to follow the specific direction of the statute.

Mr. HARRIS. And you think if the Congress provided something specific, it meant what it says?

Mr. MINOW. Exactly.

Mr. HARRIS. I hope you do not hold this against me, now, after leading you into this, because I want to ask you some questions about a situation where in my judgment what the Commission did does not square completely with what you have been saying.

As an example, you have been talking, in answer to questions over here, about the application of the rule of fairness in the public interest regarding political broadcasts. And then you refer to Supreme Court decisions, which you think, make it very clear to the station that they are expected to proceed with political broadcasts.

Mr. MINOW. Yes, sir.

Mr. HARRIS. Now, when a station gets a letter from the Commission in which there is a pretty strong hint that, "You had better do something about this," that station is usually going to do that, is it not?

Mr. MINOW. Unless it thinks we are wrong.

Mr. HARRIS. Well, sometimes if they think you are wrong, they are probably going to do it anyway, in order to avoid having it thrown

up to them when they come around again for renewal of license, later on.

Mr. MINOW. I think that is a judgment they make, depending on their view of the law.

Mr. HARRIS. But your statement earlier in the day that you have had pretty good success, ordinarily, that in almost every instance stations have cooperated——

Mr. MINOW. That is right, sir.

Mr. HARRIS. That is commendable in itself.

Now, that being true, how can you, in the administration of it, overlook this language that is in the act, in section 315, in reference to the right of the station itself, which has been there since 1934? It is still there, and I read:

No obligation is imposed upon any licensee to allow the use of its station by any such candidate.

Now, what does that mean, in your opinion?

Mr. MINOW. I think it means that with respect to this, particularly going into the history of it, with respect to political broadcasting, a station is like a common carrier. It cannot refuse anyone its facilities.

Mr. HARRIS. Are you sure you mean that?

Mr. MINOW. Wait a minute.

Excuse me, Mr. Chairman. I misspoke. It was the contrary.

That was debated at the time of the act. That all is set out in Commissioner Ford's history. And it was decided that they were not required to make their facilities available.

Mr. HARRIS. In other words, any station that makes the decision that it does not want to carry political broadcasts has the right, under this language, to make such a decision?

Mr. MINOW. Under this language. But, Mr. Chairman, I do not think that that is the whole story. I think you have to take it as the section has been interpreted by the courts.

Mr. HARRIS. Well, of course, I know that in the administration of the law it is traditional that a Government agency must comply with court decisions, though in many instances I can assure you that such decisions do not necessarily reflect the intent of the Congress correctly.

But the court is, under our system, the last word. But do you not think it is the duty of the Commission to try to interpret strictly when such specific language is included in the act, and follow what is intended thereby?

Mr. MINOW. I think so, in the light of how the courts have interpreted the law.

Mr. HARRIS. And you say the courts have construed this particular language?

Mr. MINOW. Could I have Commissioner Ford make a statement about that? I think he is more familiar with that than I am.

Mr. FORD. We have two or three rulings down at the Commission, in which we have used the broad language of public interest, convenience, and necessity—and I do not recall the names of those cases right now—in which we said that broadcasting stations that arbitrarily refused any broadcasts were not within the protection of this section.

Now, at a recent hearing before the Senate committee, the committee questioned this, just as the Chairman is questioning it right now. And our general counsel made a ruling on it. And he ruled that we were wrong; that the station that arbitrarily refuses any political broadcasting is entirely within his rights.

And I might say I just found that out a few minutes ago. I have been laboring under the belief that our rulings on this question were correct, and that this was a proper interpretation of the public interest clause, and in addition to that this particular clause.

But an opinion of our general counsel indicates that this is wrong; that the broadcaster has the absolute right under this particular language to refuse to carry any political broadcasts.

Mr. HARRIS. Now, when was this decision finally reached?

Mr. FORD. In 1962, July 24, 1962.

Mr. HARRIS. What case is involved?

Mr. FORD. I will turn this over to the general counsel, if the committee will permit.

Mr. HARRIS. I think it is important, because this has come pretty much home—

Mr. PAGLIN. In the hearings held before the Senate committee in July of 1962, the question was raised specifically as to whether or not a licensee who had arbitrarily refused any time for political broadcasts—in those circumstances, did the Commission have the right to order him to allot such time for such broadcasts, leaving the time of the broadcasts and their format up to his judgment?

The memorandum which we submitted at the request of the chairman of the Senate committee dealt solely with the legal problem involved. And our opinion was, in the circumstances of the question given, that where a licensee had arbitrarily refused to afford any time, such as I have indicated, for political broadcasts, the Commission did not have the legal authority to order the licensee to afford time.

And the memorandum deals with a subsidiary question, and that is to say in the broader obligation of the licensee to operate his station in the public interest, as the chairman has indicated, the Commission had held that it was within the confines of that obligation for him to afford time for political broadcasts, since this was one of the most significant and important aspects of his operation.

He also referred to the fact that the Supreme Court in the WDAY case cited that statement of the Commission with approval.

What we were saying in this memorandum was that though the act gives us certain sanctions and certain authority with respect to other things in the act, it did not, because of the language you cited, Mr. Harris, give us the legal authority to order him to comply with section 315 in that respect, so as to afford some time.

We did not say, however, that this in any way cut down on the Commission's authority to pass upon the question as to whether or not he was operating his station in the public interest overall.

Say, for example, that renewal time—

Mr. HARRIS. Now, do you have in mind that the Commission could consider that if a man chose to comply with the provisions of the law

which says no obligation is imposed upon any licensee to allow the use of its station by any such candidate, that the other broad general provisions of the law with reference to public interest requirements supersede this specific provision, this positive provision, and therefore the Commission is authorized to refuse to renew his license?

Mr. PAGLIN. What I am saying, Mr. Harris, is that in terms of the authority given, not only the authority but the duty placed on the Commission, to assure that stations are operating in the public interest, the escape clause of section 315 to which you have reference does not take care of the entire problem.

That is to say, this language speaks in terms of allowing the use of its station by a candidate. The Commission has held, as I indicated before, that the use of a broadcast station, in terms of the political interests of the community, is something which is high up in the public interest area, and that the Commission, as I said before, has indicated that the use of the station for the benefit of the community in the political area is something which is of importance to the community.

These two propositions are not necessarily mutually exclusive, and we have elaborated on the differences between the two areas in this memorandum. And if it would help the record in this hearing, we would be happy to supply a copy of this memorandum.

Mr. HARRIS. I would like to have a copy of the memorandum included with this discussion, Mr. Chairman.

Mr. ROGERS of Texas. Is there objection?

The Chair hears none. The memorandum will be included.

(Memorandum referred to follows:)

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., May 6, 1963.

HON. OREN HARRIS,

Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR CHAIRMAN HARRIS: As you know, hearings were held March 4, 1963, before the Communications and Power Subcommittee of the House Interstate and Foreign Commerce Committee, on House Joint Resolution 247 to suspend the equal opportunities provisions of section 315 with respect to nominees for the offices of President and Vice President during the 1964 campaign.

At those hearings, you raised a question with respect to the interpretation of the second sentence of section 315 with particular reference to whether it precludes the Commission from considering, under the general public interest standard, whether a licensee is failing to meet the needs and interests of his community by arbitrarily refusing to carry political broadcasts.

I am transmitting herewith a copy of a memorandum which the Commission has prepared in answer to this question. I trust that the material therein will provide you with the desired information.

A copy of the memorandum has been supplied to Chairman Rogers for incorporation into the record.

The memorandum was adopted by a 5-to-1 vote (Commissioner Hyde absent). Commissioner Lee is of the opinion that the second sentence of section 315(a) means exactly what it says; that since Congress spelled out in the act its own "fairness doctrine" with respect to the handling of broadcasts by political candidates, it is not within the province of the Commission to give any other interpretation; and, finally, that if Congress meant to imply or infer that a licensee is under a duty to allow the use of its station initially by a political candidate, then Congress should undertake to clarify its intent.

Sincerely yours,

NEWTON N. MINOW, *Chairman.*

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., May 6, 1963.

HON. WALTER ROGERS,
Chairman, Subcommittee on Communications and Power, Interstate and Foreign
Commerce Committee, House of Representatives, Washington, D.C.

DEAR CHAIRMAN ROGERS: At the hearings held before your subcommittee on March 4, 1963, on House Joint Resolution 247 to suspend the equal opportunities provision of section 315 with respect to nominees for the offices of President and Vice President during the 1964 campaign, Mr. Harris raised a question with respect to the interpretation of the second sentence of section 315. He inquired specifically as to whether that sentence precludes the Commission from considering, under the general public interest standard, whether a licensee is failing to meet the needs and interests of his community by arbitrarily refusing to carry political broadcasts.

I am transmitting herewith a copy of a memorandum which the Commission has prepared in answer to this question. I trust that inclusion of this memorandum will complete the record on this point. I have supplied a copy of the memorandum to Chairman Harris.

The memorandum was adopted by a 5-to-1 vote (Commissioner Hyde absent). Commissioner Lee is of the opinion that the second sentence of section 315(a) means exactly what it says; that since Congress spelled out in the act its own "fairness doctrine" with respect to the handling of broadcasts by political candidates, it is not within the province of the Commission to give any other interpretation; and, finally, that if Congress meant to imply or infer that a licensee is under a duty to allow the use of its station initially by a political candidate, then Congress should undertake to clarify its intent.

Sincerely yours,

NEWTON N. MINOW, *Chairman.*

MEMORANDUM OF THE GENERAL COUNSEL, FEDERAL COMMUNICATIONS COMMISSION,
JULY 24, 1962

This memorandum deals with the following question: Where a licensee has arbitrarily refused to afford any time for political broadcasts, does the Commission have the authority, in passing upon a complaint, to order the licensee to afford some amount of time for such broadcasts (the amount of time and the broadcasts to be presented, of course, being matters for the licensee's judgment)? The memorandum deals with the question solely in legal, rather than policy, terms.

The Commission can clearly issue an order, after appropriate proceedings, requiring a licensee, which has made its facilities available to one candidate, to provide equal opportunities to all other candidates for the same office. Section 315(a) explicitly imposes such an obligation on the broadcast licensee. Under section 401(a),¹ the United States could sue to require compliance with this provision of the act. Under section 312(b),¹ the Commission could issue an order requiring the licensee to cease and desist from violating section 315. If, after appropriate proceedings under section 312(c), the licensee did not comply with the Commission's order, the United States could apply under section 401(b)¹ to a district court for enforcement of the order.

However, there is no similar provision in the act requiring the licensee in the overall operation of his station and in the absence of his having started any "chain reaction," such as contemplated in the foregoing paragraph, to afford a reasonable amount of time for political broadcasts as such. The 1959 amendment to section 315 explicitly refers to "the obligation imposed upon [broadcast licensees] 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." But this does not, in my opinion, require the licensee to present political broadcasts; it is, in terms, broader in scope (i.e., " * * * issues of public importance"). In any event, the legislative history establishes that this provision is simply a statutory recognition of the Commission's "fairness doctrine" (S. Rept. 562, 86th Cong., 1st sess., pp. 13, 19; H. Rept. 1069, 86th Cong., 1st sess., p. 5).

The Commission, under the public interest standard (secs. 309, 307), has enunciated the policy that, as a general rule, the licensee must afford a reason-

¹ See appendix attached.

able amount of time to political broadcasts. (See, e.g., "Programming Statement of July 29, 1960," p. 15: "Report on Editorializing," 1 (pt. 3) Pike & Fischer, R.R. 91:201.) This policy was noted with approval by the Supreme Court in the *WDAY decision* (*Farmers Educational and Cooperative Union of America, North Dakota Division v. WDAY, Inc.*, 360 U.S. 525).

This policy, as with other programing policies, is implemented by the Commission at renewal time. The Commission then examines the applicant's overall record and proposals in order to determine whether a renewal would serve the public interest. A licensee which had afforded no time to political broadcasts, and which had refused requests for such broadcasts, would have the considerable burden of demonstrating why such a pattern of operation is consistent with the public interest.

The Commission thus proceeds in this area under a general policy formulated in particularization of the public interest standard. However, in the absence of an explicit statutory provision or Commission regulation, I do not believe that the Commission could issue an order directing the licensee to afford a reasonable amount to political broadcasts. Commission orders issued as a result of its various licensing and allied proceedings (e.g., original licensing, renewal, revocation, etc.) are, of course, enforceable under section 401(b). Prior to 1952, Commission orders were restricted to such proceedings. In 1952, the Congress gave the Commission the authority to issue cease and desist orders. But that authority is limited to three specific situations—(1) where the person has failed to operate substantially as set forth in the license; (2) where he has failed to observe the provisions of the act or certain sections of the Criminal Code; and (3) where he has violated a Commission regulation or a treaty. In short, the Commission has no general statutory authority to issue orders under the public interest standard; if it did, there would have been no need for section 312(b). The legislative history of section 312(b) supports this conclusion. (See S. Rept. 44, 82d Cong., 1st sess., pp. 9-10; H. Rept. 1750, 82d Cong., 2d sess., pp. 13-14; H. Rept. 2426, 82d Cong., 2d sess., p. 20.)

Since the order in question would not come within any of the three categories listed in section 312(b), it is my opinion that, in the present circumstances, such an order could not be validly issued by the Commission.

There are, however, various other actions the Commission could take. It could, for example, issue a regulation requiring the licensee to afford a reasonable amount of time to political broadcasts. It could even require that a certain percentage of time be afforded, if it found, after appropriate rulemaking proceedings, that the public interest would be served by such a rule. I believe that such rules are within the Commission's authority. (See opinion of General Counsel B. P. Cottone, hearings before Senate Commerce Committee, on FCC policy (82d Cong., 1st sess., pp. 47-48). Again, I emphasize that I am directing myself to the legality of such a rule and not to its soundness from a policy viewpoint. *Ibid.*

As another possibility, the Commission could make use of section 1.328(c) of its rules and call up the particular station's license for renewal. The renewal hearing would, of course, be for the period after the station's present 3-year license. This could result in an immediate adjudication of the matter, with an order effective at the end of the present license period (assuming affirmance upon any court review).

It is difficult, however, to conclude any renewal hearing or cease-and-desist proceeding under section 312(c) within the relatively short period of a political campaign. It, therefore, seems to me that the most appropriate method of proceeding would be the issuance of a declaratory ruling, after consideration of the written pleadings. Such a ruling might well be reviewable in the courts, under the principle established, in the *Brigham* case (*Brigham v. FCC* (276 F. 2d 828 (C.A. 5)), where the Court of Appeals for the Fifth Circuit held reviewable a Commission declaratory ruling construing the licensee's obligations under sec. 315). See also *United States v. Storer Bctg. Co.* (351 U.S. 192); *Frozen Foods Express v. U.S.* (337 U.S. 426, 432-440); *Caples Co. v. U.S.* (243 F. 2d 232 (C.A. D.C.)). In this manner, there could be a quick Commission resolution of the matter, with an equally speedy court review. The licensee would then know precisely what his obligation was—and would, of course, act accordingly.

In sum, it is my opinion that where a licensee has arbitrarily refused to afford any time for political broadcasts, the Commission does not have the legal authority to order the licensee to afford some amount of time for such broadcasts.

APPENDIX

Section 401(a) of the Communications Act provides: "The district courts of the United States shall have jurisdiction, upon application of the Attorney General of the United States at the request of the Commission, alleging a failure to comply with or a violation of any of the provisions of this Act by any person, to issue a writ or writs of mandamus commanding such person to comply with the provisions of this Act."

Section 312(b) of the Communications Act provides: "Where any person (1) has failed to operate substantially as set forth in a license, (2) has violated or failed to observe any of the provisions of this Act, or section 1304, 1343, or 1464 of title 18 of the United States Code, or (3) has violated or failed to observe any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States, the Commission may order such person to cease and desist from such action."

Section 401(b) of the Communications Act provides: "If any person fails or neglects to obey any order of the Commission other than for the payment of money, while the same is in effect, the Commission or any party injured thereby, or the United States, by its Attorney General, may apply to the appropriate district court of the United States for the enforcement of such order. If, after hearing, that court determines that the order was regularly made and duly served, and that the person is in disobedience of the same, the court shall enforce obedience to such order by a writ of injunction or other proper process, mandatory or otherwise, to restrain such person or the officers, agents, or representatives of such person, from further disobedience of such order, or to enjoin upon it or them obedience to the same."

Mr. HARRIS. But what you are saying, then, is that the Commission does not have authority to order the man to proceed with such political broadcasts, but the Commission, when the time comes for license renewal, may take into consideration his refusal to do so in renewing his license?

Mr. PAGLIN. In terms of his overall operation as to whether or not it was in the public interest.

Mr. HARRIS. And you think that was intended by reason of the broad authority included in the act?

Mr. PAGLIN. As interpreted by the courts, yes, sir.

Mr. HARRIS. Do you also construe the act that this would apply to candidates in any primary as well as in any general election?

Mr. PAGLIN. This would be the entire sphere, Mr. Harris.

We would also like to supplement this submission with respect to the legislative history and the court decisions, which we feel would support the opinion we gave.

Mr. HARRIS. I have not had occasion to read the decision referred to, and I do not know a thing in the world about it; but it does seem to me if there is any one thing where the Congress did give broad latitude to the broadcaster, it is in this provision which says—

If you do not want to get involved in a political campaign over your facility in a given area, then you don't have to do it.

And it seems to me that that is an interpretation that is going pretty far, where the Commission says—

Even though the law says you don't have to do it, if you don't do it, we are going to consider that in connection with the renewal of your license.

Did you have any cases this year that were involved with that question?

Mr. FORD. I think these rulings I referred to are older than my service as a member of the Commission. I had never had occasion to study the question. I accepted this because it had never been ques-

tioned, as far as I knew, until today, except now I find it was questioned earlier on the Senate side.

Mr. MINOW. Mr. Chairman, we have had some rulings, or at least correspondence with stations, on this very point recently.

Mr. HARRIS. Yes; you had one in Jackson, Miss., did you not?

Mr. MINOW. That is right, sir.

Mr. HARRIS. And you used this broad authority in order to write a letter to the LaMar Broadcasting Company on April the 17th, a little over a two-page letter, in which you virtually told that station that, "If you didn't put this candidate on, you might as well be prepared to see this come up when your license renewal came up."

Mr. MINOW. I do not have a copy of the letter here, Mr. Chairman, but I certainly do not recall that that was the nature of it.

Mr. HARRIS. I would like to include a copy of the letter in the record at this point, Mr. Chairman.

Mr. ROGERS of Texas. Will the gentleman identify it? Then without objection the letter will be included.

Mr. HARRIS. Yes. It is a letter from the Acting Secretary of the Federal Communications Commission, identified as 8424, 400379, 400521, dated April the 17th, 1962, to the Lamar Life Broadcasting Co., Station WLBT-TV, Jackson, Miss.

Mr. ROGERS of Texas. Without objection, the letter will be included in the record.

Mr. HARRIS. Just prior to this, in order that the entire subject matter may be included—I am not going to put all these communications in the record on it—I do want to include a letter from Mr. Fred L. Beard, general manager of this station, WLBT, dated April 12, 1962, in which Mr. Beard advised the Commission:

We have made a further review of this situation and have concluded that we would not be properly discharging our responsibility as a broadcast licensee or otherwise operating in the public interest if we were to permit the facilities of station WLBT to be used by any candidate in the above-mentioned campaign.

Mr. ROGERS of Texas. Does the gentleman want the entire letter included?

Mr. HARRIS. I want this letter included just prior to the other letter.

Mr. ROGERS of Texas. Without objection, it is so ordered.

(The letters mentioned above follow:)

JACKSON, MISS., April 12, 1962.

Re Television Station WLBT, Jackson, Miss.

Mr. BEN F. WAPLE,
Acting Secretary, Federal Communications Commission, Washington, D.C.

DEAR MR. WAPLE: On January 31 and February 1, 1962, respectively, we submitted information by telegram and letter regarding the position we took at that time in connection with a request by a candidate for nomination to the office of the U.S. Representative to Congress from the Fourth Congressional District of the State of Mississippi in which we indicated that the facilities of television station WLBT would be made available during the period preceding the election in connection with such campaign.

Since then we have made a further review of the situation and have concluded that we would not be properly discharging our responsibility as a broadcast licensee or otherwise operating in the public interest if we were to permit the facilities of station WLBT to be used by any candidate in the above-mentioned campaign.

We have advised Rev. Robert L. T. Smith, who previously requested time in connection with his candidacy, of our determination in this regard.

Very truly yours,

LAMAR LIFE BROADCASTING CO.,
By FRED L. BEARD, *General Manager.*

APRIL 17, 1962.

LAMAR LIFE BROADCASTING CO.,
 Station WLBT-TV, Jackson, Miss.

GENTLEMEN: The Commission is in receipt of a further complaint from Rev. Robert L. T. Smith in which he alleges that he is a duly qualified candidate for the Democratic nomination for the office of U.S. Representative from the Fourth Congressional District of Mississippi; that the primary election will take place on June 5, 1962; that he has been unsuccessful in buying 30 minutes' time on station WLBT-TV in Jackson; that in January 1962, your general manager, Mr. Fred L. Beard, refused Reverend Smith's request " * * * on the grounds that it was too early to make a television appearance" and that " * * * he would lose his television audience"; that Congressman John Bell Williams had appeared on your station; and that Mr. Beard offered to sell Reverend Smith " * * * limited spot announcements."

Reverend Smith further alleges that he repeated his request to buy time on your station on April 11 and 12, 1962; and that said request was refused in a letter signed by Mr. Beard, reading as follows:

"Upon further review of the situation, Lamar Life Broadcasting Co. has concluded that it would not be acting in the public interest or properly discharging its responsibilities as broadcast licensee in the event that it were to make its facilities available to any candidate in the campaign for nomination or election to the office of Representative in the U.S. Congress from the Fourth Congressional District of the State of Mississippi during the forthcoming campaign.

"Accordingly, your request for time on television station WLBT has been disapproved."

In addition to the above, the Commission has received other letters protesting your refusal to sell time to Reverend Smith.

Commission records indicate that when Reverend Smith's previous complaint was brought to your attention, you stated that you had not sold time to any other candidate; and that you had not refused to sell time to Reverend Smith but had offered to sell him time 6 weeks to 2 months before the election. Accordingly, we so advised Reverend Smith by letter dated February 21, 1962.

Your attention is directed to the statement adopted by the Commission on July 27, 1960, as a result of its programing inquiry in which political broadcasts are listed as one of the "major elements usually necessary to meet the public interest, needs and desires of the community in which the station is located." Your attention is also called to a recent decision by the Supreme Court of the United States in *Farmers Educational and Cooperative Union of America, North Dakota Division v. WDAY, Inc.*, 360 U.S. 525, in which the Court stated, in part, that:

" * * * [T]he thrust of § 315 is to facilitate political debate over radio and television. Recognizing this, the Communications Commission considers the carrying of political broadcasts a public service criterion to be considered both in license renewal proceedings, and in comparative contests for a radio or television construction permit.¹ Certainly Congress knew the obvious—that if a licensee could protect himself from liability in no other way but by refusing to broadcast candidate's speeches, the necessary effect would be to hamper the congressional plan to develop broadcasting as a political outlet, rather than to foster it.²

In light of the above, you are requested to set forth in detail the basis for your conclusion that station WLBT-TV " * * * would not be acting in the public interest or properly discharging its responsibilities as broadcast licensee in the event that it were to make its facilities available to any candidate in the campaign for nomination or election to the office of Representative in the U.S. Congress from the Fourth Congressional District of the State of Mississippi during the forthcoming campaign * * *." Since time is of the essence, it is requested that your reply be filed within 5 days from the date of this letter.

Very truly yours,

BEN F. WAPLE, *Acting Secretary.*

¹ In re City of Jacksonville, 12 Pike and Fischer Rad. Regs. 113, 125-126, 180 i-j; In re Loyola University, 12 Pike and Fischer Rad. Regs. 1017, 1099. See also In re Homer P. Rainey, 11 FCC 898 [3 RR 737]. Cf. — Report, In re Editorializing by Broadcast Licensees, 1 Pike and Fischer Rad. Regs., pt. 3, 91: 201.

² See, e.g., statement of Senator Fess, 67 Congressional Record, 12356.

Mr. HARRIS. I never saw this letter until today. I think I did bring it to your attention some time ago.

Mr. MINOW. Yes, sir. We testified about this incident in the Senate last year.

Mr. HARRIS. I know that the Senate should be informed on important matters of this kind, and it is good that they are informed. But the House needs to be informed about it, too.

Mr. MINOW. I agree, sir. The only reason I mention that is that I wanted you to know that this is a matter which is already a matter of public record. You mentioned you have not seen the letter. It is certainly no secret. The letter is a public document.

Mr. HARRIS. I wanted it to be clear for the record how this problem has been dealt with, because I wanted to follow it with the final communication from Mr. Fred Beard, dated April 20, 1962, to your Secretary, in which, in view of your letter just referred to, of April 17, the station acquiesces in the demand that it be used for that particular purpose.

Mr. ROGERS of Texas. Does the gentleman desire that last letter in the record?

Mr. HARRIS. I should like that to be included in the record.

Mr. ROGERS of Texas. Without objection, it is so ordered.

(Letter referred to follows:)

JACKSON, MISS., April 20, 1962.

Re 8424, 400379, and 400521.

HON. BEN F. WAPLE,

Acting Secretary, Federal Communications Commission, Washington, D.C.

DEAR MR. WAPLE: I am in receipt of your letter of date April 17 with further regard to the application of Rev. Robert L. T. Smith for the purchase of broadcast time on station WLBT-TV.

Our decision not to sell time to Reverend Smith was primarily based on the fact that there is no interest in this race being manifested in the district, and less than 20 percent of our coverage is within the area comprising the congressional district which Reverend Smith aspires to represent. In view of this situation, we discussed this matter with our attorneys and were advised by them that under section 315 of the Federal Communications Act and section 3.657(b) of the Rules and Regulations of the Federal Communications Commission, there was no legal requirement to broadcast such a program in view of our determination regarding the public interest considerations.

We understood that we were not required to sell time to either candidate, but that if time were sold to one candidate, it would be necessary that it be sold to all candidates who requested it. Incidentally, no time has been sold to the incumbent in connection with this race, and it was not our intention so to sell any.

In view of your letter of April 17, we are making available to Rev. Robert L. T. Smith the 30 minutes' prime time requested by him and are so advising him by this same mail. We will likewise make available 30 minutes prime time to his opponent and notify him of this decision.

Very truly yours,

LAMAR LIFE BROADCASTING Co.,
By FRED BEARD.

Mr. HARRIS. The question I raise, Mr. Minow: In view of this language, and the decision of this broadcaster, the Commission, then, construed the public interest standard as superseding the right of that broadcaster to make a decision on a matter of this kind.

Mr. MINOW. Just for the record, Mr. Chairman, I would say I most respectfully disagree with you.

Mr. HARRIS. You do not disagree that after your letter the station did begin broadcasting?

Mr. MINOW. I do not disagree with that, no.

Mr. HARRIS. Do you think by any stretch of the imagination that this station would have changed its decision on this had it not been for your letter, the Commission letter?

Mr. MINOW. I think if the station thought we were wrong under the law, it should have gone to court.

Mr. HARRIS. Yes. I know that is a very easy position to take. But you also know, Mr. Minow, that the Commission is a powerful instrument, do you not?

Mr. MINOW. In some respects, yes. I certainly think, however, that it is not beyond the law.

Mr. HARRIS. Well, that is precisely the reason I am asking this. In my judgment, if I can read language at all—and I am going to read the court decision on it—I do not see how you can get anything else out of it except what it says. And that is what disturbs me, that on so many occasions these agencies of the Government, these powerful regulatory agencies have a great many times relied on broad general language in order to suit somebody's desire.

And I am not going to say there were implications intentionally involved, though I cannot help from feeling there are some. But it does disturb me very much to see any agency move in, because they do have that power, control, and authority over the life and death of any business, and to indicate what will happen to them if they do not act in a certain way.

Mr. MINOW. Well, Mr. Chairman, I can only tell you I am disturbed by your reference to any implications or inferences, and I would appreciate your stating them for the record.

Mr. HARRIS. Well, I would be glad to state it. The situation in Mississippi is highly explosive; is it not?

Mr. MINOW. Yes, sir.

Mr. HARRIS. And it has been for some time?

Mr. MINOW. Yes, sir.

Mr. HARRIS. And the particular candidate that was running down there was a colored person. The station on its own was endeavoring to stay away from that question. And the station so advised the Commission. It decided not to have anything to do with the race for that particular office at all.

Now, that being true, what else could anyone imply than that to send a letter of this particular kind down to that particular station had certain implications to it?

Mr. MINOW. Mr. Chairman, the U.S. Supreme Court has said that one of the major obligations of a broadcaster is to carry political discussion. To me it makes no difference what his color is, or where his State is. This is an obligation of a broadcaster.

Mr. HARRIS. This was not carrying anything political.

Mr. MINOW. Not in that race.

Mr. HARRIS. Did the Supreme Court say this with regard to any particular race?

Mr. MINOW. It said political discussion. It is obviously operable to the major races.

Mr. HARRIS. Then you must admit that under that interpretation the particular sentence in the act which we read has no validity at all.

Mr. MINOW. I think not, sir. And as I say, I think there is a legal issue, with which I respectfully disagree. If the station disagreed, it has every right. It should have appealed or gone to court.

Mr. HARRIS. And I wish it had pursued its right. And I have said this to the broadcasters in the past: That whenever they think they are right, they should not kowtow, but go and find out whether they are right or not.

Mr. MINOW. Exactly.

Mr. HARRIS. And I said to them during the investigation we had here several years ago that they had a way to meet the problems, including the problem of the competition with the newspaper industry. And in my judgment they ought to have the fortitude and the courage to go and meet it. And they should do so in a matter of this kind, in my judgment, where their rights are involved.

Mr. MINOW. Mr. Chairman, you and I are in complete agreement on that.

Mr. HARRIS. I would say in my judgment the station itself is quite derelict. When reading the provisions of the act, and considering what I would construe to be the letter of the law and even more the spirit of the law—I would not have opened up my facility to that particular election. I do not care if my colleague here was a candidate. I would not have given it to him, either.

Mr. WILLIAMS. May I make a remark in that connection?

Mr. ROGERS of Texas. Without objection, unless there is an objection, the rules will be suspended, and Mr. Williams will be allowed to ask a question.

Mr. WILLIAMS. May I say I talked with the station manager several times during this controversy, and I told him I would be delighted for this man to go on television; the more he went on television, the fewer votes he would get. He did not go on television, and he got less than 9 percent of the votes.

I did want to say for the record I was not attempting to keep him from having time. I simply told the station that I did not want any time, and would not purchase any time.

Mr. HARRIS. Well, regardless, Mr. Chairman, of what the desire of either candidate or any candidate might have been, I simply raise the question as to the language of the law and the administration of it. If the Administration feels that the courts require them to interpret it that way, then I have no criticism whatsoever of the Commission. But I am going to be interested in reading the decision of the court and trying to see for myself how the provision is applicable here. Your counsel has said, that he believes the Commission can adopt the policy that they cannot order the station to do it, but at the same time the Commission can take into consideration their attitude when the renewal of their license comes up.

Maybe this is not the right time to do it here, but I think we ought to look into the question as to many other things that the Commission takes into consideration in connection with the renewal of licenses because this question of holding a real hammer over the head of somebody, when they know that it is held there, seems to me a very, very serious problem.

I do not think that you, Mr. Chairman, or you, Mr. Ford, or any other member of the Commission wants the general feeling among the industry that you are going to sit here in an ivory tower and say you are not going to renew licenses if the broadcasters do not do thus and so.

I think that the broadcast industry should follow the letter and the spirit of the Act and the interpretations of the act by the Commission. I will say that I have been pretty critical of the industry in some cases in the past. I think I was justified in doing so. I will do so again when I think it to be justified. Sometimes it was a little embarrassing. I think a lot of good has been coming from it.

At the same time, with regard to actions of these agencies and your Commission, I would be just as vigorously in trying to protect the industry and their rights. Not that I set myself up as being an authority. I do not. I know I am just a small pebble on an exceedingly big beach, but I do want to see this industry operate as it should, and this Commission continue to do the generally good job that it does. The American people demand nothing less. I do not know of any industry that is more sensitive, in the minds of the industry itself and in the minds of the public, than the broadcasting industry.

I think that this is a very sensitive subject, Mr. Chairman, that we are dealing with here. The political life of our people is wrapped up in this. I do not care what anyone says. It is a part of us. It is a part of our system, inherent in what we have. Our democratic institutions are the greatest, in my judgment, that any society has ever developed. I know that you and others in Government as well as the industry, and certainly the members of this committee and other Members of Congress, want to see these institutions continue that way.

That is all, Mr. Chairman.

Mr. ROGERS of Texas. Just a minute.

Do I understand clearly now that it is the position of the Commission that in so far as the television or radio station is concerned, if an application is made by someone in politics, in a political campaign, to use the facilities of that station, you are bound by the present findings of the Supreme Court to see that that station's facilities are available?

Mr. MINOW. I have not seen the memo until this moment.

Mr. ROGERS of Texas. I am talking about the Supreme Court memo now, Mr. Minow.

Mr. MINOW. If you want my view, my view is that the Supreme Court decision says that one of the basic obligations of a broadcaster is to carry political discussion.

It is further my view that the Commission certainly has the authority to inquire of a broadcaster whether he is carrying any political discussion; and if not, to ascertain the reason why he thinks it is not in the public interest to carry it. That is my view. With respect to our General Counsel's view, I think I had better let him speak, since I haven't read this.

Mr. HARRIS. May I say right here, before you get beyond that, that I am going to have our counsel study and analyze this decision of the Supreme Court. And I would like to suggest, if it is appropriate, that your counsel and our counsel be permitted to discuss the particular case with this particular statutory language in view.

Mr. MINOW. I would be very happy to have that done, Mr. Chairman. I would further say to you I think it is a very wholesome thing to have this aired. Because if there is an area of ambiguity and a question mark, it ought to be clarified.

Mr. ROGERS of Texas. Mr. Minow, your position has been, as I understand it, that radio and TV are somewhat in the same position as a common carrier within the bounds of reason?

Mr. MINOW. No, quite the contrary. In the first place, the law is quite opposite. The law says quite specifically the opposite.

Mr. ROGERS of Texas. I understand that. But what I am talking about is the application of the finding of the Supreme Court. The application of the finding of the Supreme Court would mean that if the candidates in a political race made a reasonable request of the TV or radio facility, in your opinion they ought to be afforded the opportunity to use that facility?

Mr. MINOW. That certainly would be my view, because I would regard that as being a necessary service to the public interest.

Mr. ROGERS of Texas. And the contrary feeling would be that the sole power to determine whether or not the radio and TV facilities were to be used by political candidates would be in the hands of the owner of the license?

Mr. MINOW. Right. And I don't think that is the law.

Now, as I say, people can differ about exactly what the law is, but that is my interpretation of it.

Mr. ROGERS of Texas. That is what I am getting at. But that is your feeling. Has that been the position of the Commission?

Mr. MINOW. I was informed, just as you were, that the Commission had ruled this way several times, but that the General Counsel, in July of 1962, wrote a legal opinion pointing out that some of our old ruling was incorrect.

Now, have I stated it properly? And we have supplied that memorandum for the record today.

Mr. ROGERS of Texas. Then your Counsel did overrule the Supreme Court?

Mr. MINOW. No, I think not. I think a lot of people would like to do that, but we haven't managed that.

Mr. ROGERS of Texas. Let me ask you this question. Who are you going to follow from now on, your Counsel or the Supreme Court?

Mr. MINOW. I will follow our Counsel.

Mr. ROGERS of Texas. Have you told the Supreme Court this?

Mr. PAGLIN. Mr. Chairman, there was absolutely no intent to overrule the Supreme Court.

Mr. HARRIS. Unfortunately.

Mr. PAGLIN. On the contrary, the citation in the memorandum was that it was our feeling, as we read the case, that the Supreme Court had affirmed the prior holdings of the Commission that as a matter of policy a broadcaster should carry this type of broadcast in his overall operations in the public interest.

Mr. ROGERS of Texas. That had to do with the public interest clause in the act.

Mr. PAGLIN. That is correct, Mr. Rogers. The interpretation of it and I repeat that this memorandum dealt solely with the narrow problem as to whether or not there was legal authority for the Com-

mission to order a licensee to put on political broadcasts as such, in the same manner as it had the authority, as recited here, to order the cessation of a violation of 315 in other respects.

Mr. MINOW. Mr. Chairman, I could read for you the paragraph from the Supreme Court decision, if you would like to have that citation for the record.

The name of the case is *Farmers Educational and Cooperative of America v. W.D.A.Y.*, decided by the U.S. Supreme Court June 29, 1959 (360 U.S. 525). And the appropriate paragraph, if I can read it, it is not terribly long, says:

While denying all candidates use of the station would protect broadcasters from liability, it would also withdraw political discussion from the area. Instead, the thrust of 315 is to facilitate political debate over radio and television. Recognizing this, the Communications Commission considers the carrying of political broadcasts a public service criterion to be considered both in license renewal proceedings and in comparative contests for a radio or television construction permission. Certainly Congress knew the obvious, that if a licensee could protect himself from liability in no other way but by refusing to broadcast candidates' speeches, the necessary effect would be to hamper the congressional plan to develop broadcasting as a political outlet, rather than to foster it.

Now, the issue in this case, you may recall, was whether a station which carries a political broadcast is immune from liability for libel. That is the context in which the case came up. And as I say, we can leave this copy here or supply you with another.

Mr. ROGERS of Texas. What the court said there, Mr. Minow, is simply this, that the Congress delegated to the Commission the power to determine what was public interest, and that you had decided that political discussion was public interest and that you had the right to do that.

Is that not right?

Mr. MINOW. I would only suggest that they interpret that to be the intent of Congress, rather than just the Commission.

Mr. ROGERS of Texas. The intent of Congress but that Congress had delegated to you the authority to fix the guidelines, and that you had done it.

But, Mr. Counsel, your position is simply this, that since that was done, the Commission still has the right, in considering applications for the renewal of a license, to take into consideration this sort of situation.

Mr. PAGLIN. That is right, Mr. Chairman. For example, if, in interpreting the language to which Mr. Harris referred in 315, that is to say, that no obligation is imposed on any licensee to allow the use of the station by any candidate, if the legislation shows, as we believe the memorandum we will submit to you will show, that this section was put in for a specific purpose when the act was first passed, that is, the language was used so as to take the broadcaster out of the category of a common carrier, and therefore the Congress felt, in considering this legislation originally, that the only way they could keep him from being considered as a common carrier—that is to say, that anyone could go up to him with the money in his hand as you would to a telegraph company and say, "I demand the service," and he would have to grant it, knowing that the operations of a broadcast station are clearly unlike those of a common carrier—if the legislative history shows, as we think it does show, that the purpose of this language were merely

to indicate that he was not a common carrier in the handling of political broadcasts, then it does not follow from that, we think, that his obligations otherwise to serve in the public interest are thereby decreased in this manner.

I believe our memorandum will spell this out to your satisfaction. (The memorandum referred to follows:)

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., May 6, 1963.

HON. OREN HARRIS,
*Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.*

DEAR CHAIRMAN HARRIS: As you know, hearings were held March 4, 1963, before the Communications and Power Subcommittee of the House Interstate and Foreign Commerce Committee, on House Joint Resolution 247 to suspend the equal opportunities provisions of section 315 with respect to nominees for the offices of President and Vice President during the 1964 campaign.

At those hearings, you raised a question with respect to the interpretation of the second sentence of section 315 with particular reference to whether it precludes the Commission from considering, under the general public interest standard, whether a licensee is failing to meet the needs and interests of his community by arbitrarily refusing to carry political broadcasts.

I am transmitting herewith a copy of a memorandum which the Commission has prepared in answer to this question. I trust that the material therein will provide you with the desired information.

A copy of the memorandum has been supplied to Chairman Rogers for incorporation into the record.

The memorandum was adopted by a 5-to-1 vote (Commissioner Hyde absent). Commissioner Lee is of the opinion that the second sentence of section 315(a) means exactly what it says; that since Congress spelled out in the act its own "fairness doctrine" with respect to the handling of broadcasts by political candidates, it is not within the province of the Commission to give any other interpretation; and, finally, that if Congress meant to imply or infer that a licensee is under a duty to allow the use of its station initially by a political candidate, then Congress should undertake to clarify its intent.

Sincerely yours,

NEWTON N. MINOW, *Chairman.*

MEMORANDUM OF FEDERAL COMMUNICATIONS COMMISSION CONCERNING INTERPRETATION OF SECOND SENTENCE OF SECTION 315(a), COMMUNICATIONS ACT OF 1934, AS AMENDED

At the hearings on House Joint Resolution 247, before the Subcommittee on Communications and Power on March 4, 1963, a question arose as to whether that provision of section 315(a) which states that "no obligation is imposed upon any licensee to allow the use of its station by any such candidate," precludes the Federal Communications Commission from considering, under the general public interest standard, whether a licensee is failing to meet the needs and interests of his community by arbitrarily refusing to carry political broadcasts. This memorandum deal with that question.

The Commission's general authority with respect to programing is set out in its Report and Statement of Policy Re Commission En Banc Programing Inquiry (20 Pike & Fischer, R.R. 180). There, the Commission stressed that there is no all-embracing formula to insure service in the public interest, but rather that it is the licensee's responsibility to seek out and meet the programing needs of his area. Accordingly, the report states that the guidelines set forth therein are neither a rigid mold for station performance nor a Commission formula for broadcast service in the public interest. They are simply indicia of the types and areas of service which, on the basis of experience, have usually been accepted by broadcasters as more or less included in the practical definition of community needs and interests. The relevant part of that report reads as follows:

"The major elements usually necessary to meet the public interest, needs, and desires of the community in which the station is located as developed by the industry, and recognized by the Commission, have included: (1) Opportunity

for local self-expression, (2) the development and use of local talent, (3) programs for children, (4) religious programs, (5) educational programs, (6) public affairs programs, (7) editorialization by licensees, (8) *political broadcasts*, (9) agricultural programs, (10) news programs, (11) weather and market reports, (12) sports programs, (13) service to minority groups, (14) entertainment programing." [Emphasis added.]

Essentially then, the question that this memorandum deals with is whether Congress intended that a broadcast licensee not be obligated to allow the use of his station for any political broadcasts by candidates for public office, notwithstanding that political broadcasts have generally been accepted by broadcasters and the Commission as one of the elements in the practical definition of community needs and interests.

Considering the importance and necessity of an informed electorate in a democracy and the ever-increasing contribution political broadcasts make to informing that electorate, it is difficult to understand under what rationale Congress could be assumed to have exempted this one area from the licensee's responsibility to program to meet the public needs and interests of his community. Nevertheless, we recognize that resolution of this question should be made upon the basis of the statutory language, the legislative history, and the administrative and judicial precedents. We shall, therefore, discuss each in turn.

I. THE STATUTORY SCHEME; SUBSEQUENT LEGISLATIVE HISTORY

Section 315(a) provides in part:

"SEC. 315. (a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: *Provided*, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is hereby¹ imposed upon any licensee to allow the use of its station by any such candidate * * *"

The last sentence must be interpreted in context. When so interpreted, it does not provide that the licensee can ignore the public interest and arbitrarily refuse to serve the needs of his area as to political broadcasts. Rather, it seems to be directed to making clear that while a licensee has an obligation to carry other legally qualified candidates for office if he presents one candidate for the office, he has no such obligation with respect to that first candidate; on the contrary, he can use his judgment as to whether there is an interest in affording time to this particular campaign as against other political contests, and as to any other programing considerations that may be pertinent. In short, the provision is designed to allay any fears that may have been raised by the prior sentence of the section that the licensee is a common carrier with respect to political broadcasts.

The legislative history supports this conclusion. The equal opportunities requirement of section 315 had its origin in the Senate version of H.R. 9971, 69th Congress (which became the Radio Act of 1927). As reported out of committee to the Senate the provision read:

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

On the floor of the Senate, Senator Dill offered the following amendment (67 Congressional Record 12501):

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

¹ In codifying certain portions of the United States Code, the revisers in many cases eliminated such words as "now," "hereafter," and "hereby" as being redundant. Such an editorial change occurred in sec. 315 of title 47 and the word "hereby" was dropped. It does, however, appear in the Statutes at Large (48 Stat. 1064). Reading the sentence with the word, would, if anything, give added emphasis to our interpretation but we do not to any degree rest our case on that point.

The amendment was offered in order to delete the common carrier provision of the bill. As Senator Dill, in opposing an amendment using the phrase "common carrier" further explained:

"I will say to the Senator that that is practically the provision we had in the bill, and the broadcasters were so opposed to having themselves designated as common carriers we thought it unwise at this stage of the development of the art to do it. I wish the Senator would not offer the amendment, because I think it would only complicate the situation. Of course, if the Senator insists, I should not want to object; but I really feel that it would only complicate the situation if we use the term 'common carrier,' putting them on the basis of any other public organization" (67 Congressional Record 12503).

A colloquy between Senator Dill and Senator Cummins made clear that in offering his floor amendment, Senator Dill believed that he was making licensees common carriers (but without using the phrase) only as to the requirement that they afford equal opportunities.

MR. CUMMINS. * * * Whenever we declare that a broadcasting station must accept without discrimination the service that is asked of it, it is made a common carrier. It becomes a common carrier by the very fact that we forbid it to discriminate. That is the only difference, or substantially the only difference, between a common carrier and a private carrier. A private carrier does not need to accept for service all the applications that may be made to it. It may discriminate. But a public carrier or a common carrier cannot discriminate between people who desire the service to be rendered. The amendment which is now proposed is one, in my judgment, of pure form and will lead to some misinterpretation and misunderstanding; for whenever we say that the service must be rendered without discrimination we have made that agency a common carrier (67 Congressional Record 12502).

MR. DILL. There is the difference that under the common carrier provision a radio station is compelled to take any kind of broadcasting that anybody wants to offer, which would mean that it would take anybody who came in order of the person presenting himself and would be compelled to broadcast for an hour's time speeches of any kind they wanted to broadcast. This provision simply says that if a radio station permits one candidate for a public office to address the listener, it must allow all candidates for that public office to do so, and to that extent there must be no discrimination. The other provision says that advertisers shall be announced and the same rate shall be charged each advertiser. It does not compel them to take any kind of program that an advertiser wants to put on; but if they do accept the program, they must charge the same to all.

MR. CUMMINS. I think there is something in the statement of the Senator from Washington that the broadcasting station is made a common carrier as to all candidates for office.

MR. DILL. If it permits one candidate—but it need not permit any candidate. In other words, a station may refuse to allow any candidate to broadcast; but if it allows one candidate for Governor to broadcast, then all the candidates for governor must have an equal right; but it is not required to allow any candidate to broadcast.

"MR. CUMMINGS. I think there is that distinction" (67 Congressional Record 12502).

As is evident, the foregoing colloquy was concerned with an explanation of the Dill amendment which was subsequently agreed to (67 Congressional Record 12505). The Conference Committee, of which Senator Dill was a member, added without comment, a final sentence:

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

Thus, it is apparent, we think, that the sentence was added in order to make clear the purpose of the Dill amendment, expressed in the foregoing colloquy, i.e., to allay any fears that broadcasters are, to any extent, common carriers with respect to the first candidate who requests air time in a particular campaign. Section 315(a), in effect, imposes a kind of common carrier responsibility when the broadcaster affords time to one candidate in the sense that he must then make his facilities available to rival candidates (see Senator Dill's comments, 67 Congressional Record 12502); but Congress thought it desirable to make clear by the sentence added by the conference committee that, by doing so, it had not made licensees common carriers in any sense as to all political broadcasts—that as to the initial request the licensee has the right to exercise

his programing judgment.² There is no basis for inferring that the colloquy explaining the Dill amendment, coupled with the quoted sentence, in any way limits the broader obligation of licensees to program political broadcasts as a part of their overall public interest obligation. To construe Senator Dill's remarks otherwise ignores the context in which they were made as well as the entire legislative history of the section's development. Moreover, as will be developed more fully below, it would require that we overlook the subsequent consistent pattern of administrative and judicial interpretation and congressional amendment of the section in other respects without any attempt to change that interpretation.

The legislative history of the 1959 amendment to section 315 further supports this view. That amendment provides that:

"* * * Appearance by a legally qualified candidate on any—

"(1) Bona fide newscast,

"(2) Bona fide news interview,

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

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

The legislative history of the 1959 amendment establishes that Congress, by such amendment, was in effect codifying the basic principles of the Commission's Report on Editorializing by Broadcast Licensees (13 F.C.C. 1246, 1 Pike & Fischer, R.R. (pt. 3) p. 91:201). That report said, *inter alia*:

"It is axiomatic that one of the most vital questions of mass communication in a democracy is the development of an informed public opinion through the public dissemination of news and ideas concerning the vital public issues of the day. Basically, it is in recognition of the great contribution which radio can make in the advancement of this purpose that portions of the radio spectrum are allocated to that form of radio communications known as radio broadcasting * * *. Unquestionably, then, the standard of public interest, convenience and necessity as applied to radio broadcasting must be interpreted in the light of this basic purpose. The Commission has consequently recognized the necessity for licensees to devote a reasonable percentage of their broadcast time to the presentation of news and programs devoted to the consideration and discussion of public issues of interest in the community served by the particular station. And we have recognized, with respect to such programs, the paramount right of the public in a free society to be informed and have presented to it for acceptance or rejection the different attitudes and viewpoints concerning these vital and often controversial issues which are held by the various groups which make up the community. It is this right of the public to be informed, rather than any right on the part of the Government, any broadcast licensee or any individual member of the public to broadcast his own particular views on any matter which is the foundation stone of the American system of broadcasting."

And, in its report accompanying S. 2424 (which became the 1959 amendment to section 315(a)), the Senate Commerce Committee stated:

"* * * The committee desires to make it crystal clear that the discretion provided by this legislation shall not exempt licensees who broadcast such news, news interviews, news documentaries, on-the-spot coverage of news events, or panel discussion programs from objective presentation thereof in the public interest. In recommending this legislation, the committee does not diminish or affect in any way Federal Communications Commission policy or existing law which holds that a licensee's statutory obligation to serve the public interest is to include the broad encompassing duty of providing a fair cross section of opinion in the station's coverage of public affairs and matters of public contro-

² The principle that persons engaged in broadcasting are not common carriers is embodied in the Communications Act of 1934 in the exception to the definition of "common carrier" or "carrier," as contained in sec. 3(h) of that act.

versy. This standard of fairness applies to political broadcasts not coming within the coverage of section 315 such as speeches by spokesmen for candidates as distinguished from the candidates themselves" (S. Rept. 562, 86th Cong., 1st sess., p. 13).

Clearly, political broadcasts fall within the category of "programs devoted to the consideration and discussion of public issues of interest in the community * * *" (par. 6, "Editorializing Report").³

Finally, the legislative history of the joint resolution (S.J. Res. 207, 86th Cong.) suspending the equal opportunity requirements of section 315 for nominees for the offices of President and Vice President during the 1960 campaign, further buttresses our position.

When Senate Joint Resolution 207 was debated in the Senate, the author of the resolution, Senator Pastore, chairman of the Senate Commerce Committee's Subcommittee on Communications, made the following statement on the floor:

"The committee was impressed by the sincere desire of the broadcasters to meet their obligation of public service in the national political arena provided this obligation was voluntary and adopted Senate Joint Resolution 207 which would suspend section 315(a), the equal time provision, for the period of the 1960 presidential and vice presidential campaign with respect to the nominees for the offices of President and Vice President of the United States (106 Congressional Record 13424).

In the House of Representatives, the consideration of Senate Joint Resolution 207 was handled on the floor by Chairman Harris of the House Committee on Interstate and Foreign Commerce, who made the following statement:

"Mr. Speaker, I realize there is some serious question in the minds of many Members with respect to this resolution. That concern has been demonstrated on every occasion on which legislation on this subject has been discussed. I feel deeply, Mr. Speaker, that the broadcasters of this Nation who have been given the privilege of operating broadcast facilities in the public interest have a public responsibility to strengthen our political institutions, and that is the issue here today. I want to urge, as a matter of great importance to all Americans who go to the polls this November regardless of political affiliation, the passage of this Senate joint resolution—Senate Joint Resolution 207—now before us. This resolution was passed by the Senate without dissent.

"The purpose of this resolution is to permit the presidential and vice presidential candidates to accept free television time promised by the three major television and radio networks and their affiliated stations throughout the country, thus to permit television and radio to cover the 1960 presidential campaign more comprehensively than ever before * * *. The broadcasting industry is clearly charged to do its best to make the significant presidential candidates and issues, through debate and discussion, familiar to the vast radio and television audiences of the country. The resolution simply gives the industry the flexibility to do voluntarily what the broadcasters have vociferously acknowledged to be their duty; that is, to provide prime evening time during the presidential campaign for debate and discussion by the major candidates * * *. Radio and television reach into virtually every home in the land. It is certainly in the public interest that these great mediums be used to their fullest and best potential in bringing the candidates and issues home to every family" (106 Congressional Record 15851-15852).

II. ADMINISTRATIVE PRECEDENTS SUPPORTING THE COMMISSION'S POSITION

The Commission and its predecessor, the Federal Radio Commission, have, from the earliest days, taken into account whether a licensee has met his responsibilities in the field of political broadcasts. Thus, in the 1929 *Great Lakes* case, the Federal Radio Commission stated:

"In a sense a broadcasting station may be regarded as a sort of mouthpiece on the air for the community it serves over which * * * its political campaigns

³ See statement of Senator Scott at 105 Congressional Record 16346, where he said: " * * * that the phrase 'to afford reasonable opportunity for the discussion of conflicting views on issues of public importance' does not refer merely to political discussions as such or to opposing views of political parties or of candidates. It is intended to encompass all legitimate areas of public importance which are controversial, and there are many, as we know, which pertain to medicine, to education, and to other areas than political discussion, and it is intended that no one point of view shall gain control over the airways to the exclusion of another legitimate point of view." [Emphasis added.]

* * * may be broadcast" (*Great Lakes Broadcasting Co.*, reported in FRC, Third Annual Report, pp. 32-36).

As pointed out previously, the Federal Communications Commission, in its most recent statement on programing, has adhered to the view that one of the major elements "usually necessary" to meet the needs of a community is political broadcasts.

There are, in addition, other Commission precedents. For example, where an unsuccessful TV applicant stated with respect to his past AM operation that, as a policy matter, it did not carry political broadcasts involving local and State offices, the Commission said that this policy had left some gap in its service to the community. *In re City of Jacksonville* (12 Pike & Fischer R.R. 113, 125-126, 180 i-j). See also, *In re Loyola University* (12 Pike & Fischer R.R. 1017, 1099).

In re Petition of Homer P. Rainey (11 F.C.C. 898) four broadcast stations agreed among themselves that they would place certain restrictions on the amount of air time they would make available for the 1946 gubernatorial campaign in Texas. A petitioner contended that he was deprived of the facilities of these stations to announce and discuss his candidacy for public office, in violation of the provisions of the Communications Act. Part of the Commission's opinion is particularly illuminating on the point under discussion here:

"Although no violation of section 315 of the Communications Act has been found, there remains for consideration the question as to whether the restrictions on political broadcasts imposed by the four licensees herein were calculated to best serve the public interest. In the instant case each of the licenses had the policy of restricting discussions by primary candidates to a total of 30 minutes between the date when the candidates were certified and 2 weeks before the primary elections, and thereafter to sell a limited amount of time for such programs. It appears that the amount of time available for political broadcasts had been set well in advance of the actual campaign and without particular attention having been given to the needs or public interest involved in the particular campaign. In view of the importance of the primary election in Texas, and further, since the licensees well knew that in the 1946 primary relatively few of the candidates for statewide office would desire to purchase time over the networks, these restrictions do not appear to bear a reasonable relationship to the needs or public interest in the particular campaign. * * *

III. JUDICIAL PRECEDENTS ALSO SUPPORT THE COMMISSION'S POSITION

The leading case on the point under discussion is *Farmers Educational and Cooperative Union of North America v. WDAY* (360 U.S. 525), which expressly recognized the Commission's authority to "consider the carrying of political broadcasts a public service criterion to be considered both in license renewal proceedings, and in comparative contests for a radio or television construction permit." In our opinion, that case supports the Commission's position that in evaluating overall programing, the Commission may consider a licensee's refusal to afford any time to political broadcasts. The case held that section 315 forbade censorship of candidate's broadcasts by the licensee, and that in light of this prohibition, the Act immunized the licensee from liability for defamatory remarks which the candidate might make. The petitioner argued, inter alia, that a licensee could protect himself from liability for defamatory remarks which a candidate might make by exercising his right, under section 315, not to allow the use of his facilities by any candidate. In reply, the Court said (360 U.S. 525, 534-535):

"Petitioner's reliance on the station's freedom from obligation 'to allow the use of its station by any such candidate' seems equally misplaced. While denying all candidates use of stations would protect broadcasters from liability, it would also effectively withdraw political discussion from the air. Instead the thrust of section 315 is to facilitate political debate over radio and television. Recognizing this, the Communications Commission considers the carrying of political broadcasts a public service criterion to be considered both in license renewal proceedings, and in comparative contests for a radio or television construction permit. [citing *City of Jacksonville*, 12 Pike & Fischer, R.R. 113, 125-6, 180i-j; *Loyola University*, 12 Pike & Fischer, R.R. 1017, 1099; *Homer P. Rainey*, 11 F.C.C. 898; *Report on Editorializing by Broadcast Licensees*, 1 Pike & Fischer, R.R. (Pt. Three), p. 91:201; 13 F.C.C. 1246]. Certainly Congress knew the obvious—that if a licensee could protect himself from liability

in no other way but by refusing to broadcast candidates' speeches, the necessary effect would be to hamper the congressional plan to develop broadcasting as a political outlet, rather than to foster it."

If the Court believed the Commission's authority to consider the carrying of political broadcasts as a facet of the public interest to be doubtful, it could hardly have reached the conclusion it did.⁴

IV. CONCLUSION

In sum, we believe, upon the basis of the foregoing authorities, that the Commission can properly consider, as a facet of the public interest, whether a licensee has met the needs and interests of the community with respect to political broadcasts. It is thus the licensee's responsibility to make a good faith judgment as to what those needs are and how they can be best met, and specifically whether any particular political race warrants coverage in view of other contests and other pertinent programing considerations. In short, the licensee's role in the area of political broadcasts is essentially the same as in the other programing areas—to make good faith judgments as to how to meet his community's needs and interests. The Commission's role, as defined in the Communications Act, is to determine whether the licensee's proposals at the time of the original grant would serve the public interest, to process complaints filed against the station during its term of operation, and to review the station's overall operation at the time of renewal. (See Memorandum of General Counsel to Senator Pastore, July 24, 1962, reprinted in hearings entitled "Political Broadcasting" before the Communications Subcommittee of the Senate Commerce Committee, 87th Cong., 2d sess., on S. 204 and other bills.) In connection with the processing of complaints, it is obviously desirable to bring the matter immediately to the attention of the station, (i) to obtain its views when all the facts or considerations are fresh and (ii) to permit the Commission to ascertain whether the station's position is consistent with the public interest. (For example, it would, as we have shown, be inconsistent with the public interest if the station, irrespective of the needs and interests of its community, had refused to give time to a political contest because of a general policy of never making its facilities available for political broadcasts). The conclusion we have here reached is fully consistent, we believe, with the statutory language, the legislative history, and judicial and administrative interpretation, and promotes the wider and more effective use of radio in the public interest.

Adopted May 3, 1963.

Mr. ROGERS of Texas. In other words, though, if he refused to have political discussion on the station, then you feel that it is right that it be considered at the time of the application for renewal of the license?

Mr. PAGLIN. As one of the factors in his overall operation.

Mr. ROGERS of Texas. Yes. Now, the only method of enforcement, then, of making him put on broadcasts, would be to threaten him with consideration when his application came up. Now, is that correct?

Mr. PAGLIN. No, it is not the only method. Again, without taking up the committee's time, in this memorandum to which reference was made, there are some other instances in which we indicate that this particular question when it arose could be resolved.

⁴ See also, the dissenting opinion of four Justices (360 U.S. 525, 544):

"Conflict between the North Dakota libel law and § 315 might be attributed to the fact that broadcasters, to avoid being held liable without fault, will refrain from permitting any political candidate to buy time. This result, the argument would conclude, is contrary to the congressional command that stations operate in the 'public convenience, interest, or necessity,' 48 Stat. 1083, as amended, 47 U.S.C. § 307. The Federal Communications Commission has determined that to fulfill this congressional command stations must carry some political broadcasts. But the state libel laws do not prohibit them from airing speeches by political candidates. They merely make such broadcasts potentially less profitable (or unprofitable) since the station may have to compensate someone libeled during the candidate's broadcast. The Federal Act was not intended to establish a mode of supervising the income of broadcasters—not of protecting or limiting their profits—but of insuring 'a rapid, efficient, Nationwide, and worldwide wire and radio communication service' for the benefit of 'all the people of the United States,' 48 Stat. 1064, as amended, 47 U.S.C. § 151."

Mr. ROGERS of Texas. To cut this short, Mr. Counsel, if you will excuse me, the fact of the matter is that the Commission could have gone to court, could they not, in this particular case?

Mr. PAGLIN. No. No, the purport of this memorandum indicates that there is not statutory authority in the Communications Act now for us legally to order him to do this.

Mr. ROGERS of Texas. Then he could have gone to court, but the Commission could not, in this particular instance? The case that Mr. Harris was talking about.

Mr. PAGLIN. Oh, this is what I was referring to. Excuse me.

I refer to the fact that there were other means. For example, if we issued a declaratory ruling—this is what I was beginning to refer to—if he came to us and asked for a declaratory ruling, and if we issued an order in which we made a declaratory ruling, and then he refused to abide by it, my tentative opinion is that the Commission could then go to court and seek to force it, yes.

Mr. ROGERS of Texas. But that would have to be initiated by him in the first instance, by asking for a declaratory decision. Is that not correct?

Mr. PAGLIN. Yes. Such a request would be made.

Mr. ROGERS of Texas. In other words, you could not go to the court? The Commission could not go to the court unless he had asked for a declaratory decision concerning this matter?

Mr. PAGLIN. Well, if we adopted—we are getting into complications here—if we adopted a regulation, for example, in this regard, then perhaps the Commission could go to court and enforce it without his initiating it.

Mr. ROGERS of Texas. Yes, but what you are saying is that the Commission has not adopted any regulatory measures or rules, that is, in this particular type of case.

Mr. PAGLIN. Not with respect to this narrow matter, no.

Mr. ROGERS of Texas. So they could not have gone to court?

Mr. PAGLIN. The Commission could not have gone to court, as I understand. That is correct.

Mr. ROGERS of Texas. Well, do you think it would be good to arm the Commission with the right to go to court in these cases, rather than to drive the station owner to court?

Mr. PAGLIN. I don't know the answer to that question right now. I don't think I am prepared to answer that.

Mr. HARRIS. Will the gentleman yield.

It is far worse to leave it like it is, because what you would do in a proceeding of this kind is to leave hanging a threat over that broadcaster's head all of this time until he comes up for renewal. You know how it is about this human machine we have. You can kill a man by holding something over his head.

Mr. PAGLIN. In another connection, I think the Commission has testified with respect to fairness complaints, if I recall correctly.

Mr. MINOW. It was the Commission's practice for years, Mr. Chairman, to take all fairness complaints and then decide them at the time of renewal, which I, and I think all the other Commissioners, felt was really quite unfair, because by the time this got resolved, it might be years after the facts were ascertainable, and what we try to do now is dispose of them very quickly.

Mr. HARRIS. Well, when do you decide whether a fairness complaint has any validity?

Mr. MINOW. I say we are now trying to determine them very promptly. It was the practice until quite recently——

Mr. ROGERS of Texas. Take this particular instance Mr. Harris was talking about. Could you have gone into court and requested a declaratory judgment on this matter?

Mr. PAGLIN. No, I do not think so under the present statute.

Mr. ROGERS of Texas. Do you not think, if it was made possible for you to do that, you could get some answers to these questions, where you would not be in this gray area all the time?

Mr. FORD. Mr. Chairman, I don't see any necessity for that sort of authority in the Commission.

For example, I think any administrative agency has to interpret the law before they can apply it. And what has happened here is that the Commission has interpreted the law and applied it.

Now, if it is wrong, if the station does not comply with this or any other type of ruling in which we issue an administrative interpretation, then we have sanctions available which are in the nature of renewals.

Mr. ROGERS of Texas. I understand that was ruled on by your counsel?

Mr. FORD. What he said is that we do not have the power to order the station to accept political broadcasts, but that we do have this in our general consideration of the operations of the station, whether they are serving all the needs of the community as they find them under the Commission's program policies.

Mr. ROGERS of Texas. Well, now, in this particular case, Mr. Ford, if you had ordered that station to do this, you would not have had the statutory authority to do that.

Mr. FORD. He could have ignored us.

Mr. ROGERS of Texas. But if you did have the statutory authority to do that, then he would have the right to appeal.

Mr. FORD. That is right.

Mr. ROGERS of Texas. But he would have been subject to the substantial evidence rule under the Administrative Procedures Act, would he not, Mr. Ford?

Mr. FORD. Substantial evidence rule with respect to the introduction of evidence on this point? I don't see the connection.

Mr. ROGERS of Texas. What I mean is that he would be in a position where he would have to establish that your findings were arbitrary and capricious, before he could overrule them?

Mr. FORD. As I understand, the facts were not in dispute. It would be a question of law. If we had issued a memorandum opinion and order, a declaratory ruling, ordering him to do this, then that would have been a final order, as I understand it, from which he could have appealed to the U.S. Circuit Court of Appeals to stop us. What we are talking about is the other way around. We issue this sort of a declaratory order, and he says, "We don't think you have that right," and we say, "Well, you had better do it, or we will consider you at renewal time."

Then the issue is whether or not we should have the right to go into court and get an order compelling him to do it.

Well, we do have this authority in certain other areas, but here our Counsel says we don't have the basic authority to order him, and therefore a statute which permitted us to go into court to tell him to do it would not have any substantive law on which it rested. And personally, I do not think we need it.

Mr. HARRIS. If the Chair would permit.

The real question I raise here is this: Suppose he had not submitted to the Commission, and a year and a half or 2 years later he comes up for renewal, and the Commission says, "Because you have this particular experience, and only because of this, we are going to refuse to give you a license."

Now, it would be interesting to me to know whether the Commission has that authority.

Mr. FORD. I have remained rather quiet because this matter is new to me today. And this particular issue that the General Counsel is going to submit a memorandum on, is the very question you have put. And I haven't recently read the *WDAY* case, and I am a little reluctant to take a position on this particular point, even though I must admit that the basis of the sentence in 315 does have its foundation in the earlier proposal of section 4 of H.R. 9971 of the 69th Congress, in which it said that if—

any licensee shall permit a broadcasting station to be used as aforesaid, that is, for political purposes, or by candidates for any public office or for any discussion affecting the public, he shall make no exception as to such broadcasting station with respect to such matters, and the licensee shall be deemed to be * * * in interstate commerce.

This particular language was probably the most objected to of any language in the bill. So following that, Chairman Dill changed it into substantially the same form in which we have it now. And then this sentence was added, and the sentence was added to make certain, as the General Counsel has just described to you, that this earlier provision of section 4 did not become the law and was not interpreted that way. And then when you take that together with the broad public interest thing, we have arrived at this conclusion.

As I explained to you, it has been traditional, and I was practically raised in the broadcast business, with this interpretation in mind, and if it didn't come up in my mind during the administrative situation I don't know whether I participated in that or not, but if I didn't I would have, and I would have voted that he had a rule systematically excluding all political broadcasts. I don't think that is right. I am inclined to think the General Counsel is correct in his statement. But again I think I would like to study it a little bit more myself.

Mr. HARRIS. It was very interesting to me, because in the campaign down in my State, in the last primary, the stations themselves decided, in a particular race, that they would not sell any time to any candidate.

Mr. FORD. You see, in my interpretation of public interest, convenience and necessity, I think that you have to look at an awful lot of things besides that phrase, because all through the act there are signposts pointing out to the Commission what is in the public interest and what is not in the public interest. Consequently, when you get into something of this kind and you start using the phrase "public interest, convenience, and necessity, it seems to me through court interpretations, through committee hearings, and legislative history of the

act, provisions of the act, all of these things go into an interpretation of what the public interest means, in a particular factual situation.

So the use of that term does not give the Commission the broad, sweeping authority sometimes it is interpreted to give to it.

Mr. HARRIS. I am keeping in mind the suggestion made by Chairman Minow and by you to explore these questions in a conference. Perhaps a little later on when everybody can get the time, we should have such a conference and develop all these things.

Mr. MINOW. I certainly would favor that.

Mr. Chairman, for the record, I submitted a letter to some of the committee about this July 30, and one of the suggestion I made at the time was that people should have a right to get a declaratory ruling quickly on issues like this, so that if they wanted to test them out they could go to court. I would like to submit a copy for the record, if that is agreeable.

Mr. ROGERS of Texas. Are there any further questions?

Mr. CUNNINGHAM. I notice at election time broadcasters go crazy. Although Dr. Stanton didn't mention that, I imagine that is why he is concerned with section 315, because they do get some complaints and so much fuss.

Mr. Minow, you mentioned the number of cases brought to your attention, or complaints, during the 1962 election—I have forgotten the period, but that is not important. Would you give a judgment as to the number of cases that came to you as complaints, that were found to be valid?

Mr. MINOW. I would have to study that. We are going to supply the committee with a very comprehensive breakdown of them. So that will be available, sir.

Mr. CUNNINGHAM. My reason for bringing it up, and I will want to see the information, is that I think that a lot of candidates cry "foul" when they have no real basis for it. It is always a headline thing in the local community when some candidate, who probably is the underdog, says, "I am getting injured, and I am going to take this up with such and such an agency in Washington"—whether he has any basis for it or not. And he gets a lot of headlines out of it.

I would wonder whether a lot of these complaints are perhaps of that nature.

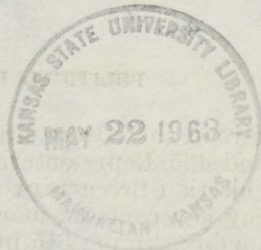
Mr. MINOW. I think that there is a substantial amount of that, sir.

Mr. ROGERS of Texas. Thank you very much, gentlemen, for your fine addition to the record.

The Chair has received a telegram from Mr. Tom Chauncey, president of KOOL Radio-Television, Inc., Phoenix, Ariz., in which he expresses opposition to section 315 and thinks it should be repealed. This telegram will be received for the file.

If there is no further business to come before the subcommittee, we will stand adjourned until 10 o'clock Wednesday morning.

(Whereupon, at 5:10 p.m. the hearing adjourned to reconvene at 10 a.m., Wednesday, March 6, 1963.)



POLITICAL BROADCASTS—EQUAL TIME

WEDNESDAY, MARCH 6, 1963

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS AND POWER
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., in room 1334, Longworth House Office Building, Hon. Walter Rogers (chairman of the subcommittee) presiding.

Mr. ROGERS of Texas. The Subcommittee on Communications and Power will come to order for the further consideration of pending business which is House Joint Resolution 247 by Mr. Harris, of Arkansas, to suspend the equal time requirements for the President and Vice President in the 1964 campaign.

We heard several witnesses on Monday and recessed over until today. Now, this morning, we are honored to have Hon. LeRoy Collins, president of the National Association of Broadcasters, 1771 N Street NW., Washington, D.C., and, I might add, the distinguished former Governor of the State of Florida.

Governor Collins, we are glad to have you, and you may proceed with your testimony.

STATEMENT OF HON. LeROY COLLINS, PRESIDENT, NATIONAL ASSOCIATION OF BROADCASTERS

Mr. COLLINS. Thank you, Mr. Rogers.

Mr. Chairman and members of the subcommittee, I first want to thank you for the great opportunity which you have given me to be here and testify on this proposition of the proposed repeal or proposed suspension of section 315 as the same relates to the candidates for the President and Vice President of the 1964 campaign.

I would like to join the other witness who testified here in the last few days and compliment the committee for its early and extreme interest in this subject and its willingness to examine in the light of what you regard as the needs of the Nation in this area.

It was a similar suspension in 1960 that made it possible for broadcasters to bring to the American people a new look and a whole new dimension in American politics. The confrontations of candidates Kennedy and Nixon were events of monumental significance, and it is with a deep sense of pride that I point to the performance of broadcasters in that campaign. It was a service that won an overwhelming consensus of praise for its fairness and responsibility—greatly stimulated interest in the election—and contributed importantly to the public's knowledge and understanding of the candidates and issues.

Last year, there were elected over the land 35 Governors, 38 Senators, and 435 Representatives in the National Congress. Also, the whole election process involved thousands of local and State offices. In many key contests, more than 2 candidates were involved. Unquestionably, section 315 provided a limiting factor on public information and prevented the people from receiving the advantages of full broadcast coverage.

Now, it is true that the 1959 amendments which exempted bona fide newscasts, interviews, documentaries and on-the-spot coverage of news from the "equal opportunities" provision of section 315 proved to be of great help and substantial improvement.

But, we at the National Association of Broadcasters feel strongly that the legal straitjacket of 315 requires more than piecemeal removal. It is our position, sir, that the shackles should come off all the way.

Most American broadcasters feel that section 315 not only fails to serve a useful purpose but, further, actually handicaps them in serving the public interest. Therefore, we contend that the operation of section 315 results in a disservice to the American people.

I know the concept of equal opportunities sounds at first blush like the epitome of fairness. The very words seem to have a strong ring of freedom. Yet, as logical as the proposition seems at first, in truth we submit the aim goes far wide of the mark.

When enacted—actually, its basic provisions were contained in the old Radio Act of 1927—the section was accepted as a relatively simple provision of law. But with changing times and the greatly accelerated importance of broadcasting in political campaigns, there has resulted a highly complex group of rules and regulations, interpretations and policy statements that make the handling of political broadcasts now a nightmare.

For example, on October 3, 1962, the Commission—that is, the Federal Communications Commission—published a 28-page document, in question-and-answer form, of its interpretive rulings under section 315. This was before the 1962 elections and was for the guidance of the broadcaster in the campaign then underway.

Shortly after the elections, and notwithstanding all the clarification, one commissioner publicly lamented—

We have just completed one of the most trying political campaigns that the broadcasting industry has ever experienced. Many and difficult questions arose * * *.

This was understandable because, as the campaigns progressed, the Commission was harassed and belabored to decide whether various types of talks on variety shows were bona fide interviews; whether debates by candidates before nonpolitical groups were on-the-spot coverage of news; whether under section 315 a broadcast at an out-right political-group meeting involving an exchange between candidates entitled a group to an opportunity to reply to what it regarded as an injury to it; whether the use of film clips of a candidate's picture and voice in simulated debate was "material" broadcast over which there is no censorship; and so on, and on, and on.

Many of these issues have required such hair-splitting interpretations as would defy the wisdom of Solomon, and as would be expected, the views of those making the decisions were of many varied shades and hues.

In this welter of inquiries and decisions, Mr. Chairman, one fact stands out: As important as the 1960 exemption was to broadcasting and the American people; as important as were the 1959 exemptions in aiding wider coverage of the 1962 campaign, their prime result, we submit, was to underscore the basic failure of section 315.

Section 315 fails because it makes of the broadcaster an automaton and denies to him proper responsibility and accountability.

Section 315 fails because it denies to the broadcaster a range of journalistic judgment equivalent to that accorded other arms of the press.

Section 315 fails because in creating a fear of doing wrong, it destroys the initiative and resourcefulness and the will to do right.

And when section 315 fails, it is not the broadcaster who loses most, but the public.

In the face of a truly outstanding record in the coverage of political and public affairs, it is very difficult for the broadcaster to understand the unwillingness of the Congress thus far to trust him in the political broadcast field. In all other forms of programing, his good-faith judgment is permitted to control.

More than a law, more than the power of the Federal Communications Commission, the intimate relationship of the good-faith broadcaster to his community's life and progress will make certain fair and honest coverage of all matters of public importance—including political broadcasting.

If the repeal of section 315 is achieved, I am convinced that electronic journalism will offer far more extensive and more meaningful coverage of political matters.

Many Members of the Congress have expressed reservations concerning the outright appeal of section 315 at this time. We are well aware of that. If this should prove to be the consensus, then we would certainly support H.J. Res. 247. But, Mr. Chairman, we shall continue to urge repeal of section 315 because we believe that the public interest demands it and that the Congress will ultimately adopt this position.

There is, however, another alternative that we would like to suggest. The freedom the broadcasters exercised so responsibly in the 1960 presidential campaign can and should also serve the country well in the contests for all political officers in 1964.

I urge that you consider, if just for the 1964 campaign, suspension of section 315 for all candidates—National, State, and local. This would afford the broadcasters the opportunity to prove in the crucible of experience that they are qualified to and, in fact, will exercise sound discretion in political broadcasting; and, furthermore, that the American people—and this is even of greater importance—will benefit from a freer and more open discussion of political matters. Then, if broadcasters prove unequal to the trust, if the experiment fails, no further action would be necessary to reestablish the statutory obligations.

From the point of view of the Congress, as well as the industry, this suspension of the equal-time provision of the act for all elections in 1964 would afford an even greater opportunity than 1960 to obtain a reliable body of evidence of how the industry could operate with good

faith and good judgment entirely free from the shackles of section 315.

I would, therefore, respectfully urge that the Congress so extend the 1960 experiment during the 1964 elections.

Mr. Chairman, essential to our democratic society is human friction. Argument, dissent, disagreement, minority versus majority, liberal versus conservative—all of these are the stuff of progress. We believe section 315, although intended to provide a catalyst to this process, has been an impediment.

Only through free communications can this powerful force be kept working. With section 315, broadcasting is crippled and unable to do its full part in helping the Nation meet its responsibilities.

Certainly, there must be good faith and responsibility by the broadcaster. This we seek to encourage at every turn. And this the Congress has adopted as its policy through the Communications Act.

Give us, I urge, the whole range of responsibility for our broadcast programing. You will find, I am confident, that your trust is not only deserved, but that our national life will be significantly enriched.

Thank you.

Mr. ROGERS. of Texas. Thank you, Governor Collins, for your very excellent statement.

The Chair recognizes the gentleman from California, Mr. Moss.

Mr. MOSS. Mr. Chairman, I ask that I be permitted to use my time a little later. I have not quite finished the statement.

Mr. ROGERS of Texas. The Chairman recognizes the gentleman from California, Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

The essence of your statement, Governor, is that you believe that 315 should be repealed?

Mr. COLLINS. Yes, sir.

Mr. YOUNGER. Is that true?

Mr. COLLINS. Yes, sir.

Mr. YOUNGER. Then you believe that there should be no more control over the electronic journalism and over paper journalism?

Mr. COLLINS. Yes. You have under the Communications Act a substantial other control of electronic journalism.

The character and integrity of every license holder is passed upon in the first instance by the Communications Commission. He is licensed by the Communications Commission and that license is subject to renewal and it is also subject to revocation at any time for cause by the Communications Commission.

I think that places much more stringent regulation upon him than the press is subject to because the press is unlicensed and has no restraints upon it at all.

Mr. YOUNGER. If you repeal 315, then there is no control over it?

Mr. COLLINS. Oh, yes. You would continue to have the provision of the Communications Act. You would continue to have the broad power of the Federal Communications Commission which has prescribed the so-called fairness doctrine which would continue to be in force. You would continue to have the obligation of the Communications Act that all licensed broadcasters serve the public interest.

You would continue to have a vast amount of supervisory control over the broadcaster. You would just put more responsibility upon him to exercise his journalistic judgment in this particular field, a responsibility you are now giving in all other fields of programing.

Mr. YOUNGER. You have been in politics, Governor?

Mr. COLLINS. Yes, sir.

Mr. YOUNGER. You are not naive enough to tell us who are in politics that in a hot campaign any broadcaster can remain neutral in his thoughts or perhaps in his acts?

Mr. COLLINS. Yes, sir.

I would say many of them can remain neutral.

Mr. YOUNGER. I say I hope you are not naive enough to tell us that is true.

Mr. COLLINS. If that is naive, I plead guilty, sir, because I think many broadcasters can and do remain neutral in political campaigns. That has been my experience as a politician.

Mr. YOUNGER. Now, one other question: You talked about all elections. For instance, in our own district—

Mr. COLLINS. Mr. Younger, let me say this: That neutrality can't be equated completely with fairness and soundness and the exercise of journalistic judgment. A good broadcaster can certainly be partisan in support of a candidate and still respond to an application to be fair.

I don't want to say that I am advocating that all broadcasters should be neutral in campaigns but, if they can be, I don't think that it is necessarily that they should not. In fact, I think in some cases they owe an obligation as meeting an influence in a community not to be neutral, to take sides and to have conviction and to give leadership to a community.

In my own State, for example, the legislature provided for the reapportionment of its membership and suddenly there was thrust upon the larger counties the responsibility of electing new members to the State legislature. In Dade County, where Miami is located, they were called upon to elect 12 new representatives and 1 additional senator beyond the 1 that they already have.

It developed in that campaign, which was held on very short notice, that there were 231 candidates for these 12 seats in the house of representatives. I don't know that any broadcasters did, but in a situation like that, I think it would have been highly appropriate for a broadcaster, in the exercise of judgment and responsibility, to have aided the people in determining the qualifications of some of those candidates. That is my personal judgment.

One newspaper did, and it proved highly helpful or highly influential, at least in the first primary. The election has not yet been completed.

Mr. YOUNGER. There is where I think you and I differ.

Mr. COLLINS. Yes.

Mr. YOUNGER. You concede that where you have broadcasting stations that have to be licensed, controlled, as to their signal by the Federal Government and they use the public domain owned by all the people, that they should have the same right to exercise personal opinion that a newspaper has which anybody can start at any time without any control on the part of the Government.

This is where, fundamentally, we differ. When we took action in 1960 campaign which was requested on the basis that it was to be a debate and which turned out to be no more of a debate than an interview by a number of journalists that action has been the nose, so to speak, under the tent, and now you want the whole 315 section repealed.

I think if we permit another campaign exemption, then we are going to have another block in the building to get us to repeal 315 in whole which, in my mind, would be one of the greatest crimes on broadcasting that could be perpetrated.

That is all.

Mr. COLLINS. Mr. Younger, we have differences of viewpoint.

I want to say, of course, I respect your viewpoint, but I think that we differ from the point where we start and the basic goal that we have in mind.

Frankly, the basic goal that the broadcaster has in mind as an ideal is not just to help him as a broadcaster, but, rather, to be relieved of limitations that prevent him from doing what he regards as his job of properly informing the people.

When you talk about getting the nose under the tent, if that is the nose under the tent, and if we can make further progress for a better-informed electorate and for an electorate that understands the issues and understands the candidates better, then I think that is great progress and is really reaching toward the ideal of our democratic Government.

Mr. YOUNGER. That is the difficulty.

If you want one medium to determine the elections of all of the candidates in the United States, then you can accomplish it with repeal of section 315. There is no question in my mind about that.

Mr. COLLINS. They won't determine it; they only offer a conduit, the opportunity for that candidate to get to the people himself.

Mr. YOUNGER. That is all.

Mr. ROGERS of Texas. Mr. Kornegay.

Mr. KORNEGAY. Thank you.

Governor, it is nice to see you this morning, and I appreciate hearing your fine statement.

Mr. COLLINS. Thank you.

Mr. KORNEGAY. Now, on page 6, in the fourth paragraph, you state that:

With section 315, broadcasting is crippled and unable to do its full part in helping the Nation to meet its responsibilities.

I don't quite follow or understand why section 315 cripples broadcasting when, in effect, as I understand it, all that it does is to insure that one candidate or each candidate seeking public office in a particular race is guaranteed equal treatment insofar as the broadcasters are concerned or insofar as equal treatment is possible in exposing him to the public during the course of the campaign.

Mr. COLLINS. The simple fact is, Mr. Kornegay, that we have in our system, and you are fully aware of it, of course, as much as I, often a great number of candidates who cannot be said to be serious candidates, who cannot be said to be contributing to the campaign purportedly through that kind of a system. The obligation under

the law as it is now is that in the recognition of a new candidate you must give all the remaining candidates the same time. You fix it so that it is impossible for the broadcaster to undertake that consistent with his general obligations to the public and you also encourage that broadcaster not to provide any political broadcasting because you say in this section 315 expressly that it should be distinctly understood that nothing herein requires the broadcaster to give or to sell time to any candidate but, if he does, then you put him under this straitjacket so far as all the candidates down this whole long range are concerned.

Now, what we are saying is we want to be rid of section 315 so that that broadcaster—and I hope you will assume that we are proceeding from the point that he is a man of good character and integrity and good purpose—so that that broadcaster can in a given case, with, for example, 12 candidates for the office but with the real issues in the campaign centering around the campaigns of 2, 3, 4, or more, bring to the people the viewpoints and the differences in positions of those seriously contending candidates.

Mr. KORNEGAY. Let me interrupt you right there, Governor.

I think that is the thing that is concerning a lot of us. It boils down to the question of who is going to determine what the issues in the campaign are. Are the candidates going to do it, or are the television and radio stations going to do it?

Mr. COLLINS. The broadcaster is going to have to accept that responsibility.

Mr. KORNEGAY. Well, should they have the responsibility of saying what the issues in the campaign ought to be? Aren't issues cultivated by the candidates themselves?

Mr. COLLINS. Well, as they may be cultivated by the candidates, then the broadcaster is bound to recognize that, and he is bound under the law without section 315 to operate in the public interest and to be fair in the presentation of his whole programming schedule.

I think your general obligation on top of the fact that he is supposed to be a man of character and integrity would assure a sound reaction to that responsibility.

Now, I grant you there would be mistakes; there are bound to be mistakes. I don't think there would be many, sir. I think there would be very, very few. I think this comes back around to this basic principle, that every time through the legal process you strive to develop a floor to prevent failures, almost inescapably, then you create a ceiling that prevents the achievement of real excellence, and that is what has happened in this case.

By the Congress in good faith seeking to establish a floor against any abuse I submit that you have established a ceiling that prohibits the broadcaster from doing the full job that I would like to see him be responsible and accountable for.

I admit judgments will have to be made and doubtless on occasion mistakes will be made, but I don't see any reason for assuming that the mistakes are going to be the rule.

I would like to call your attention to this simple fact that section 315 has the broadest possible authorization for abuse of the purpose the Congress had in mind. There is not a thing in the world in 315 that

imposes any limitation on what the broadcaster may do in the way of limiting the use of its facilities by fringe candidates.

If I were a broadcaster and wanted to be a partisan and biased—biased is a better term—if I wanted to be biased, and I wanted to be unfair, I could easily, under 315, operate to circumvent the provision. It would not be any trouble at all. Yet have you heard of that being done? I have not. And the Federal Communications Commission has not heard of it being done.

I submit that very fact undergirds our reputation that the broadcaster basically is a man of integrity and in this particularly sensitive field he is going to strive to the very best of his competence to do a good job.

Mr. KORNEGAY. I don't question that at all, Governor.

I don't know at the moment of anybody in the broadcasting area that I don't have the highest respect for and a great confidence in, but you know some of these issues, candidates and things that you and I think are ridiculous are important to some people.

As I view our Government and our democracy in its representative form, what to you and I may appear to be foolish and ridiculous may be important to others and they are entitled to run on it if they desire and their supporters should have the opportunity to support that type of candidacy.

The question arises in my mind as to whether or not it would be fair and in the interest of our Government for somebody just to cut them off because they may think that they are screwballs or nuts. Many who fall into that group as well as the unknown and obscure get into politics and on the fringe areas of politics.

Mr. COLLINS. I certainly, Mr. Kornegay, believe with you that there ought to be room in our system for the unknown, the obscure, to rise in politics. When I started, I was obscure, unknown.

I really think, sir, that your fear that the broadcaster would close that man out just does not have the real stuff of realism behind him. That is what I would like us to prove in this 1964 election.

Mr. KORNEGAY. I see your problems and recognize your problems, certainly, in a national race, and even down to the State levels where you cannot, of course, give equal time to everybody who just announces that he is a candidate for the Presidency or Vice Presidency or maybe even for Governor of a State.

Mr. COLLINS. In talking about these so-called fringe candidates, what do we do in a situation where you have one that really is identified with an organization that is labeled subversive by the Attorney General or the FBI? What do you do when the head of one of those organizations qualifies as a candidate? That is the extreme. You don't have much of that but it has happened.

Mr. KORNEGAY. You have problems.

Mr. COLLINS. In a broadcasting situation like that, if the broadcaster determined that the man representing the subversive organization should not utilize his facilities and recognized his obligation to the people to forbid it, then under 315 he has to deny the whole range of candidates an opportunity. There ought to be some way out of that.

I come back to the proposition that I think the broadcaster deserves the judgment and discretion and I think he will exercise it.

Mr. KORNEGAY. That is all.

Mr. ROGERS of Texas. Mr. Cunningham?

Mr. CUNNINGHAM. Thank you, Mr. Chairman. I have no questions.

Mr. ROGERS of Texas. Mr. Broyhill?

Mr. BROYHILL. No questions at this time. I may want to ask later.

Mr. ROGERS of Texas. Mr. Moss?

Mr. MOSS. Governor Collins, you talk of electronic journalism.

Within the last 3 years, Congress voted broadcasters are free to report the news of political campaigns; aren't they?

Mr. COLLINS. In regularly scheduled newscasts; yes, sir.

Mr. MOSS. That is right; regularly scheduled newscasts are free to report the news.

Mr. COLLINS. Yes, sir.

Mr. MOSS. As long as it is bona fide and importance of the news.

Mr. COLLINS. Yes, sir.

Mr. MOSS. This gives him great latitude?

Mr. COLLINS. Yes, sir.

Mr. MOSS. Now, you want us to remove this restriction so that they can have free time to roam really all over the lot in the type of programs or presentations which they might ask those candidates who, in their judgment, are entitled to a greater exposure?

Mr. COLLINS. I would not agree to the expression about "roaming all over the lot." I would say exercise full responsibility and judgment as to presentation of political issues and candidates.

Mr. MOSS. Let's say that this certainly knocks down a lot of fences on the range and makes it possible for them to roam more widely.

Mr. COLLINS. Yes, sir; that is true.

Mr. MOSS. Now, in taking out 315, you not only deal with the matter of the free time which would be exercised on the basis of news judgment or whatever other judgment might go into decisions of the broadcasters, but removing any right of the opposing candidate to even buy time; isn't that correct?

So, 315 is the section of the Communications Act which makes it possible for a candidate to insist upon the right to buy time.

Mr. COLLINS. If the station sells time to one who is opposing him; yes, sir.

Mr. MOSS. Yes; and if I understand the laws that now stand, if I think that my opponent is getting too much news coverage, about my only out is to buy a little time on that station so I get exposure to the viewing audience of that station. That is my right now. That would not be my right if we repeal 315.

Mr. COLLINS. I don't see any difference in that situation where you had 315 or not. If you are a candidate and you feel that your opponent is getting more exposure on the news, your right to buy would be dependent really upon the fairness doctrine, and that would still, in effect, be in the Communications Act.

Mr. MOSS. Governor, my right to buy is not at the time on the fairness doctrine.

Mr. COLLINS. Well, you are not getting anything that could be equated with what the other man has got, assuming that he got partiality in the portrayal of news broadcasts.

Mr. MOSS. I don't want to make an issue of it with the broadcaster so I have some campaign funds and I buy time. He has used the station for political discussions.

Mr. COLLINS. You don't have a vested right to do that under 315, I don't think.

Mr. MOSS. I think that is something, Governor, that you and I must agree the courts will finally have to determine. As it now stands, you might disagree with me, and we could not resolve that question here because it would probably have to be determined by the courts. I think I can make a pretty good case.

Mr. COLLINS. Yes, sir. I think I could make a good case against you. I respect your views.

Mr. MOSS. This matter of presenting of candidates—I regard the buying of time as the renting of a larger hall in order to get a bigger audience. I think the broadcaster here is more in the position of the landlord of a big hall to hold a larger audience. It affords me the opportunity of exposure to far more people than I can get through almost any other medium.

I like to feel that if my opponent is going to be permitted to buy time, not that I have to go and try to convince the broadcaster that I am a major candidate, but that I have a right to buy.

I ask you the same question I asked Dr. Stanton the other day: What public interest is better served by removing my right to buy time equally?

Mr. COLLINS. Well, Mr. MOSS, the difficulty in responding to your question when you project it in the first person like that, you are talking about Congressman MOSS.

Mr. MOSS. No. Let's talk about a candidate who filed in 1952 and it was generally agreed didn't have a chance of election.

Mr. COLLINS. Well, I think unquestionably if he was a man of any substance, and I don't mean material substance but I mean any substance in his proposals, if he had anything in which the people would reasonably be interested in hearing about, I don't think there is any question but what a broadcaster in good faith would be anxious to provide him an opportunity to be heard.

Mr. MOSS. Well, we are talking about Broadcast Bureau.

Mr. COLLINS. I think you are assuming a broadcaster who is not in good faith or one of poor character or something of that sort.

Mr. MOSS. Governor, I have had a few occasions to call a few broadcasters on behalf of some of my colleagues when I have complaints. There was a case out in Hawaii in 1960, and I think a number of the other members of this committee recall that, where we had calls from men like the present Governor of Hawaii. One of the major Republican candidates had a bipartisan complaint against the station there. I called and talked to the station manager.

Those people were faced with a very unfair situation. I suggested that perhaps the best thing to do would be for me to call Chairman Harris and have the committee go into some hearings on it. The situation cleared up very quickly.

Mr. COLLINS. I think more unfairness actually occurs under 315 than would occur if you took it out.

Mr. MOSS. You think the broadcasters are responsible and responsive in their communities and that they are all equipped to exercise good news judgment?

Many of them have no background in it and in some stations—I am talking about broadcasters, both the TV and radio—some of them have no type of news organization, no trained news organization.

This might be the local grocer or restaurateur or someone else who is going to exercise this news judgment.

This man might have considerable personal political bias and you are saying that it is more in the public interest to give him the right to determine which candidates are going on the air. I don't see that, other than in the Presidential election, where it is very difficult to determine who a candidate is.

You can have men claiming to be candidates because they have publicly announced and whose names will not go on the ballot in a single state. This poses problems far more difficult than those in the average election for Congress or city council or State legislature where you normally have only two candidates.

Normally, in the general election, at least, you have a Republican and a Democrat and you don't have a third party. I have watched some of these since we had this controversy develop back in 1959 here in this House, well before that, and I have gone into communities where there is not the slightest interest on the part of the broadcaster in really doing anything to serve the public other than to sell whatever time the candidates were willing to pay for.

Now, if you are asking that we grant to persons of this type a broader right where they could be very partisan, I think you are urging us to adopt a very dubious policy, one which could well in many areas result in partisan presentation of candidates.

I think that the Members of this Congress, if they were really convinced that this would make more time available to them, time they didn't have to worry over paying for, that they would probably go along with you, but you know we have all had some experiences, and experience is a great and persuasive feature.

We have doubts, serious doubts, as to the type of treatment we would receive.

In 315, you also at the present time relieve the broadcaster of any liability from remarks made by a candidate.

Mr. COLLINS. No, sir. You increase his liability if you take it out.

Mr. MOSS. If I go on the air as a candidate, the broadcaster is not liable for what I have to say and I don't have to submit him any text in advance.

Mr. COLLINS. That is right.

Mr. MOSS. That is right.

If you repeal that, then the opposite is true.

Mr. COLLINS. If you repeal this and he goes on there and he defames somebody or something, or says something, or does something wrong, he is liable.

Mr. MOSS. If we repeal this and the broadcaster wants to require that I submit my text 24 hours in advance so that he can look it over and determine whether it violates any of the policies of his station, he can do it.

Mr. ROGERS of Texas. Will the gentleman yield there?

Mr. MOSS. Yes.

Mr. ROGERS of Texas. Governor, one thing that occurs to me: Would that not make a censor out of the broadcast station owner?

Mr. COLLINS. It would give the broadcaster a greater position of responsibility because he could be sued in the event a candidate defames somebody or injured somebody in his broadcast. That would give the broadcaster a larger measure of responsibility.

To the extent that he could review material and require the deletion of that which would be defamatory, it does, and it would give him a right of censorship.

Mr. ROGERS of Texas. That is what I say. I mean censorship, itself, involves a rather vague responsibility.

Mr. COLLINS. It would not give the sponsor the right to censor the view he didn't like. No, sir.

Mr. MOSS. I don't know why it would not.

Mr. COLLINS. It would put the broadcaster in a very difficult position under the fairness doctrine and under the obligation to serve the public interest if he set himself up as a censor of views.

Mr. MOSS. Governor, you are certainly familiar with the fact that there are newspapers in this country who on occasion refuse to accept political copy from a candidate because they just don't like it. I have had that experience. They just didn't like the copy and they would not take it.

Now, we are going to put the broadcaster in a position where if I buy time and I want to make a speech and I will concede it is controversial that I have to delegate to him or the law has delegated to him the responsibility for what I say. I am a candidate for public office going to the people and, yet, this party who is not answerable to the people at this point is going to determine whether or not I can say what I want to say.

I remember under the existing setup, I am the one that shows the liability for my remarks.

Mr. COLLINS. I can't accept that premise, and, Congressman Moss, I don't mean to be too argumentative, and I certainly respect your viewpoint, but I really think, sir, and I would not be frank if I didn't say so, that your viewpoints in this matter must be colored by some extraordinarily extreme experiences with some irresponsible broadcaster or broadcasters.

I grant you, sir, that such do exist, have existed, and always will exist, but I don't think there are but very few of them.

I think that this profession has its fringe operators and its shysters, if I may use that word, just as every other profession has. Certainly, we are doing our very best to develop standards and to encourage the adherence to standards.

Through our codes and through other efforts, we are going to make that the minimum, but I don't think the people should be penalized because of the fact that there does exist one like that here and there.

I think that your views of alarm and concern are unreasonably colored by your distrust of that very isolated irresponsible broadcaster.

To tell you the truth, sir, if there is a broadcaster who goes to the extreme that you describe—

Mr. MOSS. I didn't describe any broadcasters that have done it. I mentioned the fact that if we repeal 315, we could be required to submit in advance a text of our speech or our comments and the broadcaster could go over them and determine that they would have to be changed. Maybe I would not want to change them. I don't want the broadcaster's timidity to put me in a straitjacket on what I might feel necessary to say to the people of my district.

Mr. COLLINS. I think any broadcaster who would have that kind of timidity or that type of irresponsibility would also be lacking in something very basic, to wit, solid character, solid integrity of purpose, a solid sense of responsibility to his community, and when those conditions exist, that man has no business being in broadcasting. There are ways under the law that he can be gotten out of broadcasting.

Mr. MOSS. In the middle of a campaign, are there timely ways, Governor?

Mr. COLLINS. Well, I would not say that. I recognize that such a thing would take time, but I wish that your viewing this would take into account that the image of that average broadcaster or that broadcaster with the right kind of background, with the right kind of purpose or the right kind of intent, I think if you took that into account that you would see and understand that the advantage that would inure to that kind of broadcaster who is in a great majority, sir, I really believe that the added advantage that the repeal of 315 would mean to him and to his service would far, far outweigh a disadvantage of some unscrupulous effort that some isolated irresponsible broadcaster might resort to.

Mr. MOSS. Governor, my concern is really far deeper than that. I suppose it goes to the fact that I don't buy the case of the broadcasters that they are, in fact, in a straitjacket; I don't, particularly in the case of general election campaigns.

Now, I have not done it, but I think I am going to request the Library of Congress to make a survey for me and tell me how many congressional races in this country in 1962 and how many State elective races in this country in 1962 had more than two candidates. I think that there is at the present time a tremendous area of freedom of operation in political reporting and broadcasting that has not been utilized or exploited in any way by the broadcasters.

I don't think they have experienced the straitjacket excepting in the presidential election that you mentioned as the basis for requesting this Committee to repeal the entire section 315.

I think that the broadcasting industry has failed in the instances where they had clear right and opportunity to undertake to give the candidates for office a broader exposure and having not utilized the rights already theirs by law between two candidates.

Governor, there is no question of which is the major. There are two major candidates and if you let them go much beyond that, you are permitting them to take partisanly preferential position in favor of a candidate.

If they can show us, and I don't think they ever have, this is, in fact, a straitjacket, then I would listen with care, but that showing has never been made to this committee.

We hear it all ties back to Lord England in those presentations we get. Sure; he is an inconsequential candidate and a rather interesting gentleman, but he is not typical of all the races around this country.

There has been no showing that this is a straitjacket in the average congressional district or the average State elective district. Absent that showing, I remain totally unconvinced that a straitjacket exists and a persuasive case is made to change something what was written originally to ensure fairness.

That is all the questions I have, Mr. Chairman.

Mr. COLLINS. May I respond briefly to the question?

Mr. ROGERS of Texas. Yes.

Mr. COLLINS. I admit there have been failures by the broadcaster to respond to the fullest of his opportunities in political broadcasting, but I believe, sir, and I assert, sir, that most of those failures have been due to fears that he has at the present time of getting into trouble under 315 and that most of those failures would be washed out and would not reoccur if he did not have that fear.

Mr. Moss. Governor, what legitimate fear can a broadcaster have when he is confronted with two candidates for one office?

Mr. COLLINS. When there are two candidates for one office, I don't think we have got in the record indications that in the situation like that he has been fearsome about providing the opportunity of those two candidates to use his facilities.

Mr. Moss. Do you think he has exploited those opportunities as much as he could?

Mr. COLLINS. He, I think, has as much as he could with the kind of cooperation he could get from the candidates, themselves. There are an awful lot of candidates who don't want to broadcast. You have all of this argument.

Mr. Moss. To go on around 10 or 11 in the morning was not really worth it.

Mr. COLLINS. I know of many cases—of course, out in your own State there was a long squabble between two of your candidates out there about a format before they would be willing to go on and the broadcasters were clamoring for them. I don't know of cases and I don't think there would be many. I could be mistaken.

However, I don't know of many cases where you had a Republican candidate and a Democratic candidate for major office who were willing to broadcast that were denied the opportunity to use broadcast facilities.

Mr. Moss. I have never had a case where I was refused to buy time. I have had a few instances back years ago where I had difficulty getting spots equal to what my opponent had but I finally got them after I found out about 315.

Mr. COLLINS. That presents a completely different issue and I don't think it is too closely related to this question of paying for time.

Mr. ROGERS of Texas. Governor, I think we have kind of a new phrase; perhaps it is not new; I have just heard it—electronic journalism.

I wonder if you would give me your definition, your idea of what it is.

Mr. COLLINS. Pardon?

Mr. ROGERS of Texas. Electronic journalism.

Mr. COLLINS. Oh, I thought you said laconic journalism. I was about to ask somebody to get me a dictionary, although I have heard the word many times.

Mr. ROGERS of Texas. That is my southern accent.

Mr. COLLINS. That is the radio broadcaster; he is the electronic journalist. It is through electronic means that he does his work and provides his service.

Mr. ROGERS of Texas. Do I gather that you mean, Governor, in referring to it that the man who owns the broadcast station ought to have the same identical freedom and the same rights as the publisher of a newspaper?

Mr. COLLINS. I won't say identical because, as I tried to say a while ago in answer to Mr. Younger's question, I think the broadcaster, as a licensee, is in a different position from the press and has some different responsibilities and they are spelled out in the Communications Act and those requirements there are supplemented with the authority that the Congress has granted the Federal Communications Commission in the supervision of the broadcaster, so he can't be said to be on precisely a par with the newspaperman because of the fact that there are just a limited number of frequencies that can operate in the spectrum without interference.

Somebody from the Government has to say who has the privilege of using those and that has been given to the Federal Communications Commission.

It is certainly reasonable to say that the use of those facilities will be conditioned upon certain requirements imposed by law that they be operated in the public interest. All that is a part of electronic journalism which is not existent in newspaper journalism.

The public really, so far as electronic journalism is concerned, has the assurance that the broadcaster's character and his competence have been passed upon by authority of law and by representatives of the public, to wit, the Federal Communications Commission. The public has the assurance also that certain reports are made by him to the Federal Communications Commission from time to time, that he is expressly required to operate his facility in the public interest, that he is subject to have his license renewed every 3 years.

I could enumerate many other impositions of control and authority over the electronic journalist that is not true in the newspaper business.

Anybody for any cause with any money can start a newspaper at any time he wants to and do whatever he wants to with it, whether it serves the public interest or whether it is actually promoted with the purpose of serving a wholly special or wholly selfish interest. That is not true so far as the electronic journalist.

Now, I do say in this area of freedom to express views and this area of freedom to control programing, I think the broadcaster should be accorded an equivalent range of judgment and discretion and be held to the accountability, certainly equivalent or higher degree of integrity and all based upon, of course, the primary controls which are existent in law about his continuance in business.

Mr. ROGERS of Texas. Let us consider journalism and editorial policy synonymous.

The broadcaster at the present time is free insofar as his editorial policies are concerned, isn't he, as free as the newspaper editor?

Mr. COLLINS. Yes; he can take viewpoints and we have encouraged him to do more and more of that because I have a strong feeling and I think it is shared by most of our members that we are in a period of time when the broadcaster of conviction, the broadcaster of strength, can serve a greater purpose in advancing the welfare of this Nation and that he should be that kind of man.

We are encouraging him to editorialize, also assuming that he has the qualifications to do a competent job.

Realize this, sir, that all of his editorials, all of his expressions of judgment, are by law required to conform with the doctrine of fairness.

Mr. ROGERS of Texas. Yes, sir; I understand that.

Mr. COLLINS. So that, if he speaks out in his community, for example, in opposition to a bond issue, he, under the law is required, because that is a controversial issue, to give opposing viewpoints an opportunity for expression.

Mr. ROGERS of Texas. Yes, but that would not be under 315. That would be under the fairness doctrine.

Mr. COLLINS. Yes, sir.

Mr. ROGERS of Texas. And the reason for that, Governor—

Mr. COLLINS. The newspaper is not.

Mr. ROGERS of Texas. I understand, but don't you think that the reason for this fairness doctrine and for the provision of section 315 are based on the fact that you mentioned a minute ago that there are only limited facilities available and that the question goes down to the right or the lack of right of an individual who has been licensed to use those facilities to arbitrarily deny their use to someone because he does not like him or because of some other reason?

Mr. COLLINS. He can't be arbitrary, sir, without inviting all sorts of troubles.

Mr. ROGERS of Texas. I understand that, but we are talking about arbitrariness. Arbitrariness to one man, Governor, is not arbitrariness to another. The man who makes the decision and is accused of being arbitrary, he would deny that he was being arbitrary, so it is a question of fact to be determined, I think, in the final analysis, but with relation to the activities of the man, if you say we repeal section 315—

An incident came to my mind some time ago that certain public service time, as I was told, was being used by a man who had some views that conflicted with the view of some business people, and the owner of that station was advised that if he permitted this man to go on any more that their advertising account would be withdrawn from that station.

Now, the matter was straightened out and there is no need to identify the parties. It could be very easily done, but the man who owned the station must depend upon the sale of his facilities for advertising purposes in order to pay his bills.

Now, what he would have done had this been allowed to go to the end where he would have had to have made a final decision, I don't know what he would have done, and I am sure that he would be guessing if he undertook to say that he did.

Mr. COLLINS. That opens up the issue that we have had from the beginning of the print media, and I don't see much difference between the broadcasters' position there and the newspaper man's position because throughout the history of the development of newspapering you have had the man from advertisers who said, "Don't print that."

That gets to the basic opposition of integrity. You have really great newspapers; your newspapers have strong integrity. Of course, if that demand is not based upon soundness and if he is not shown any reason why in good conscience he should change his position, he continues to follow his course, and I should think that the electronic journalist of integrity would do the same thing.

I realize that that is not altogether a question of black and white. There are all kinds of shades of gray somewhere in between many of those issues, but I don't think a broadcaster who has taken a strong position based upon his conviction of right who would alter that position or desist from it because of commercial pressures has the kind of integrity he should have to be an electronic journalist.

Mr. ROGERS of Texas. Governor, that is fine, but you must recognize the fact that people who are in business are sometimes influenced by many factors and this is only one of the factors.

Now, I presume that you take the same position I would, that substantially all of the industrialists of this Nation are patriotic, honest Americans, that you could trust them by simply taking their word for it; yet, out of that group came Mr. Goldfine.

Mr. COLLINS. Yes.

Mr. ROGERS of Texas. Now, why should we have the Federal Trade Commission?

Mr. COLLINS. Federal Communications Commission?

Mr. ROGERS of Texas. The Federal Trade Commission.

Mr. COLLINS. Federal Trade Commission.

Mr. ROGERS of Texas. Why should we have the Federal Power Commission?

Why should we have the Civil Aeronautics Board?

Now, those people are all honest people and, in many instances, they are licensed and their groups are licensed, the same as the Federal Communications Commission.

Now, if we turn this over and simply say that the determination of the politics of this country is going to be handled by broadcasters, you don't feel like that that would create much of a problem?

Mr. COLLINS. You are making, I think, the same mistake that has been made previously when you say you are turning over the politics to the broadcaster.

A broadcaster who allows a conduit to use his facilities is not influencing what the reactions of people are going to be to that candidate.

Mr. ROGERS of Texas. I appreciate that, Governor.

Mr. COLLINS. He is giving that candidate an opportunity to sell his goods.

Mr. ROGERS of Texas. On radio and TV.

Now, you will agree with me that the success of an inferior product that is advertised on TV is much better or the possibility of success of that inferior product, if it is advertised on the TV, is much better than the possibility of success of the sales of a superior product that is never mentioned on TV.

Mr. COLLINS. Well, in the temporary sense, that could be true. In the range of time the question of quality is a very meaningful thing to the American people and I think that a product without quality, regardless of how it may be promoted on the TV, will not succeed.

Mr. ROGERS of Texas. I am not talking about just inferior quality; not one that is bad.

We have had testimony before the Oversight Committee, with which you are fully familiar, of men in business who have been

extremely successful, unbelievably successful to a certain extent, who were willing to pay \$5,000 to merely have the mention of his store on TV one time. When I asked that man if he thought that he had been gypped, he said no; he thought he had gotten his money's worth many times and he would pay \$5,000 again to have the name of his store mentioned on TV. Why? Because of the very audience that was available.

Now, the thing that occurs to me is this, and I think you and your group are wanting to be completely fair, but I think that the strength of this Government rests in the fact that no one has ever been able to control politics in this country. I think that once you get to the point that you have any medium that might be able to exercise even a limited control over politics that you are moving into the area of political power that is very dangerous, and I know you would not want to see anything happen to this country because of a mistake that might be made by an honest man or a deliberate action that might be taken by him.

I think that is the thing that ought to be considered here as a basic proposition with relation to the appeal of this section.

Now, your organization is supporting the present resolution that is before the committee which, of course, is the thing that we are concerned with now. You advocate, however, that this be extended to include not only the presidential and the vice presidential nominees but also the candidates for all other offices.

Mr. COLLINS. We advocate, first, the complete repeal.

Mr. ROGERS of Texas. Yes.

Mr. COLLINS. And, in light of what we hear, there is a rather strong feeling and consensus even of Congress that that would not be acceptable at the present time.

We advocate, secondarily, that you give us a complete repeal for one election and let us prove something to you we have not had an opportunity to prove. We advocate complete repeal just for the 1964 election for all offices: city, county, State, primaries, general elections, and everything, in such a way that automatically that suspension would expire so that the Congress, if it didn't work out, would not be confronted with the difficulty of reenacting a completely new law.

This, we think, would give us a really fair test and that we could prove something that we are convinced of but apparently the Congress is not convinced of.

Mr. ROGERS of Texas. Now, Governor, your organization is against censorship as a basic policy, are you not?

Mr. COLLINS. Oh, yes.

Mr. ROGERS of Texas. And you would not support any type of censorship insofar as getting the facts to the American public?

Mr. COLLINS. We certainly are opposed to censorship.

Now, we do not oppose the right of a broadcaster to cut out defamatory and objectionable material in the event of the repeal of section 315.

Mr. ROGERS of Texas. Now, let me ask you this question in that regard: None of us would support a defamatory action on anybody's part. Suppose we began from the premise that the Congress repeals 315 or intended to repeal 315. Would you be willing to support a substitute for 315 that would impose criminal penalties and also civil

penalties on any violation of the fairness doctrine as enunciated by the Federal Communications Commission?

Mr. COLLINS. I don't think I would, sir, because I think that the question of fairness often is a thin line to draw and I think that a broadcaster would probably be plagued with lawsuits by people who are actually treated very fairly but who in their own judgment and feeling were not treated fairly. I think the fact that that would be hanging over him would really destroy greatly any additional freedom that you might give him by the repeal of 315 otherwise.

Mr. ROGERS of Texas. What redress would the individual American citizen have if he felt that he was treated unfairly?

Mr. COLLINS. Well, if, in that unfairness, he was wronged by any personal or defamatory or libelous matter, of course, he could sue the station. If that were not the case and he felt that the manager had treated him unfairly, why, he could obtain some redress in some way from the Federal Communications Commission in its overall supervisory authority.

Mr. ROGERS of Texas. When I said criminal penalties and civil penalties, I was not speaking of lawsuits.

Mr. COLLINS. Congressman, you know after an election almost everybody feels he has been treated unfairly somewhere.

If you spell out some law authorizing suits against broadcasters for treating candidates unfairly—

Mr. ROGERS of Texas. No. I was speaking of criminal penalties and civil penalties against the fairness doctrine.

Let us assume, of course, that they are all honest, law-abiding, patriotic people, which I think they are, but it is not those people that we are after. We are after the individual who goes out in the dark of the night and hits a fellow over the head with a blackjack. That does not mean everybody in the community is bad.

If you had a criminal penalty to prevent or to punish those that would be guilty—and with that many people you are bound to have some who will seek power that they would not otherwise have. I think it is a human trait and I think the reason we have laws is to guard against that sort of thing.

Mr. COLLINS. Do I think it would be reasonable to suggest that that kind of a burden be placed on the free press of this country?

Mr. ROGERS of Texas. On the free press?

Mr. COLLINS. Yes.

Mr. ROGERS of Texas. No, sir; I was not suggesting that for the free press.

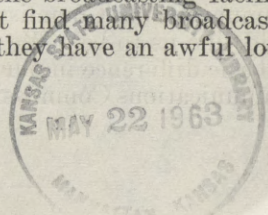
Mr. COLLINS. We think we ought to be treated in this respect like the free press.

Mr. ROGERS of Texas. In what respect?

Mr. COLLINS. I mean this question of authorizing of lawsuits for the imposition of criminal and civil penalties for failure to be fair.

Mr. ROGERS of Texas. Even though you are different from the press in that you have a monopoly on the medium by which you convey the thoughts from this station to the public?

Mr. COLLINS. Well, with the growth of the broadcasting facilities in this country in recent years, you won't find many broadcasters who feel they have any monopoly because they have an awful lot of competition.



Mr. ROGERS of Texas. And a very valuable one.

Mr. COLLINS. True.

Mr. ROGERS of Texas. I think that, of course, is the basis for this whole situation.

Mr. COLLINS. Yes.

Mr. ROGERS of Texas. My feeling is that if we could ever answer the problem of making these facilities available to people under reasonable circumstances so that they would have an equal opportunity to get their case before the public, I think our troubles with section 315 would probably fall by the wayside.

Mr. COLLINS. You have 6,000 broadcasters now.

Mr. ROGERS of Texas. I understand that.

Mr. COLLINS. That is a large number.

Mr. ROGERS of Texas. But, relatively speaking, it is not very many. I mean you have a lot of people who would like to get into the broadcasting business.

Mr. COLLINS. There is one thing I would like to mention before you turn me loose, and I don't know that you are about to do that, and that is that we are having in this country an enormous transition in the press. We are having fewer and fewer and fewer competitive newspapers.

Mr. ROGERS of Texas. Yes, sir; that is correct.

Mr. COLLINS. There are some 28 States of the union now that do not have a single, what you would call, a competitive newspaper; that is to say, where you have independent ownerships covering the same market.

Mr. ROGERS of Texas. Yes, sir.

Mr. COLLINS. And parallel with that shrinkage of the newspaper medium and its independence, you have had this great growth of broadcast journalism, and the broadcaster, if he is no more than a conveyor belt, if he does not do anything more in his community than peddle goods and give out information and do the mundane things of ordinary life, if he does not recognize a sense of deep responsibility to help that community grow and develop and prosper, well, there are not going to be newspapers there to do it. And if he does not do it, in many cases there will not be within those communities a great catalytic force that will accomplish that.

He needs to be free to do a full job of that.

Mr. ROGERS of Texas. That is true, Governor, but I mean what you are saying is very good words that come out of the pulpit on Sunday in many of these communities that we are speaking of, but if everybody followed those dictates, you would not have the ICC; you would not have the FTC; you would not have any of these organizations. Frankly, I wish they would follow them.

Mr. COLLINS. Congressman Rogers, we have got the Federal Communications Commission, and I mean they are quite an active agency and they are writing letters to broadcasters continually these days. Every broadcaster has a very heavy sense or feeling of being regulated, I assure you, sir.

We are not here recommending the abolishment of the Federal Communications Commission, although many broadcasters probably would like us to be. We still have that. This is not going to make any basic difference in our being subject to regulations by the Federal Communications Commission.

Mr. ROGERS of Texas. Now, Governor, let me ask you this final question: If the Congress should decide to repeal section 315, would you feel that it would be in order for some legislation to regulate the networks insofar as exercise of the rights that they gained by the repeal of section 315 is concerned?

Mr. COLLINS. No, sir; I would not advocate that for the basic reason that each of the networks owns and operates five broadcasting outlets and, as broadcasters in those five major markets of the Nation, they are subject to precisely the same regulations and supervision and all that every other broadcaster is. I think that basically affords the Government reasonable supervisory authority over them.

Mr. ROGERS of Texas. But the power over those five stations that they own is sort of infinitesimal insofar as the power that the networks have, though, isn't it, Governor?

Mr. COLLINS. No, sir. I don't think that. Those licenses are subject to renewal every 3 years, just like everybody else's licenses, and they are all very profitable operations.

Mr. ROGERS of Texas. I understand that.

Mr. COLLINS. I think, generally speaking, if you take your network revenue, a great part of it—I am speaking without real knowledge; it is just a guess—I think a great part of that revenue comes from the operation of those five stations.

Mr. ROGERS of Texas. Yes, but if those stations' licenses were canceled, that would not be any reason that the network would not continue as a network, would it?

Mr. COLLINS. Well, I tell you now they would certainly feel like that they had been wounded awfully deeply if they did not have one of those licenses continued.

Mr. ROGERS of Texas. Some of the broadcasters, I hope you don't ask me to identify them because I would have to take the statement back, they have much more fear of the networks than they do the Federal Communications Commission.

Mr. COLLINS. Well, I won't comment on that.

Mr. ROGERS of Texas. Maybe I should not have said it.

Mr. COLLINS. I have said this many times, NAB, our membership is the broadcasters. Now, we include in our membership the networks but the basic job that we have as I see it is to represent that broadcaster who is out there in direct contact with the people doing the job, and that, in my view, should never yield to any influence of any network or any rating services or advertising services or anything else.

I am here today and what I say here today is in response to a feeling of obligation I have to that individual broadcaster serving what I regard to be his problem.

Mr. ROGERS of Texas. Yes; I think that is true. I think what this committee wants to do, and I think the full committee wants to do, is preserve and protect the free enterprise system.

I don't yield to anyone insofar as my feelings about freedom of man is concerned.

Mr. COLLINS. I know you have a job, and I know you very earnestly are pursuing your job and that you have a great and sincere concern about this. I certainly feel that deeply.

I think that these concerns that you have in summary are unfounded in reality. I think they are sincere fears that would not prove to be the case were we given this additional freedom.

I do wish that I could convince you not to give us the whole loaf because I think that would be futile. I wish that I could convince you to give us this full repeal for 1964 and then let us show you that this is not just talk that we are putting out here but it is really meaningful predictions of things that would come.

Mr. ROGERS of Texas. Let me say this, Governor: We appreciate your contribution to this very much.

Mr. COLLINS. Thank you.

Mr. ROGERS of Texas. I hope, as I said before, that we will have exhaustive hearings on the repeal situation.

I think our time is too limited here to really go into the many facets of the problem, but we do appreciate your comments on it.

Mr. Younger has a question.

Mr. YOUNGER. I just have one more question.

I was somewhat puzzled, Governor, when you state that these stations are immensely profitable, as you just mentioned, and those were your words just a minute ago; isn't that true?

Mr. COLLINS. I am talking about the O and O stations, that is, the ones that are owned and operated by the networks, themselves.

Mr. YOUNGER. That is right.

Mr. COLLINS. I don't know what the different peoples—

Mr. YOUNGER. Isn't it correct?

Mr. COLLINS. I don't know whether I said immensely or not. I don't know how people will interpret that term.

Mr. YOUNGER. Let me find out from the reporter.

Mr. COLLINS. They are very profitable; there is no question about that, sir.

Mr. YOUNGER. All right.

And, yet, you feel that those stations using public domain should not be regulated any more than a newspaper which does not use public domain. In the newspaper, everything they do in their printing the paper and distribution is private enterprise?

Mr. COLLINS. Mr. Younger, they are vastly more regulated than the newspapers. I have been over that. Maybe you were absent when we were talking about it.

Mr. YOUNGER. You want freedom?

Mr. COLLINS. I want freedom in this respect but that does not deny the continued power of the Government and the exercise of that power of regulation of broadcasters.

There is just a wealth of regulation that goes on completely aside from this particular issue that we have here.

Mr. YOUNGER. That is all.

Mr. ROGERS of Texas. Mr. Kornegay.

Mr. KORNEGAY. Governor, let me ask you this: You have urged in your statement that section 315 be suspended through the 1964 campaign on all levels, National, State, and local.

Mr. COLLINS. Yes, sir.

Mr. KORNEGAY. I just wondered if you cared to comment at all on a possible suspension during the 1964 campaign for the national election and statewide elections?

Mr. COLLINS. Well, that would be somewhere between the resolution you have under consideration and was recommended but I would certainly prefer that over the resolution you have under consideration.

I think that would be a substantial step, sir, and one, I think, that would permit considerable additional proof and the development of much more information regarding the actual operation of this.

Mr. KORNEGAY. This is of considerable concern throughout the country and goes back to last year when the National Government investigated the costs of campaigning?

Mr. COLLINS. Yes.

Mr. KORNEGAY. And the fact that campaign costs have become almost prohibitive and a large portion of the budget of any candidate, I would suspect, is television costs.

Do you feel with the suspension of this section that that would, through the cooperation of the television industry, go to help in that area, that is, by increasing the amount of public service time, as I understand from Dr. Stanton was done in 1960?

Mr. COLLINS. That is certainly true, that it occurred based upon the 1960 suspension and it would certainly be my judgment the same trend would develop in the further suspension of it and that there would be a great deal more time available to candidates, a great deal more exposure by the broadcaster without compensation to him by candidates under such a suspension.

Mr. KORNEGAY. That is all.

Mr. ROGERS of Texas. Thank you very much for your testimony.

Mr. COLLINS. Thank you, Mr. Chairman.

Mr. ROGERS of Texas. It was nice of you to come.

Mr. COLLINS. You were very patient with me and I enjoyed the talk with you, particularly in such a relaxed and friendly atmosphere.

Mr. ROGERS of Texas. Our next witness is Mr. Sidney Zagri, legislative counsel, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, 25 Louisiana Avenue NW., Washington, D.C.

Mr. Zagri, you may occupy the witness chair and proceed.

STATEMENT OF SIDNEY ZAGRI, LEGISLATIVE COUNSEL, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA

Mr. ZAGRI. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, for the record my name is Sidney Zagri. I am legislative counsel for the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America.

I noted that Governor Collins said that he did not expect you to give him the whole loaf, he just wants it one slice at a time. I do not even want you to give it one slice at a time because I feel that we are dealing with something so fundamental here in section 315 that if we give one slice today and another slice next year there will be an erosion of the basic right which section 315 seeks to protect; namely, the right to communicate by all segments, by all parties in our free society. Once that basic right is eroded there is no difference between

the monolithic system of totalitarian Russia and the monolithic system which presumably operates on a 2-party basis.

As one of our sage observers said around the turn of the century, the difference between the two parties is between tweedle-dum and tweedle-dee, and if we ever get to the point where only tweedle-dum and tweedle-dee's point of view can be heard, we are no better than the totalitarian countries. Actually when we talk about free speech we must be realistic. We must recognize that if I have the right to get up on a soap box on a street corner and attract the attention of a few people, I do not have the same free speech if you can get on a network and talk to millions, especially if the network operates in the same public domain of the free air that I occupy when I get up on a soap box.

So on behalf of General President Hoffa and our general executive board, representing 1,750,000 teamsters and their families, totaling approximately 5½ million potential votes, we oppose House Joint Resolution 247 on the following grounds:

1. It is restrictive in nature and encourages conformity of thought;
2. It transfers the responsibility of guaranteeing all the right of expressing all points of view on the airwaves of America from the Government to the leaders of the communication industry; and
3. It provides no alternative methods except for this fairness doctrine which is really no alternative because it corrects the damage after the damage is done. After a defeated candidate complains, it is too late to complain if the damage has been done. So I do not consider that an alternative. It provides no alternative method which would guarantee freedom of discussion of all points of view.

The proposal to suspend the equal time provisions of section 315 as it applies to presidential and vice presidential candidates is a major blow to the rights of minority groups in the use of the airwaves for the communication of its ideas.

The airwaves are a part of the public domain. They do not belong to NBC, CBS, ABC, or any television station or network. The television and radio stations of America are simply trustees of the airwaves and are obliged to administer their trust in a manner consistent with the commands of the first amendment of the Constitution, and Congress through section 315 has implemented this command in the area of the use of communication of ideas through the airwaves.

What the proponents of House Joint Resolution 247 appear to be seeking is simply this: that the judgment of the broadcaster be substituted for that of the Congress in guaranteeing that all points of view receive national expression on radio and television.

We are dealing with a very fundamental liberty of the American people to hear—the liberty to communicate, the right of the people to know and understand the minority as well as the majority points of view. The courts have long held that there is a strong public policy which compels the Federal Communications Commission "to foster the widest possible dissemination of information from diverse and antagonistic sources."

The proponents of this resolution are tampering with the basic command of the first amendment. As the Supreme Court said in *Associated Press v. United States*, 326 U.S. 1, page 20:

* * * That amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public, that a free press is a condition of a free society.

I can say, a fortiori, if the command of the first amendment applies to the press, this guarantee should apply where the airwaves are concerned.

In 1959 when hearings were held on temporary suspension of section 315 with respect to the presidential campaign of 1960, many feared that this would open the door to permanent repeal of section 315, with no safeguard provided for the protection of minority party candidates. Of course this fear has already found ample expression during these hearings, the president of the Columbia Broadcasting Co. on Monday and Governor Collins today. I regret to report that the fears expressed at that time were well founded. As recently as last Monday, Dr. Stanton, president of Columbia Broadcasting Co., called for the outright repeal of section 315 and offered in its place the judgment and the benevolence of the leaders of the broadcasting industry.

Further, we take sharp issue with Dr. Stanton's testimony in which he not only calls for the abolition of section 315 but also says the TV and radio industry shall have the right to censor political speeches in advance of their deliverance on radio and television.

It is shocking to say the least that in a day and age when our way of life is being challenged by the totalitarian, thought-controlled standards of the communistic world that a leader of our communication industry should propose that we abandon the basic guarantee which provides for a diversity of opinion and thought and substitute therefor the censorship and judgment of the radio and television industry. By what divine right does Dr. Stanton believe that he is a better judge of what you as a Member of Congress or the head of a political party who is a candidate for President should say to the American people? We have the experience of the suspension of this provision of section 315 in 1960 before us.

House Joint Resolution 247 is a replica of the joint resolution which suspended equal time provisions as applied to presidential and vice presidential candidates under section 315 of the Federal Communications Act. At that time many feared that such a suspension would result in creating a monopoly of the airwaves for the two major parties and for all practical purposes create a blackout of the minority parties in this country. The report of the Federal Communications Commission, as contained in a statement of the Honorable Frederick W. Ford, Chairman of the Federal Communications Commission, before the Subcommittee on Communications of the Committee of Interstate and Foreign Commerce, U.S. Senate, January 31, 1961, concluded:

That, by and large, networks and stations exercised considerable care and succeeded in providing virtual equality in sustaining time as between the presidential and vice presidential candidates of the two major parties.

Then he states:

That presidential candidates of other than the major parties received relatively little free time * * *

A breakdown of the report draws a comparison between sustaining time for political broadcasts on TV and AM networks between 1956 and 1960. The report states:

* * *These figures include both candidates and noncandidates. The figures show very substantial increases in the hours of sustaining network program time given to the major parties and sharp declines in the time allotted to candidates of other parties.

Table 4 of the report shows the extent of appearances by all candidates by parties on TV stations. Television stations as a whole gave virtually the same amount of sustaining time to the candidates of the two major parties: Of the stations reporting, each on the average gave 2 hours and 54 minutes of sustaining time to Republican candidates and 2 hours and 55 minutes to Democratic candidates. (These figures include the four great debates which were reported as 2 hours for the Republican presidential candidates and 2 hours for the Democratic candidate.) The average per station sustaining time given to all other candidates was 35 minutes, and a number of TV stations carrying these other candidates were much lower than those carrying the candidates of the major parties.

The experience on radio was even more discouraging for candidates of the minority parties. AM stations granted candidates of the two major parties the following time:

Two hours five minutes for Republican candidates and two hours eight minutes for Democratic candidates.

The average per station sustaining time given to all other candidates was 35 minutes, and these candidates were carried by 202 AM stations as compared with 1,188 and 1,208 carrying the candidates of the major parties.

Presidential and vice presidential candidates of the two major parties aggregated 8 hours and 6 minutes per party. Presidential candidates of all other parties combined received a total of 1 hour and 20 minutes of TV network sustaining time.

The presidential and vice presidential candidates of the two major parties on AM radio networks: 10 hours and 18 minutes for the Republican candidates and 10 hours and 48 minutes for the Democratic candidates. Sustaining time reported for the presidential candidates of all other parties was 51 minutes.

The report continues, "There was practical identity in the amount of free time given by the TV stations to the presidential candidates of the two major parties." However, no mention is made of any free time given to the presidential candidates of the minority parties. I understand that there was one instance where I think 15 minutes free time was given to a candidate in one of the minority parties.

The temporary suspension of 1960 legislation was by way of an experiment, gentlemen, and it also established a watchdog committee to report back to Congress. I think some of the information we have just received should be studied carefully as shedding light on the 1960 experience. Also, I want to call your attention to the Yarborough committee, the watchdog committee set up in the Senate. The six volumes of the Yarborough committee are very enlightening and it warns that the Congress should proceed with great caution in this field before entertaining any additional proposals for even

temporary suspension or relaxation of this basic guarantee. The Yarborough committee states, and I quote:

The drive for suspension of section 315 permanently has some curious overtones. There seems to be a feeling on the part of some proponents of this type of legislation that those who are eminently qualified in the field of entertainment are better able to judge the format and content of political programs designed to enlighten the public than the candidates themselves. Those who test the public response and rate programs accordingly for entertainment value or the sale of commercial products may not be the best judge to analyze the citizen's quest for information or his taste for political controversy. Programs of a political nature in our society are a paramount public service responsibility of licensees. And the intervention of the licensee between the candidate and the public does not mean that the licensee is to act as a filter, substituting his judgment for that of the candidate as to what the American people want to know.

The proposal really calls for the establishment of a monopoly of the airwaves by the majority parties. The facts are incontrovertible on this point. What does this do to our system of freedom of expression of minority views? We are fully aware of the fact that a view cannot receive effective expression unless it may reach the maximum audience available so far as both sides or the many facets of the argument are concerned.

The next question that arises is, Do the two major parties really afford the opportunity for discussion of the basic and fundamental differences concerning solutions to the problems of our time?

I referred to tweedle-dum and tweedle-dee a little earlier. Now I would like to quote a more sober observation on this point, a statement of Mr. C. L. Sulzberger, publisher of the New York Times. Mr. Sulzberger stated in his New York Times column of July 25, 1960:

* * * both parties are (also) adopting startlingly similar program on basic domestic policy. Each founds its philosophy on the same essential precepts * * *. Thus in strange fashion we give the impression of staging an election which is but a race with one horse, or, one might say, two parties and two candidates split from the same monolithic whole. Sameness is the standard, and within the political organisms there seem to be only the vaguest stir of callow and unsuccessful resistance to this tide.

Then we have a statement from George Kennan, former U.S. Ambassador to the Soviet Union. Mr. Kennan stated in the "Encounter" of March 1960:

As for the one-party system (of the Soviet Union): It must be contrasted, unfortunately, with precisely that segment in the political life of the West which is itself today most subject to question, most doubtful in point of adequacy to the needs of the time. I mean the system of political parties and parliamentary institutions. In the doctrinal sense we in America also have in certain respects a one-party system. For aren't the two parties ideologically indistinguishable? Don't their pronouncements form one integral body of banality and platitude?

Now, gentlemen, I would like to call your attention to the platform of a minority party in 1912. It was the platform of the American Socialist Party and the candidate was Eugene Debs. That party asked for the following things:

To further conserve and develop natural resources:

- (a) By scientific reforestation and timber protection;
- (b) By reclamation of arid and swamp tracts;
- (c) By storage of flood waters and utilization of water power.

To secure for every worker a rest period of not less than one day and a half each week.

To forbid the employment of children under 16 years of age.

To establish minimum wage scales.

Unrestricted and equal suffrage for men and women.

The election of the President and Vice President by direct vote of the people.

The enactment of further measures of general education and particularly for vocational education in useful pursuits. The Bureau of Education to be made a Department.

The separation of the present Bureau of Labor from the Department of Commerce and Labor and its elevation to the rank of Department.

I am sure that the Republican and the Democratic parties have accepted this as part of their platform many years ago, but this was a radical proposal by the American Socialist Party in 1912. Do you think that if we had had television in that day and the networks were to make the decision that Eugene Debs would have had an opportunity to perform the educative function that has been the traditional function of the Socialist Party in this country?

I dare say that when Norman Thomas—I read in the paper yesterday he was going to run again in 1964 to perform perennial education function and he hopes that some of the platform of the Socialist Party of 1964 may be incorporated possibly in the platform of the Democratic Republican Party in 1974 or 1980. But will he be given the opportunity under the proposal to perform this vital educational function as the representative of the minority party of the American people, or will the American people be continued to have a choice really on the basis of exploitation of the television arts—joint performances, not debates?

I think that all parties admit that the objective of the Lincoln-Douglas debates was the basis of hope for the Nixon-Kennedy debate. They were not approached, they were merely joint appearances. The real issues facing the American people were never discussed in terms of our national hookup, our national broadcasting system, by any of the candidates. The minority parties did not have the opportunity and the representatives of the majority parties just did not get to it.

Now I would like to suggest there are other alternatives. I recognize the problem that if you have obscure parties, like a Vegetarian Party, and I understand there was someone picketing the White House the other day that wanted a national party so that animals should wear clothes just as men and women do, and some other crackpot scheme, that this presents somewhat of a problem.

However, it seems to me that if we could have during election time sort of a Susskind "Open End" discussion where the presidential candidates would gather around and discuss for two hours, or as long as necessary, the basic issues, if the man who is running for the presidency for the party has a contribution to make on some of the basic issues, whether it be foreign policy, whether it be automation, whatever, that is fine, at least a minority who identifies with this man will feel that they are participating.

I think that one of the problems we have in America today is a disillusionment. The American people really feel they do not have

too much of a choice. The reason we have so little participation in politics, and I know this from personal experience because our drive organization which is the political arm of our union spends 365 days a year encouraging our rank and file members and their families to participate in the party of their choice, and we always get this answer, Well, what can we do, what are the issues? They somehow feel that it does not make much difference which party wins and therefore they do not participate.

So I say that rather than to relax the provisions of 315, even for 1964, that we reexamine the 1959 amendment because I think that the television stations and the radio stations and the networks are giving aid and comfort to one party or another in the editing of news. So I would like to make the proposal that we examine the 1959 amendment rather than make any relaxation on 315.

Mr. ROGERS of Texas. Thank you. I presume that your quote from the New York Times was not out of a recent issue.

Mr. ZAGRI. No.

Mr. ROGERS of Texas. Mr. Zagri, you refer to the word "given" with relation to time during the past presidential election. Now were the times that you were talking about times that were actually given as public service and not charged for or were they sponsored by anyone?

Mr. ZAGRI. I think the language I quoted was from the report itself. I would be glad to furnish that. If the record would permit, I have a statement of the Honorable Frederick W. Ford, Chairman of the Federal Communications Commission, before the Subcommittee on Communications of the Commerce Committee, U.S. Senate. I have his complete report here and I believe the facts are very enlightening. I would be glad to submit the entire report.

Mr. ROGERS of Texas. We have that report.

Mr. ZAGRI. You have that report?

Mr. ROGERS of Texas. Yes.

Mr. ZAGRI. I am simply quoting from that report. I assume since he refers in some cases to free time, in other sections of the report, just sustaining time, the word "given" I think is used interchangeably.

Mr. ROGERS of Texas. I thought we should clear that up.

Mr. MOSS.

Mr. MOSS. No questions.

Mr. ROGERS of Texas. Mr. Younger.

Mr. YOUNGER. Mr. Chairman, I think Mr. Zagri appreciates the fact that I very seldom agree with the recommendations which come from his organization but I must confess that on this occasion I think we are pretty much down the same line.

That is all I have.

Mr. ZAGRI. I am happy to note the agreement, Mr. Congressman. We seldom agree with everyone on every issue anyway. We feel that we are very fortunate if we can have agreement on some issues.

Mr. YOUNGER. That is right. Thank you.

Mr. ROGERS of Texas. Mr. Cunningham.

Mr. CUNNINGHAM. I want to thank Mr. Zagri for his fine statement.

After having listened to these discussions over a period of several days the thought occurred to me, and I would ask the witness, what would be your reaction to legislation that would not allow any free time to be given?

Mr. ZAGRI. I would be opposed to such legislation primarily because I think the cost of campaigning is becoming an increasingly, almost insurmountable burden. I think the trend should be in the direction of more and more free time so that the burden of raising these fantastically large campaign funds would not have to be on the shoulders of Congressmen every 2 years and on Senators every 6 years. I think you will agree with me you would have a freer hand, you would have fewer obligations to constituents, if you had more free time and fewer debts to repay.

Mr. CUNNINGHAM. The reason I mention that is that we hear of many problems with section 315. If 315 is wiped off the books, I am wondering if the eventual answer might be to have legislation not allowing stations to give any free time, that would solve a lot of problems.

Mr. ZAGRI. The elimination of 315 does not eliminate free time, it simply eliminates the responsibility of equal time.

Mr. CUNNINGHAM. You misunderstood me. I realize that. I say there are strong arguments for the elimination of free time, there are strong arguments for retaining free time. Now by simply eliminating altogether the giving of free time would solve problems on both sides of the issue.

Mr. ZAGRI. Well, I don't think it would solve the problems, it would simply be a way of resolving something, but I think it would be unsatisfactory.

Mr. CUNNINGHAM. I think solving would be a better word.

Mr. ZAGRI. It would tend to resolve but I think in an unsatisfactory manner, for the reason I have already stated.

Mr. CUNNINGHAM. Thank you.

Mr. YOUNGER. Mr. Chairman, just one other question.

Mr. ROGERS of Texas. Mr. Younger.

Mr. YOUNGER. I am wondering in the distribution of equal time, could that be changed somewhat or would it be feasible so as to give expression to minority parties by dividing the time according to the percentage of the total vote in the last election or some standard of that kind because equal time means that you give half an hour to one presidential candidate, you give half an hour to the next one or minority party which may not in the last election have received more than 5 percent or 2 percent of the vote. In your opinion could a distribution of the time be made on some standard other than equal time?

Mr. ZAGRI. Yes, I think that there is an area where we can. This is an area for workability. We can try to juggle around some ideas and see what could be done. Offhand, just thinking off the top of my head, it would appear to me that if each party had a guarantee of a minimum of time so that we would not equate the validity of ideas with the number of people supporting them, because often times some very good ideas have only a few people supporting them at the inception, so that there would be an opportunity for new ideas to gain a national platform by having a minimum amount of time, then I think there should be a reward for the number of votes at the last election. If you have a large number of people in a party, they certainly deserve possibly a little more attention than a very

small group. So if you wanted to play it on numbers, I suppose you could work out some compromise along that line.

Mr. YOUNGER. That is all.

Mr. ROGERS of Texas. Mr. Zagri, what is the position of your organization on the question of censorship?

Mr. ZAGRI. We are against it by private, public or any other way. We feel that a free society can only prosper through a free flow of ideas.

Mr. ROGERS of Texas. Thank you very much.

The subcommittee will stand in recess until 2 p.m.

(Whereupon, at 12 noon a recess was taken until 2 p.m.)

AFTERNOON SESSION

Mr. ROGERS of Texas. The Subcommittee on Communications and Power will come to order for the further consideration of pending business. I think we had finished with the second witness.

Our next witness is Mr. Eric Hass, editor of the Weekly People Socialist Labor Party, Post Office Box 76, New York.

Mr. Hass, it is nice to have you before the subcommittee.

STATEMENT OF ERIC HASS, EDITOR OF THE WEEKLY PEOPLE SOCIALIST LABOR PARTY

Mr. HASS. Thank you, Mr. Chairman, and members of the subcommittee. This statement that I am about to read was prepared by Mr. Arnold Peterson, our national secretary, and he asked me to deliver it.

Mr. ROGERS of Texas. Fine.

Mr. HASS. If there is anything that is fundamental to and inseparable from democracy, it is free speech, whether in assembly, in the press, or—in our modern age—on the airwaves. Woodrow Wilson once observed that:

Nothing could be more obvious than the fact that the very life of free, popular institutions is dependent upon their breathing the bracing air of thorough, exhaustive, and open discussion.

This uniquely American concept of the great importance of free speech no longer appears to enjoy the same widespread acceptance that it formerly did, despite the lipservice continually paid to it. The truth of this is particularly emphasized by the repeated and persistent attacks that have been made against the "equal opportunities" provision of section 315 of the Federal Communications Act by the licensed operators of the publicly owned radio and television airwaves, and the widespread support that these efforts have received from the privately owned press, public officials, and others.

As a result of these efforts, section 315 has already been ruthlessly emasculated by the amendment (Public Law 86-274) passed on September 14, 1959. During the 1960 national elections it was completely suspended insofar as candidates for President and Vice President of the United States were concerned. Now it is proposed that this be done again for the 1964 presidential campaign. It would be naive to assume that these temporary suspensions are the final aim of the broadcasters and their supporters. Their original goal was, and still

is, the complete and permanent elimination of the "equal opportunities" provision of section 315 from the Federal Communications Act. And they will leave no stone unturned in their efforts to accomplish this. Nor can there be any doubt that they consider these temporary suspensions as steps that will lay the foundation for the eventual complete elimination of section 315.

If it appears that we express ourselves bluntly and indignantly during the course of our testimony before this committee, let it be emphasized that our feelings and opinions in this matter are strong and sincere, and born of a deep concern. We consider the question of the free and unrestricted expression of divergent views over the public airwaves, especially during national elections, a matter of the gravest importance, involving not only our own constitutional rights, but the constitutional rights of the American people. In a world where all too many of civilization's hard-won freedoms are rapidly disappearing, with little or no opposition, it becomes necessary to speak out clearly and emphatically, rousing if possible an apathetic citizenry to the dangers that threaten their rights and liberties. The Socialist Labor Party of America, therefore, is impelled to speak unequivocally on the vital matter before us. For we are fully convinced that if section 315 is again suspended for the 1964 campaign the result will be:

1. A long step toward the complete suppression or elimination from the public airwaves of all minority views during political campaigns, thus further reducing these campaigns to a mockery of free, democratic elections; and

2. A serious and far-reaching blow at the democratic freedoms generally guaranteed by the Bill of Rights, and particularly the right of free speech guaranteed by the first amendment of the U.S. Constitution.

Before dealing specifically with the nature, scope and implications of the latest proposal to suspend section 315, we wish to restate several basic and relevant facts. These facts, we hold, provide the really important background against which this proposal should be considered.

First, it is a fact that the airwaves belong to the people—all the people. This important fact, its full implications, is all too frequently ignored or overlooked. Indeed, the broadcast licensees and their spokesmen generally talk and act as if they were the private owners of the radio and television airwaves. The following statement by Robert W. Sarnoff, chairman of the board of NBC, is an illustration of this attitude. Said Mr. Sarnoff:

We should consider the most effective methods of using our own facilities to create wider understanding of our medium and how it functions in everyone's interest. (Quoted by Frank K. Kelly, vice president of the Fund for the Republic in "Who Owns the Air?") [Mr. Kelly's emphasis.]

As Mr. Kelly aptly observed: "The sense of proprietorship came through in every line." Listening to Mr. Sarnoff and Dr. Frank Stanton and other broadcast industry spokesmen, one would think that during all these years the poor broadcasters have been exploited for the public good. The truth is that the broadcast licensees have been granted the privilege of exploiting a natural resource belonging to the people for their own private and corporate gain. And they have reached a point where they consider this privilege an absolute right.

No less an authority than the Chairman of the Federal Communications Commission, Mr. Newton N. Minow, speaking at the "homecoming" seminar of Northwestern University Law School, observed:

The trouble is that far too many licensees do not regard themselves as "trustees for the public." The frequency is regarded as their's, not the public's, and the license is not one to operate in the public interest but rather to get the greatest financial return possible out of their investment (Broadcasting Magazine, Aug. 7, 1961).

And the "financial return," as we shall presently show, has not been insignificant.

The broadcasters, of course, are fully aware of the need to justify their huge profits. Thus, when Mr. Sarnoff appeared before the Senate Subcommittee on Privileges and Elections in June 1961 he cited the "costly facilities, manpower and other resources" which he contended represented an "investment and expense that have created a service where none existed before." (Broadcasting Magazine, June 12, 1961.) This claim distorts the picture and misrepresents the essential facts. The television industry's revenues in a single year have been reported to have reached the point where they are "double the original investment of the industry in physical property, plant and equipment, with returns higher per dollar invested than the great majority of major American industries." (Robert W. Horton in "To Pay or Not To Pay, A Report on Subscription Television," published by the Center for the study of democratic institutions.) And it is pertinent to call attention to the fact that in addition to permitting the broadcasters the free use of the public airwaves, the people of this country have spent an estimated \$40 billion "to acquire and maintain sets which make broadcasting possible and profitable as an industry." (This is all from Robert W. Horton's "To Pay or Not To Pay," a report on subscription television.)

Nor do the airwaves belong to any special group of candidates for political office, though repeatedly we are being told by those who wish to amend, suspend, or repeal section 315 that only those candidates whose party has received substantial numbers of votes in previous elections should have access to the radio and television airwaves. It should be noted that on the basis of this premise the particular candidate himself need not ever have received a single vote. If he is nominated by a political party whose previous candidates did receive a substantial vote, he is automatically presumed to be a "substantial" candidate who has something important to say and thus entitled to time and opportunities over the broadcasting facilities. To carry this counterfeit logic (in Lincoln's words) one step further—if the candidate who actually polled the substantial vote in the last election on one of the major party tickets were this time nominated by a new party (as Theodore Roosevelt was nominated by the Progressive Party) or by one of the present minority parties (for example, the Socialist Labor Party), he would probably no longer be considered a "substantial" candidate and would not be considered worthy of "equal opportunities" at all. In short, whether such candidate for public office would get an opportunity to present his views in any degree would depend solely on the whims or the presumed "mature judgment" of the licensed broadcasters.

The point involved here can be illustrated still another way. In 1960, Mr. Eric Hass, the Socialist Labor Party's candidate for President of the United States, was not considered a "substantial" candidate by the broadcasters. By their arbitrary standards they decided he was not "newsworthy." But suppose that Mr. Hass became a Democrat and was nominated by the Democratic Party for public office. Mr. Hass would quite suddenly become a "substantial," "newsworthy" candidate simply because he changed his party label.

These examples speak for themselves. It would, indeed, be most dangerous to the principles of democracy to place in the hands of a small group of individuals, the licensed broadcasters, the unrestricted power to decide arbitrarily which candidates for public office are to have access to the airwaves. It would provide the basis for a system of censorship and suppression of views utterly abhorrent to, and in conflict with, our traditional and constitutional freedoms. To say nothing of the fact that it would place those candidates who were adjudged "substantial" and "newsworthy" under a tremendous obligation to a vested corporate interest. The contention that it won't happen, is not at all reassuring in face of the fact that it could happen. As James Madison observed at the Virginia Convention in 1788:

I believe there are more instances of the abridgment of the freedom of the people by gradual and silent encroachments of those in power than by violent and sudden usurpation.

To summarize and to emphasize: the airwaves do not belong to the broadcasters; they do not belong to any special group of candidates; they do not belong to any other group or combination of groups. They do belong to all people.

Second, it is widely recognized that the airwaves have become the most important and most effective means for communicating and discussing matters of public importance. This is particularly true during political campaigns. As Senator John O. Pastore, chairman of the Senate Subcommittee on Communications, correctly put it:

Broadcasting and in particular television today is the most powerful medium of communications available to candidates for public office (S. Rept. No. 1539, June 8, 1960).

This appears to be a universally recognized truth. It follows in simple logic that it would be inimical to the democratic process, and work an injustice on the citizenry, to limit the use of this "powerful medium" to political parties whose social and political philosophies are practically alike in all matters that are essential. And it would be presumptuous to assume that the listening audience is interested only in what the major parties may have to say on the burning questions of our age which demand for their solution the active participation of the whole people. Moreover, as we have repeatedly urged, the right to speak is inseparable from the right to hear. As Alexander Meikeljohn reportedly expressed it:

We listen not because they desire to speak, but because we need to hear. This is the program of self-government (San Francisco Chronicle, July 24, 1962).

Third, it has been repeatedly emphasized that the first amendment of the U.S. Constitution is applicable to the communication of ideas over the public airways and, accordingly, protects against the abridgment of free speech over these media. The broadcast licensees have

repeatedly attempted to distort this fact into an argument that it is their freedom of speech that is being abridged because they have not yet been given the unqualified right to determine arbitrarily who shall speak over the publicly owned airwaves. This is, indeed, perverse reasoning.

We shall have occasion to make additional explicit references to these extremely important facts later in this statement. Obviously the members of this committee, the Members of Congress, the members of the FCC, the broadcasters, and many others are as aware of the basic facts we have cited above as we are. Yet, we are impelled to restate these fundamental truths here because of the widely publicized statements and reports in recent months which indicate an all too apparent willingness completely to surrender control of the public airwaves to a handful of men who are primarily concerned with exploiting these media of mass communication for their own private profit, and on their own terms.

The chief argument used to support and justify the demand for the suspension of section 315 is the claim that the broadcasting industry's performance under Senate Joint Resolution 207 during the 1960 national campaign resulted in the most enlightened electorate in history, and demonstrated that they could and would operate their broadcasting media impartially and fairly during political campaigns. The spokesmen for the major networks, in particular, point with pride to their "record" during that campaign. They contend that this record shows that they have rendered "a great public service," proving that they have "matured" and demonstrated their "sense of responsibility," and, therefore, can be relied upon to be fair and objective to all candidates without being kept under statutory obligations.

At this point we wish to make the following observation: No one would attempt to argue that the Bill of Rights should be amended, suspended, or repealed because in their opinion those who hold office and administer the affairs of state have proved that they are "mature" and have demonstrated a "sense of responsibility" and, therefore, need not be kept under any statutory obligation not to interfere with the rights and freedoms of the people as guaranteed by this historic section of our national constitution. The principle that applies here applies also to the important democratic principle embodied in section 315. "Maturity," "sincerity," "sense of responsibility," good intentions, or whatever, do not justify or warrant the repeal of a statutory admonition to those entrusted with administering affairs in the public interest not to violate that trust or interfere with, or attempt to abrogate, the hard-won rights and freedoms of the people.

As to the specific claims of the broadcasters regarding their record during the 1960 national campaign: An objective review of that record reveals quite a different picture from that painted by the industry spokesmen and their supporters. According to the Federal Communications Commission's preliminary report to the Senate's Subcommittee on Communications during the hearings conducted January 31 and February 1, 1961, the seven national radio and television networks gave the two major parties a total of 80 hours and 10 minutes free, on a "virtually 50-50 basis." In addition, these two parties also

shared equally an additional 2,503 hours donated to them free by the television stations across the country. (Broadcasting Magazine, February 6, 1961.) The value of the network time alone has been estimated at close to \$6 million. (Columnist Marie Torre, New York Herald-Tribune, February 6, 1961.) All other parties received a total of only 1 hour, 35 minutes on the television networks, and a total of only 101 hours from the television stations across the country. And this despite the fact that neither the 1959 amendment to section 315, nor Senate Joint Resolution 207, suspended the mandatory obligations of broadcast licensees to operate their radio and television facilities on a basis of overall fairness as set forth in the FCC's Release No. 215 entitled, "Editorializing by Broadcast Licensees." Actually, the amendment and the resolution both specifically reaffirmed this statutory obligation. Which prompts us to repeat here the observations we made in a letter to Senator Ralph Yarborough, chairman of the Senate Subcommittee on Freedom of Communications:

* * * If it is "fair," "impartial," et cetera, to accord to the two major parties (in all essentials practically one party) a virtual monopoly of the airwaves, and exclude minority parties from enjoying a "reasonable opportunity" as provided by law, then, surely, these terms have lost all meaning.

The unfairness and actual disregard of the Communications Act's provision of "reasonable opportunity" are emphasized by the reported fact that the broadcasters offered additional free time to the two major parties amounting to \$2,563,000, which these parties rejected. Surely, this excess of gratuities could and should have been given the "minor" parties, if only as a token of "fairness" and "impartiality."

(Parenthetically it should be noted here that the liberalness of the broadcasting industry in giving free time to the major parties in 1960 amply refutes their contention, made prior to 1959 when section 315 was in full effect, that they could not afford to give more free time than they did give. In fact, in 1960 they admittedly could afford to offer \$2.5 million worth more than the major parties were even willing to accept. Which is not hard to understand when one realizes, for example, that the three television networks and 519 individual TV stations showed a profit of over \$222 million in 1959. (Jack Gould, New York Times, September 11, 1960.) The net profits of the television networks alone rose from \$9.9 million in 1952 to \$95.2 million in 1960, almost a tenfold increase in 8 years. And these profits have been steadily increasing ever since.)

The record, in short, proves beyond a doubt that while the broadcasters, and particularly the networks, freely gave millions of dollars worth of free time to the candidates of the major parties and were willing to give them millions more, they practically suppressed all minority views during the 1960 campaign. The overwhelming majority of the broadcasters arrogantly and insolently refused to recognize any obligation under the "public service reservation of the resolution" to fairly present the candidates of the "minor" parties. Some of them were so contemptuous that they did not even have the courtesy to answer, or acknowledge receipt of requests for "reasonable opportunity" for its national candidates from the Socialist Labor Party. And in all instances they were supported by the evasive actions and contradictory "rulings" of the Federal Communications Commission. And we have no doubt that the broadcasters will repeat their 1960 performance in 1964, if House joint resolution 247 is passed.

Under such circumstances the claim that the 1960 electorate was the most enlightened in history demonstrably is not true. For the debates in 1960 did not clarify the issues or enlighten the electorate. Hallock Hoffman, staff director for the study of the political process for the Center for the Study of Democratic Institutions summed it up quite well when he wrote:

For the practice of politics, this total personalizing of campaigns is a disaster. It empties politics of meaning, eliminates the few distinctions that remain between the parties and their programs, and removes political discussion from reality. For the detached observer, the outstanding quality of the 1960 television campaign was its absence of attention to any of the new and important facts about the world. Neither the arms race, nor technology, nor the population explosion, nor the situation of a rich white minority in an arming colored world, nor the uncontrolled exploitation of our natural resources, nor the irrelevancy of our economic policies was argued about during the television discussions. What was said about such matters was said before small audiences in single localities, where the candidates could gauge the possible losses in popularity by ascertaining the biases of their audiences before they spoke. ("The Great Debates.")

To this we may add Theodore H. White's blunt observation in his book, "The Making of the President, 1960." Mr. White wrote:

Rarely in American history has there been a political campaign that discussed issues less or clarified them less.

And understandably so. The 1960 electorate was denied the right to hear all sides of these issues. They were denied their rightful opportunity to consider carefully all views. They were thus prevented from fully and intelligently exercising their franchise and arriving at meaningful conclusions. They were denied all this in violation of their right to hear because the most effective means of presenting the merits of their principles and programs to the people were completely closed to the national candidates of all minority parties. And now it is proposed to impose this restriction again during another national campaign—and this at a time when we face the most serious problems and threats in mankind's history. If anything, certainly this is a time when more than ever we should keep the channels of communication open to all proposals that aim to solve these problems and eliminate these threats.

This leads us to repeat here a brief relevant portion from the Socialist Labor Party's statement to the President's Commission on Campaign Costs:

* * * The right to hear is as important as the right to speak, since only by giving the people the opportunity to hear all sides will they be able fully and intelligently to exercise their franchise, and arrive at meaningful conclusions. The Socialist Labor Party has every confidence in the ability of the people ultimately to judge the merits of the claims presented by the various political parties. By denying the people this right the government and the two major parties manifest their contempt for the citizenry, and also a contempt for their own professed adherence to the democratic processes of our country. As Thomas Jefferson observed: 'Democrats (meaning those who practice true democracy) consider the people as the safest depository of power in the last resort; they cherish them, therefore, and wish to leave in them all the powers to the exercise of which they are competent. And they can only exercise their competency if fully informed, without hindrance or discrimination, and without a virtual censorship being imposed on views in opposition to those of the major parties.'

(Because of its relevancy, we submit for the record a full copy of our letter to the President's Commission on Campaign Costs, dated January 4, 1962.)

One of the arguments used more and more frequently by the broadcasters and their supporters to justify their demands for a completely free hand in operating the broadcasting media is that a broadcasting station does not differ from privately owned newspapers. As Robert W. Sarnoff, chairman of the board of NBC put it:

What is at stake is nothing less than the freedom of expression that we believe the Constitution assures broadcasting as a medium of journalism. (Address to San Francisco Advertising Club, Oct. 5, 1960.)

This false premise completely ignores the most important relevant fact, namely, that anyone can start a newspaper if he has the necessary capital, but not everyone can start a radio or television station. This vital difference, as the FCC once put it, is due to the limited availability of spectrum space * * *." The framers of section 315, and the Congress that passed it into law, were fully aware of this difference as is amply attested by the record. In this connection it is also pertinent to cite the following statement by James L. Fly, who served as Chairman of the FCC from 1939 to 1944. Mr. Fly said:

* * * The argument (that the airwaves are like newspapers) is both fallacious and a grave public disservice. In most countries, broadcasting is a government function. Here, private industry is endowed with this undertaking. But the airspace is owned by the public, and the average citizen is not "free" to establish a business in it. Many apply, and only the chosen few can be licensed. Thus it is with poor grace and shoddy logic that the chosen few now argue that they have no responsibility, because the air is "free" * * *

And Mr. Fly added:

Let's face it. The broadcasting industry leaders have great political power through their control of network time and, indirectly, of time along the whole range of affiliated stations. Political figures depend upon this time. The very fact that the leaders wield this great power makes it doubly important that they be called to account * * *. The network leadership takes millions from the public air space. This is only an added reason why any indolence and arrogance on their part towards the public's vital interest are not to be tolerated * * *. (The Nation, Mar. 10, 1962.)

Still another false premise put forth by the broadcasters and the proponents of the suspension of section 315 is the claim that ours is a two-party political system. This claim has no basis in law, no basis in fact, and no basis in our traditional concept of free elections. The claim is particularly absurd in face of the fact that there is no basic or important difference between the two major parties in existence today. As the late conservative columnist, George Sokolsky, put it a few months ago:

The next presidential election may be a very peculiar one. Rockefeller versus Kennedy. Wherein do they differ in principle? Precisely what is the difference between the Republican and Democratic Parties? What is the historic difference between the Eisenhower and the Kennedy administrations?

In Soviet Russia they have a one-party system; in the United States we have a no-party system * * *. (Washington Post, Oct. 10, 1962.)

Actually, though it has been vociferously claimed that the "great debates" were an "extension of democracy," it has never yet been satisfactorily explained how democracy was extended by restricting free speech; that is, by reducing discussion of the issues of the campaign to two participants who were in substantial agreement on all basic questions. We submit that the widest knowledge and understanding of important issues simply cannot be achieved by limiting the discussion of such issues to a minimum of participants who repre-

sent the status quo in every important respect. It has always been the proud boast of Americans that new parties, advocating new philosophies of government and sponsoring new ideas of social importance, could and would always get a fair and impartial hearing. And history amply demonstrates that minority parties have frequently been the source of progressive concepts, and have even in time become major parties. In the face of these facts, it is significant and rather frightening that in the millions of words written and uttered in defense of Senate Joint Resolution 207, and on behalf of again restricting the use of the airwaves to the major parties and their candidates in 1964, not a single word of regret or concern has been expressed over the practically complete suppression of all minority views. This in itself is, indeed, a fitting commentary on the distorted concept of democracy and free elections that has been cultivated. And it is equally significant and frightening that whereas section 315 resulted from the concern of Congress that all candidates for the same office should have equal opportunity in seeking election to that office, the proponents of the suspension of section 315 contend that only "substantial" or "licensee determined newsworthy" candidates should have such opportunity. The change in approach to, and concept of, the democratic principles involved is very well illustrated by the difference in the position taken by the American Broadcasting Co. spokesman at the hearings conducted by the Senate in February 1961, and his position at the hearings conducted by the House Interstate and Foreign Commerce Committee on H.R. 6810 in 1956. At the 1961 hearings Alfred R. Beckman, vice president of ABC, urged approval of legislation that would permanently nullify section 315 at least insofar as presidential and vice presidential candidates were concerned. In 1956, however, the ABC spokesman stated:

While it is true that there may be certain disadvantages in the present section 315, the basic guarantee provided therein to all legally qualified candidates is, in our opinion, of maximum importance and outweighs any possible disadvantages * * * The guarantees provided by section 315 are basic and a necessary protection to all present and potential candidates and should not be disturbed. The importance of continuing to guarantee to a political candidate the same access to the airways as his opponent cannot be underestimated.

The Columbia Broadcasting System, whose spokesmen have been spearheading the attack on section 315 for the past 8 years or more, has contended that "section 315 fails because it assumes that all candidates are political equals—so far as broadcasting is concerned." ("Point of View," published by CBS, December 1960.) Which prompts us to ask: Are not all candidates political equals in their right to seek office? It is not fully in keeping with America's constitutional and traditional concept of freedom that all candidates, and especially those seeking the highest offices in the Nation, have an equal right to present their case to the electorate and particularly so over media of communications which belong to the people? CBS and its very vocal president, Dr. Frank Stanton, obviously do not think so. They argue that the epitome of democracy is to permit only the "well-known" and "important" candidates to use the airwaves. And they demand for themselves the unqualified right to determine who these "well-known" and "important" candidates are in each case. The truth is that when presidents of broadcasting networks, or individual owners of broad-

casting stations, are given a free hand to determine in advance who are the "important" candidates, or which candidates have a chance to win and thereby, in their opinion, qualify as being worthy of an opportunity to use the public airwaves, our elections will most certainly become a complete farce. And American democracy will, then, in fact, be dead. In our judgment, advocates of such a concept of democracy hardly qualify as "responsible" licensees who can be expected to exercise their tremendous power fairly and impartially in the past interests of society, without clear and specific statutory directions to do so.

There is no question but that the broadcasters, and particularly again the networks, are fully aware of the constitutional prohibition against the abridgment of free speech and its applicability to the media of radio and television. For when it suits their material interests they do not hesitate to invoke the guarantees of the First Amendment of the United States Constitution. The National Association of Broadcasters did precisely this when it appeared before the Senate Communications Subcommittee on December 9, 1960, to testify against S. 3171, a bill which would have made it mandatory that television broadcasting stations give a specified amount of free time to the major party candidates for President of the United States. Through their special counsel, Mr. Whitney North Seymour, they pointed out that:

* * * one of the most vital purposes behind the constitutional concept of freedom of speech is the guarantee that minority views shall not be suppressed by the Federal Government, no matter how subtle or indirect the form of such suppression * * *

One can hardly argue with this position. Yet the broadcasters in 1960 were granted the very right they properly and correctly denied the Government. And now it is proposed that they be granted this power again in 1964. And let it be noted that in 1960 these broadcasters demonstrated emphatically by word and act that when the equal opportunities provision of section 315 is suspended their suppression of minority views is neither "subtle" nor "indirect," despite the admonition "to operate in the public interest."

Mr. Seymour during his testimony on behalf of the broadcasters repeatedly emphasized the important constitutional guarantees and democratic principles involved, stating:

* * * suppression of unpopular or minority ideas was the very evil which the first amendment was designed to prevent.

And again:

* * * liberties as important to our free society as those guaranteed by the first amendment may not be abridged merely because a convenient way to administer (or transfer the administrator of) the abridgment has been devised.

Dr. Frank Stanton of the Columbia Broadcasting System, in taking issue with Mr. Bernard Kilgore, president of the Wall Street Journal (who had suggested that the freedom of the press concept would become "dangerously" obscured if it were stretched to cover such licensed media as radio and television), wrote in a letter to the New York Times on December 10, 1961:

In the report of the Commission on Freedom of the Press, Prof. William Ernest Hocking of Harvard eloquently summarized the need to extend traditional freedom of the press to all aspects of expression as opposed to limiting it to the area of news. He wrote:

"Neither the value nor the duty of expression is limited to its more purposeful aspects. Speech and press may be trivial, casual, emotional, amusing, imaginative, speculative, whimsical, foolish; all utterance serves a social end—to report to fellow-beings mutual presence and interest, the play of mood, the vagaries of taste, the gropings for principle, the barometric flux of belief and disbelief, hope and fear, love and hate, and thus to shape attitudes . . . there is a common duty to protect the whole range of this freedom, as a right of social existence."

Just how Dr. Stanton squares his demands for the licensed broadcasters' "freedom" to present only the "well-known" and "important" candidates over the radio and television media with his approving citation of Professor Hocking's statement is one of those mysteries of illogic which defies rational explanation.

It seems apropos at this point to call attention to some pertinent observations made in the New York Herald Tribune of August 28, 1960, by feature writer Victor Wilson. He wrote:

At first glance, any connection between the birth of the Republican Party in 1854 and setting aside the "equal time" section of the Federal Communications Act to permit a Nixon-Kennedy TV political debate seems far-fetched.

But some deep thinkers on social, ethical and political principles here don't think so at all. *And there's just a chance that the U.S. Supreme Court won't think so either * * **

What concerns the deep thinkers here, who prefer to remain anonymous, but are closely and in some cases officially concerned with Federal communications control, is (a) how to define a "splinter party," and (b) how can a "splinter party" hope to attain major status if it's largely barred from radio and television * * *.

If, it is pointed out here, the Republican Party had been born this year, instead of 1854, chances are it would receive little or no radio or TV time, never get its issues *properly* before the public, and finally expire quietly. (Our emphasis.)

We believe that anyone concerned with the preservation of free speech and civil liberties generally will agree that these are, indeed, most pertinent observations, and will be profoundly impressed by them.

For the reasons made clear in the foregoing, the Socialist Labor Party of America, a national political party that has participated in National, State, and local elections since 1892, is irrevocably opposed to House Joint Resolution 247. And we would be as irrevocably opposed to any other bill that may be introduced in the House and which would have as its objectives the further amendment, suspension, or repeal of the "equal opportunities" provision of section 315 of the Federal Communications Act.

If House Joint Resolution 247 is passed, it will unquestionably result in limiting the sources of information that our people would have access to during the crucial 1964 national elections. And rather than the result being a more widespread knowledge and understanding, it would be stagnation of thought, and suppression of all new and stimulating ideas at a time in our history when new ideas and concepts to meet the great problems and dangers facing us are more imperatively needed than ever before in mankind's history.

The retention of our democratic institutions and the opportunity for a consideration of peaceful and civilized solutions to our many problems depend on our freedom to speak, to think and to listen to new and varied opinions and ideas. We may be sure that when one of these basic freedoms is undermined it will be just a matter of time before all are undermined. Retaining, or more correctly, reestablishing free-

dom of speech over the public airwaves is essential to our democratic processes. For, if our traditional and constitutional freedoms are to be made secure, the airwaves can no more be monopolistically assigned to special interests than can the seaways, the thoroughfares, or the public parks.

Mr. ROGERS of Texas. Thank you, Mr. Hass, for your statement, and let the record show that the attached letter to which you refer will be included immediately following your statement in the record.

Mr. HASS. Thank you, sir.

(The document referred to follows:)

NEW YORK, N.Y.

To the Members of the U.S. Congress:

Having been invited by the Commission to present its views and suggestions on the subject of campaign costs, etc., the Socialist Labor Party has responded as set forth in the following letter to Mr. Alexander Heard, Chairman of the Commission.

The Socialist Labor Party is unalterably opposed to the proposed subsidizing of candidates for political office. It maintains that such subsidies are undemocratic and discriminatory, and contrary to our country's avowed principles of democracy. They would, we hold, in effect freeze our political campaign into contests between the two existing major parties, and freeze out present minority parties, and effectively prevent emergence of new parties.

We urge Members of the Congress to vote down any proposals to enact into law any such subsidizing of individual candidates or parties. Such laws would be in violation of our American political traditions, and would probably be unconstitutional.

Respectfully submitted.

SOCIALIST LABOR PARTY OF AMERICA,
ARNOLD PETERSEN, *National Secretary.*

SHALL THE MAJOR PARTIES MONOPOLIZE THE BALLOT AND THE AIRWAVES?

SOCIALIST LABOR PARTY STATEMENT TO THE PRESIDENT'S COMMISSION ON CAMPAIGN COSTS

JANUARY 4, 1962.

Mr. ALEXANDER HEARD,
*Chairman, President's Commission on Campaign Costs,
General Services Building,
Washington, D.C.*

DEAR MR. HEARD: The Socialist Labor Party has given careful consideration to the questions which President Kennedy has asked your Commission to consider and on which to make recommendations to him. We have noted that your Commission's attention was especially directed by the President to the following:

- (a) Ways costs can be reduced;
- (b) Ways the base of contributions can be broadened;
- (c) Proposals to provide a Federal share in meeting campaign costs;
- (d) The facilitation of campaigning by such permissive legislation as made possible last year's television debates without cost to the candidates;
- (e) Helpful actions that can be taken by private groups, partisan and non-partisan.

Before dealing directly with each of these questions, we wish to make the following statement:

While the Socialist Labor Party certainly favors correction of injustices and wrong practices in political campaigns, we are in principle unqualifiedly opposed to any proposal or plan to have the government subsidize what are in fact private political ambitions. We hold that although the offices which political candidates seek to win are public offices, the seeking of such offices in a political democracy has traditionally and properly been the concern of private individuals, and groups of individuals, who subscribe to certain principles and objectives of government, and who seek to win such offices by obtaining the support of other

citizens who agree with, and subscribe to, the same principles and objectives. This traditional practice, we contend, is entirely in keeping with elementary principles of democracy, and anything contrary to it would be wrong.

Subsidies for Tweedledum and Tweedledee only

We are also deeply concerned with the effects that Government subsidies to political candidates and political parties may have on our already greatly restricted ballot. This concern arises from the fact that all recent proposals for such Government subsidies would base the amount, or extent of the subsidy that each candidate would receive, in direct proportion to the past popularity or past support given previous candidates of the political party involved. These proposals clearly indicate that not a single candidate of any minority party existing today could qualify for such subsidy. On the other hand, these proposals would enable candidates running for the first time on the ticket of one of the two major parties to become eligible for huge sums from the Treasury simply because another candidate (who had previously run for the same office on the same party's ticket) had received a substantial, yet not necessarily winning, vote. Finally, these undemocratic proposals for the use of public funds to support the private political ambitions of candidates on a proportional basis would, in the very nature of things, further inhibit the formation of new parties.

It seems not inappropriate to cite here the observations made by two attorneys, Messrs. Ralph Nader and Theodore Jacobs, writing on a related subject in the October 9, 1958, issue of the Harvard Law Record. We quote from their article:

"This is no place to catalog the contributions of minority parties in American history. Their importance, as any history text will attest, has been far greater than their size. * * * At a minimum, minor parties have many times in our history stirred opinion and illuminated the murky atmosphere of politics with a flash of idealism. From the standpoint of the electorate, this is bound to have substantial educative value.

"Opening the ballot to more than two alternatives encourages citizen participation in the political process. * * *

"It is perilous, however, to rest an advocacy of liberal ballot legislation on a utilitarian evaluation of minority parties. Such a foundation is too unstable, too fluctuating and excessively subject to the whims of majority assessment. Rather, it is submitted, the right to present minority candidates before the electorate on equal terms with other parties derives from those basic rights inherent in a free society. And these rights stem from a tradition of unending struggle to preserve the free competition of the market place of ideas."

Regarding the five specific areas to which the attention of the Commission on Campaign Costs was especially directed by the President, we proceed now to deal with them briefly.

On reducing campaign costs

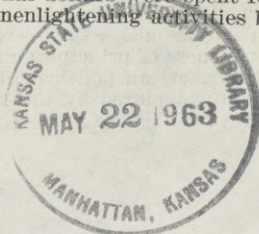
As to (a): We firmly believe that the ways and means by which the costs of campaigns can be reduced are the sole concern of the candidates and their political parties. It is, or should be, their concern to keep their costs within their resources. Certainly it cannot be reasonably argued that it is the concern of the Government whether or not these candidates remain financially solvent. No compulsion rests on any citizen to run for public office.

However, we cannot refrain from pointing to some of the altogether useless expenditures by these candidates, or made in their behalf. We quote the following from an article dealing with expenditures during the 1960 campaign by Mr. Tom Wicker in the New York Times of October 8, 1961:

"For buttons, banners, brochures, and the like * * * the Democrats alone spent \$800,000. Both parties spent a total of \$1 million to \$1,500,000 for public opinion polls. * * *"

Mr. Wicker quoted a spokesman for Brookings Institute, viz., that a minimum amount of \$750,000 was spent to produce and mail scurrilous campaign literature.

These facts speak for themselves. And we may be reasonably sure that hundreds of thousands, perhaps millions, of additional dollars were spent for other equally noninformative, noneducational, and nonenlightening activities by these candidates and their supporters.



Only the big donors count

As to (b): Here, too, in our view, Government action is uncalled for. In a nation proclaiming itself free, a citizen has the right to support financially the candidates with whose principles or program he agrees. He also has the right to withhold financial support if he so wishes, or may be forced to withhold by personal circumstances. But it should be pointed out that even if by legitimate persuasion additional hundreds of thousands could be prevailed upon to contribute small sums to the candidates of their choice, it could not, and would not, materially change the fact that such candidates would still be beholden to their large contributors. It would be naive to conclude otherwise. The whole history of American politics proves the point.

Indeed, the point was affirmed in a Wall Street Journal feature story, September 20, 1960, on the methods used to finance the 1960 presidential campaign. "Where does all the money come from?" the Journal staff reporter, Roscoe Born, asked. "Despite growing stress on little gifts, fundraisers still depend on wealthy contributors who give \$500 or more."

Facilitating major-party political monopoly

As to (c): We have already substantially covered this point in our opening statement. We might merely add here that even if the proposals made to date in this connection were to be enacted into law, they could not achieve the supposedly desired goal of relieving national candidates from their condition of dependence on large sums from a relatively small number of contributors. For example, Senator Mansfield's bill (S. 227) proposed reimbursement to the major parties for their radio and television expenditures with a sum not to exceed \$1 million each. In view of the fact that the combined expenditures for the 1960 presidential campaign has been estimated at \$40 million or more (Leo Egan, "Politics and Money," New York Times, Dec. 4, 1961), Government subsidy of \$1 million or \$2 million, or even more, is hardly likely to remove such alleged condition of dependence.

All that such proposals for contribution of Federal funds to political candidates would accomplish, would be to make even greater sums of money available to those candidates who already have the greatest financial and material resources, thus still further monopolizing the political field by the two current major parties.

When "two parties" are one

The incongruity of the proposal to finance the campaigns of candidates for public office (which in effect means the two major political parties) is pointed up by the fact that these parties are, in reality, but one party in respect of all that is essential in their political platforms. The Socialist Labor Party is not alone in pointing to this palpable fact. We shall here content ourselves with citing the testimony of two highly respected citizens, Mr. George Kennan, former U.S. Ambassador to the Soviet Union and present Ambassador to Yugoslavia, and Mr. C. L. Sulzberger, of the New York Times. Mr. Kennan stated:

"As for the one-party system [of the Soviet Union]: It must be contrasted, unfortunately, with precisely that segment in the political life of the West which is itself today most subject to question, most doubtful in point of adequacy to the needs of the time. I mean the system of political parties and parliamentary institutions. In the doctrinal sense we in America also have in certain respects a one-party system. For aren't the two parties ideologically indistinguishable? Don't their pronouncements form one integral body of banality and platitude?" ["Encounter," March 1960.]

And Mr. Sulzberger, in his New York Times column of July 25, 1960, stated: " * * * both parties are (also) adopting startlingly similar programs on basic domestic policy. Each founds its philosophy on the same essential precepts. * * * Thus in strange fashion we give the impression of staging an election which is but a race with one horse, or, one might say, two parties and two candidates split from the same monolithic whole. Sameness is the standard, and within the political organisms there seem to be only the vaguest stir of callow and unsuccessful resistance to this tide." [Emphases ours.]

This incongruity is further emphasized by the well-known fact that not infrequently well-to-do citizens have made contributions to the Democratic and Republican Parties alike, thus certifying to their belief in their essential oneness. And this oneness of principles and purposes is one of the ominous manifestations of modern American political life, reminiscent of the foreign one-party systems so frequently deplored by the spokesmen for the alleged "two-party system in our country."

Major-party monopoly of the airwaves

As to (d) : It is in this area that we find the greatest threat to what is left of our free elections. What President Kennedy referred to as "the permissive legislation which made possible last year's television debates without cost to the candidates," we regard as "restrictive legislation"—legislation which conferred upon the two major-party candidates what practically amounted to a monopoly of the publicly owned airwaves.

We propose in due course to submit our full and detailed views on this important matter to the Senate and House committees directly concerned with this question. We shall limit ourselves here to a few relevant facts. During the 1960 presidential campaign, the Democratic and Republican Parties were able to raise and spend a combined total of \$13,763,795 for radio and television (Broadcasting magazine, April 17, 1961). During the same period "the networks and stations spent \$15 to \$20 million in all their nonreimbursed election activities." (Tom Wicker, New York Times, Oct. 8, 1961.) Ninety-nine percent (if not more) of these election activities were devoted to the major parties and their candidates. In addition, the seven national radio and television networks gave the two major parties a total of 80 hours and 10 minutes free time (under the "permissive legislation") on an equal basis. The individual television stations across the Nation granted these two parties an additional 2,503 hours free under the same "permissive legislation." (Broadcasting magazine, Feb. 8, 1961.) The value of the free network time alone has been estimated at close to \$6 million (Marie Torre, New York Herald Tribune, Feb. 6, 1961). The broadcasters had offered the two major parties additional free time worth \$2,563,000 which these parties rejected. (Ibid.)

"Some more equal than others"

By contrast, all the minority parties combined received a total of only 1 hour and 35 minutes on the television networks and a grand total of only 101 hours from the television stations throughout the Nation. And this from a publicly owned mass communication medium which has become the most vital and effective, indeed indispensable, of all available means of communication in political campaigns. Let us emphasize the indisputable fact that the airwaves do belong to the people. Assuredly they do not belong to the licensed broadcasters, who nevertheless have been granted the privilege of exploiting the people's property for their own private and corporate gain. Nor do the airwaves belong to any special group of candidates for public office, though more and more frequently we are being told that only those candidates whose party has received substantial numbers of votes in previous elections should have access to them. And let it be noted that the candidate himself need not ever have received a single vote but, as pointed out before, if he is nominated by a political party whose previous candidate did receive a substantial vote, he is presumed to have something important to say, and therefore entitled to time and opportunity over the broadcasting facilities. To carry this counterfeit logic (in Lincoln's phrase) one step further: If the candidate who actually polled the substantial vote in the last election on one of the major party tickets were this time nominated by a new party (as Theodore Roosevelt was nominated by the Progressive Party) he would not be entitled to "equal opportunities" at all.

Restrictive—not permissive—legislation

We repeat: The suspension of section 315 of the FCA during the 1960 presidential campaign was not simply "permissive legislation," but restrictive legislation. It violated, in our considered opinion, both the letter and the spirit of the first amendment to the U.S. Constitution, which guarantees free speech for all.

If section 315 is permanently suspended it will mean that a powerful financial group, the broadcasters, will have obtained complete control over a most essential medium of political communication. And then, indeed, will the national candidates suffer from a "condition of dependence" upon this powerful financial group.

The retention of democratic institutions, and the opportunity for a consideration of peaceful and civilized solutions to our many problems, depend on a free ballot. And the free ballot, in turn, depends on our freedom to speak, to think, and to listen to new and varied opinions and ideas. Retaining, or more correctly, reestablishing freedom of speech over the public airwaves is essential to our democratic processes. For, if our traditional freedoms and free elections are to be made secure, the public airwaves can no more be monopolistically assigned to special interests or select candidates than can the public thoroughfares or the public parks.

The people's right to hear

It might be observed in passing that the conferring of a virtual monopoly of the airwaves on the two major parties, in effect, denies to the people the right to hear differing and even radically opposing viewpoints. The right to hear is as important as the right to speak, since only by giving the people the opportunity to hear all sides, will they be able fully and intelligently to exercise their franchise, and arrive at meaningful conclusions. The Socialist Labor Party has every confidence in the ability of the people ultimately to judge the merits of the claims presented by the various political parties. By denying the people this right the Government as well as the two major parties manifest their contempt for the citizenry, and also a contempt for their own professed adherence to the democratic processes of our country. As Thomas Jefferson observed: "Democrats (meaning those who practice true democracy) consider the people as the safest depository of power in the last resort; they cherish them, therefore, and wish to leave in them all the powers to the exercise of which they are competent." And they can only exercise their competency if fully informed, without hindrance or discrimination, and without a virtual censorship being imposed on views in opposition to those of the major parties.

Restrictions on the ballot

We spoke of the "free ballot." The ballot, under prevailing restrictions in most States, is far from free. California and Ohio are two outstanding cases in point. In the former approximately one-third of a million signatures on petitions are required to place minority party candidates on the ballot in a national election. This is not merely a restrictive, it is a prohibitory provision which in fact disfranchises thousands of citizens, as in the case of the Socialist Labor Party. But the situation in Ohio is even worse: Here approximately 400,000 signatures are required, with the additional fantastic proviso that the signers must be members of the minority party seeking to place its candidates' names on the ballot. And to cap this, the State of Ohio even bars a write-in vote. In the two States cited (and in other States to a lesser degree) the democratic process affecting the ballot is reduced to a mockery.

We are aware of the contention made by supporters of the status quo that because the vote received by Socialist Labor Party candidates is relatively small, therefore they are not entitled to any consideration. This retort ignores the very circumstances which chiefly are responsible for the small vote, or, as in some States, no vote at all. Abraham Lincoln answered such contentions effectively. In his speech delivered in New Haven, Conn., on March 6, 1860, he said:

"The fact that we get no votes in your section is a fact of your making and not of ours, and if there be fault in that, the fault is primarily yours, and remains so until you show that we repel you by any wrong principle or practice. If we do repel you by any wrong principle or practice, the fault is ours; but this brings you to where you ought to have started—to a discussion of the right or wrong of our principle." [Emphasis ours.]

Incidentally, Lincoln would, indeed, have faced insurmountable obstacles if he had been faced with the restrictions or prohibitory conditions and discriminations that minority parties today must contend against.

We respectfully suggest that it would be of far greater importance if your Commission were to try to find means to rectify the serious question of a truly free ballot, than to help private candidates to solve their financial campaign problems through governmental subsidies.

As to (e): We have no special comments to offer in this connection except the obvious one that all groups, seriously interested in preserving our democratic traditions, and who make a practice of providing forums for free discussion of the issues during political campaigns should make every effort to include the spokesman of legitimate minority parties on a fair and equal basis, especially such as have been in existence over a long period of time, participating regularly in local, State, and National elections, as in the case of the Socialist Leader Party, which nominated candidates in national campaigns as long ago as 1892.

We trust your commission will give serious thought to the facts and contentions presented in this letter.

Sincerely yours,

ARNOLD PETERSEN,
National Secretary, Socialist Labor Party of America.

Mr. ROGERS of Texas. Mr. Kornegay, do you have any questions?

Mr. KORNEGAY. Yes, Mr. Chairman.

Mr. HASS, I am sorry I was not here when you started your statement, and I missed the first few paragraphs of it. I got in about the place you were talking about how much time or free time was given to the two major parties in the 1960 election. I will not quote the figures because you have them in your statement, but they were substantial, is that not true?

Mr. HASS. Yes.

Mr. KORNEGAY. Now, in 1960 did your party request time?

Mr. HASS. Yes, from all the networks. As I noted here, we did not even have the courtesy of a reply from two. We received for myself as candidate for President 15 minutes of time on a limited network, that is on ABC's network-owned stations. I think that was about six or seven stations, hardly a very—

Mr. KORNEGAY. That was 15 minutes?

Mr. HASS. Fifteen minutes.

Mr. KORNEGAY. On one limited network?

Mr. HASS. Right.

Mr. KORNEGAY. And how about any local stations? Were you able to get free time on local stations?

Mr. HASS. I can't remember a single television—

Mr. KORNEGAY. Rather than network?

Mr. HASS. We got, I believe, not a single television time on a single television station that we did not pay for.

Mr. KORNEGAY. Fifteen minutes was television?

Mr. HASS. That is right.

Mr. KORNEGAY. How about radio?

Mr. HASS. Well, I think we went over the ABC radio at the same time. We got no other network radio time. We had a few grants of free time on radio on individual stations, for the most part small stations.

Mr. KORNEGAY. Now to go back to 1956; what was your experience in that election with reference to getting free time?

Mr. HASS. Yes, we did get free time on all the networks.

Mr. KORNEGAY. Do you recall or do you have any figures on how much time you got?

Mr. HASS. No; I don't have the figures offhand, but I was also the candidate in that election, and I am sure that we had at least 5 network programs of 15 minutes, and a good many individual stations granted time.

Mr. KORNEGAY. Are you speaking of television or radio?

Mr. HASS. Television.

Mr. KORNEGAY. Television?

Mr. HASS. And radio, too.

Mr. KORNEGAY. And radio. And did that time come simply by requesting it or did you have to go through the procedures of demanding equal time?

Mr. HASS. No. For the most part we requested it, and of course we would get it. They were obliged to give it to us under section 315.

Mr. KORNEGAY. Under section 315.

Mr. HASS. And there was usually no argument at all about it. I would say this though in that connection, that the time that was given us was not usually the equal in value, that is, it was not prime time.

Mr. KORNEGAY. In other words, you did get substantially more time in 1956?

Mr. HASS. Oh, yes.

Mr. KORNEGAY. Than you got in 1960.

Mr. HASS. I should say we did, yes.

Mr. KORNEGAY. And just to go back to one more national election, in 1952 what was your experience at that time?

Mr. HASS. The same was true then.

Mr. KORNEGAY. As in 1956?

Mr. HASS. Right.

Mr. KORNEGAY. In other words, you say that you have only run into difficulty in 1960.

Mr. HASS. Well, there are times when we run into difficulties, but that is the exception. For the most part we did not run into difficulties when it was quite obvious that we had the time coming to us. It was given to one or the other of the major party candidates, and we merely requested it and arrangements were made and we were given time.

Mr. KORNEGAY. That is all I have to ask at this time.

Mr. ROGERS of Texas. Mr. Younger?

Mr. YOUNGER. No, Mr. Chairman, I think the statement speaks for itself very thoroughly.

Mr. ROGERS of Texas. Mr. Cunningham?

Mr. CUNNINGHAM. I have no questions.

Mr. ROGERS of Texas. Mr. Broyhill?

Mr. BROYHILL. No questions, Mr. Chairman.

Mr. ROGERS of Texas. Mr. Hass, with reference to your experience, were you the candidate in 1952 also?

Mr. HASS. Right.

Mr. ROGERS of Texas. And in 1956 and in 1960?

Mr. HASS. Right.

Mr. ROGERS of Texas. Now the only change that was made as between those elections was the change that was made in the suspension of the president and vice presidential candidates—

Mr. HASS. No, correction—pardon me—

Mr. ROGERS of Texas. And the 1959 news situation. Now did you notice any difference in the 1960 campaign from your 1956 or your 1952 campaign?

Mr. HASS. Oh, yes, quite obviously.

Mr. ROGERS of Texas. What was that change?

Mr. HASS. In 1960 we obtained almost no time on television or radio that we did not buy, and it was sometimes difficult to buy time.

Mr. ROGERS of Texas. In 1960?

Mr. HASS. Yes. Now, I want to talk about that in a second.

Mr. ROGERS of Texas. Back to 1956 you did receive at that time fair treatment because section 315 was in full effect and had not been suspended.

Mr. HASS. Yes, sir, substantially. When we speak of fair treatment, it was not really equal, but it was close enough to satisfy us that we were protected. We had statutory protection.

Mr. ROGERS of Texas. Do you feel, Mr. Hass, that if there had been a suspension of 315 in 1956, that you would have received that treatment?

Mr. HASS. I am positive that we would not have received fair treatment. I am positive that we would have received the same treatment that we received in 1960.

Mr. ROGERS of Texas. And the same answer would be for 1952?

Mr. HASS. Oh, yes.

Mr. ROGERS of Texas. Then it is your contention that the broadcasting industry did not measure up to the responsibility of seeing that everyone was treated fairly?

Mr. HASS. Most certainly not. I don't think it would be possible for it to do that.

Mr. ROGERS of Texas. Mr. Hass, with regard to the purchase of time to which you made reference, did you have difficulty?

Mr. HASS. Yes.

Mr. ROGERS of Texas. In 1960?

Mr. HASS. Yes.

Mr. ROGERS of Texas. In purchasing time?

Mr. HASS. Yes, we have had difficulty, but we are not the only ones.

Mr. ROGERS of Texas. Yes, I know, but I mean just confining it to you.

Mr. HASS. Yes.

Mr. ROGERS of Texas. For this present question, did you have the money available to have purchased nationwide network time?

Mr. HASS. No.

Mr. ROGERS of Texas. I mean though were you—

Mr. HASS. On radio but not on television.

Mr. ROGERS of Texas. I see. Now what would it cost you to have gone on nationwide TV networks?

Mr. HASS. I am not sure. I am not quite up on the rates but I would imagine that we would have to spend in the neighborhood of \$50,000 to get any kind of a substantial network, even for 15 minutes.

Mr. ROGERS of Texas. Did you make application for that TV time in 1960?

Mr. HASS. No, we did not have that kind of money to spend.

Mr. ROGERS of Texas. That was the next question. The reason was that you just did not have the money?

Mr. HASS. Yes.

Mr. ROGERS of Texas. Had you made the offer and the request had been granted and you paid the \$50,000, is it your contention that that is the only way that you could have been put on a par insofar as exposure to the people?

Mr. HASS. Well, one program of 15 minutes would hardly put us on a par with the hours and hours that were given free to the major party candidates. So it would hardly put us on the par with them. That is the only way that we could have obtained a network.

Mr. ROGERS of Texas. Now does your party, Mr. Hass, run local candidates, too?

Mr. HASS. Yes.

Mr. ROGERS of Texas. And what is the age of your party, how old is it?

Mr. HASS. We were founded originally in 1876, and we took the name Socialistic Labor Party in 1877, and changed it to Socialist Labor Party in 1890.

Mr. ROGERS of Texas. If you changed the name to Socialist Republican or Socialist Democrat, do you think they would be any better to you?

Mr. HASS. I think What is in a name? It is what we stand for that counts.

Mr. ROGERS of Texas. Do you run local candidates?

Mr. HASS. We have a ticket, of course, in New York all the time, Philadelphia, State elections in several of the States.

We ran tickets I think in about 17 or 18 States in the last elections, some on write-in campaigns, because we are also attacked on the ballot front, some of the States having prohibitive obstacles against obtaining a place on the ballot, as for example Ohio and California, where it would cost—in Ohio it would be impossible.

I think if the Democrats were off, they couldn't get back on there, and there is not even a position for a write-in campaign. In California it would cost us I would say conservatively half a million dollars to get a place on the ballot. So those are the places.

Mr. ROGERS of Texas. I see.

Mr. CUNNINGHAM. May I ask a question?

Mr. ROGERS of Texas. Yes.

Mr. CUNNINGHAM. Mr. Hass, I am going to be out a while and I did not want to miss asking this. You were the presidential candidate in 1952, 1956, and 1960?

Mr. HASS. Right.

Mr. CUNNINGHAM. In 1952 and 1956 you got substantially more time—

Mr. HASS. Yes.

Mr. CUNNINGHAM. Than you got in 1960?

Mr. HASS. Yes.

Mr. CUNNINGHAM. What was your votes in those years?

Mr. HASS. I don't remember our votes. Now mind you when we speak of votes we speak of votes that were counted, and as gentlemen who know how votes were counted, there were a great many that were not.

We know this: In 1956 and 1960 we received substantially the same number, around 50,000. However, because of the change in the election laws, this was obtained in fewer States.

Last year in the State campaigns we obtained something like 55,000 votes in still fewer States because of the changes in election laws.

Mr. CUNNINGHAM. You say approximately 55,000 votes?

Mr. HASS. Yes.

Mr. CUNNINGHAM. In 1956, and the same in 1960. Do you have any rough idea of what you consider your vote to be in 1952?

Mr. HASS. Yes. I think it was in the neighborhood of about 40,000.

Mr. CUNNINGHAM. I don't know if it has any bearing on the subject, Mr. Chairman, but I was wondering what impact their not having this coverage available would have on the vote that the candidate received.

Mr. HASS. I think the facts should be taken into consideration that ideas have a timing.

Mr. CUNNINGHAM. Yes, I understand.

Mr. HASS. A timing value, any ideas that we have most assuredly have greater impact in this age when civilization is trembling upon the very brink of chaos, than it did in those wishful days and specially in the days of 1952 when the pall of McCarthyism lay over the whole Nation. So that should be all taken into consideration.

Mr. ROGERS of Texas. You had about 35 million more people in the United States in 1960 than you had in 1952.

Mr. HASS. That is true.

Mr. ROGERS of Texas. Now, Mr. Hass, your position is that you and your group are against tampering with 315 in any way.

Mr. HASS. Right.

Mr. ROGERS of Texas. Except perhaps to make it more effective insofar as requiring more time to be given for political discussions.

Mr. HASS. Yes. We believe that that would be a most worthwhile addition to section 315.

Mr. ROGERS of Texas. Now I think in all fairness, in view of some of the testimony or maybe some questions, it has been said that all of the networks are in support of this resolution and all networks are in support of a repeal of section 315.

Now I think the record ought to show here precisely that the ABC network, although they did not testify, we have a communication from them stating that they are in favor of the resolution pending before the subcommittee at this time, but that they are against the repeal of section 315 as such, and stating their reasons, and I make that reference so that anyone desiring to acquaint themselves with the position of ABC may refer to the record.

Thank you very much, Mr. Hass.

Mr. HASS. Thank you very much.

(The following letter was received for the record:)

SOCIALIST LABOR PARTY,
New York, N.Y., March 11, 1963.

HON. WALTER ROGERS,
Chairman, House Subcommittee on Communications and Power,
Washington, D.C.

DEAR SIR: During the questioning of Mr. Hass which followed his presentation of the Socialist Labor Party's formal statement, Mr. Hass made several erroneous statements of facts and figures. These errors were, of course, unintentional and caused by Mr. Hass' not having the exact facts and figures available at the hearings. For this reason we respectfully request that this letter of correction and clarification be made a part of the formal record of the recent hearings on the proposal to suspend section 315 for the 1964 national elections.

In answering a question from Representative Kornegay, Mr. Hass unintentionally implied that in 1960 two of the networks even failed to reply to the Socialist Labor Party's request for free time for its national candidates. What Mr. Hass meant to say was that the Socialist Labor Party had requested time from all the networks and many individual stations, and, as was clearly stated in the formal statement he presented, some of the broadcasters did not even have the courtesy to reply to, or acknowledge receipt of, this request. CBS and NBC did reply rejecting our request and were upheld by the FCC, despite the fact that Senate Joint Resolution 207 reaffirmed the mandatory obligation of broadcast licensees to operate their facilities on a basis of overall fairness.

We also wish to correct the record by stating that we did get some free time for our national candidates on a relatively small number of local television stations—mostly brief interviews or token appearances. In a few rare in-

stances a local television station granted one of our national candidates a 15- or 30-minute time segment.

We also wish to correct Mr. Hass' statement that no radio network had granted the Socialist Labor Party any free time. We did receive from the Mutual Radio network a 25-minute period for our presidential and vice presidential candidates to present brief acceptance speeches. However, a spot check by our local organizations throughout the country definitely indicated that only a handful of the many stations affiliated with the Mutual Network carried the program. Many of the local station affiliates of this network, when approached locally by our members and asked if they would carry the program, bluntly and arrogantly said they didn't have to and they wouldn't.

Most of the questions asked of Mr. Hass were in an effort to establish whether or not the suspension of section 315 in 1960 had a definite detrimental effect on the efforts of minority parties such as the Socialist Labor Party to present their candidates and programs to the electorate via the broadcast media. We believe the following brief summary will clarify the relevant facts.

In 1952, the national candidates of the Socialist Labor Party received free time on six radio network programs of 15 minutes each. They also received free time on five television network programs—four of 15 minutes each and one of 30 minutes.

In 1956, these candidates received 14 radio network programs—12 of 15 minutes each, 1 of 25 minutes, and 1 of 30 minutes. They also received 11 television network programs—nine of 15 minutes and 2 of 30 minutes. It should be noted that in both 1952 and 1956 some of the programs were simulcast so they did not constitute individual appearances on all the radio and television network programs listed above.

In 1960, the national candidates of the Socialist Labor Party received only two limited radio network programs and one limited television network program as already noted in the record.

These facts make the effect of the 1960 suspension of section 315 obvious. Even so, however, the conclusion that under the full operation of section 315 a minority party candidate received equal time or equal opportunity is not justified. The best that can be said is that prior to the 1959 amendment of section 315—and the 1960 suspension—a minority party had a fighting chance to be heard at least a percentage of the time. But minority parties never received in full what they were entitled to even when section 315 was in full effect, and for a variety of reasons.

For one thing, while broadcasters generally voluntarily gave liberal amounts of free time, directly and indirectly, to major party candidates, minority party candidates did not receive free time, comparable or otherwise, unless they specifically demanded it upon learning that another candidate had received it. It would take several thousand words to describe the difficulties and frustrations that a minority party candidate had to contend with in his efforts to obtain what section 315 expressly entitled him to.

To present a demand for free time, a minority party candidate had to know definitely that one of his political opponents had previously been granted such time. Here he was greatly handicapped at the very start. No minority party candidate has the time or resources to monitor the networks and the many individual broadcasting stations effectively in order to determine if he is entitled to such time. Nor has he the time or resources to check periodically the records of all stations. But even when he learned, many times by pure accident, that he was entitled to some free time, and his legitimate demand was finally granted—let us say by a statewide or nationwide network—he again lacked the means to check whether all the stations that carried his opponent's appearance lived up to their legal obligation to carry his. Hence, more often than not, he failed to get equal opportunity—indeed, the Socialist Labor Party's experience proves that on the whole a minority party candidate rarely got more than a small fraction of the equal opportunity to which he was actually entitled under section 315. For example, in 1956, following some of the radio and television appearances of our national candidates we tracked down at least 77 radio stations and 79 television stations affiliated with these networks which did not carry these though legally obligated to do so. After considerable correspondence and effort these 156 stations did release the program, but we had to supply kinescopes and/or tapes of the programs at our own expense or run the risk of running out of time by continued correspondence and "negotiation." And there may have been as many more stations who failed to fulfill their obligations, but it was beyond our physical and financial means to follow them all up.

We may cite another example. Mr. Frank Stanton, president of the Columbia Broadcasting System, testified before a Senate committee that 20 percent of all CBS network news time was assigned to the Democratic and Republican candidates in 1956. We dare say it was probably higher in 1960. By contrast, not a single second of similar time was assigned to the candidates of the Socialist Labor Party. It should also be noted that although the major networks covered the Republican and Democratic National Conventions for several consecutive days each in 1956 (for example), the only time that minority party candidates were allowed was an amount approximately equal to the actual acceptance speeches by the candidates who were finally nominated by these conventions. And even in this latter respect the minority party candidates frequently had to accept less and often undesirable time, or run the risk of spending all their time and energies in long, drawn-out struggles to receive what under the law they were incontestably entitled to. And we repeat, all this was true even before section 315 was emasculated by amendment or suspended.

In short, under the best of circumstances, section 315 of the Federal Communications Act was in several respects a law without teeth, and one which many broadcast licensees repeatedly violated or ignored with impunity. They knew that the resources, energies, and time available to minority parties and their candidates were definitely limited and they took full advantage of these facts. Certainly, such demonstration of "responsibility" as licensees of a valuable public property hardly justifies the paeans of praise that have been heaped upon the broadcasters for their past performances in the field of public service—nor does it justify placing in their hands even more power to abuse their privileges by again suspending section 315 for the 1964 elections. It cannot be emphasized too strongly that at best section 315 in principle established the right of all candidates to have equal access to the public airwaves and, equally important, the right of the people to hear all views. At least it provided, and still provides, though in reduced measure, an opportunity for an alert, sincere, and active minority party and its candidates a fighting chance to secure some opportunities to present their views and program to the people.

ARNOLD PETERSEN,
National Secretary.

Mr. ROGERS of Texas. Our next witness is Mr. Lawrence Speiser, director of the Washington Office of the American Civil Liberties Union, 1101 Vermont Avenue, room 803, Washington, D.C.

Mr. Speiser, you may proceed.

STATEMENT OF LAWRENCE SPEISER, WASHINGTON DIRECTOR, AMERICAN CIVIL LIBERTIES UNION

Mr. SPEISER. Mr. Chairman, initially I will state our position.

The American Civil Liberties Union unequivocally opposes House Joint Resolution 247, which provides for suspending for the 1964 campaign the equal opportunity requirements of section 315 of the Communications Act of 1934 for nominees for the offices of President and Vice President. Our opposition to this resolution is for the following specific reasons:

1. Its effect will be to deny a hearing on the air to minority parties which have named legally qualified candidates for the Presidency and Vice Presidency.

This, of course, was the effect of the 1960 legislation, Senate Joint Resolution 207. Three years ago we opposed the adoption of that legislation for that very reason. We foresaw—and we needed no crystal ball—that minority parties which ran presidential candidates in the 1960 campaign would receive short shrift from the networks.

As an illustration, the Socialist Labor Party had this very experience; you have just had the testimony of Mr. Eric Hass for the Socialist Labor Party indicating that is exactly what happened. His

group, a long-established Marxist, but nonrevolutionary group, received a total of only 15 minutes on one limited network of 6 scattered stations as compared with the 18 hours and 20 minutes of free time which the networks gave Mr. Nixon and the 19 hours and 26 minutes which the networks gave Mr. Kennedy.

Mr. Eric Hass, the candidate of the Socialist Labor Party was thus denied any type of effective forum, in effect, because the Senate and the House, in August, 1960, decided that the people needed to hear—had the right to hear—only the presidential and vice presidential candidates of the two major parties.

The broadcasters for their part, could have redressed the imbalance, but they, like Congress, substituted their judgment for that of the minority party candidates "as to what the American people want to know." There were, in fact, that year, 14 other presidential candidates from minority parties.

We are not suggesting that section 315, the equal time provision in the Federal Communications Act is to be forever unamended, as though it were the law of the Medes and the Persians. In fact, on August 9, 1960, we proposed to the Senate Committee on Interstate and Foreign Commerce, a revision of section 315 which we believe would constructively serve the public interest and place no undue hardship on broadcasters.

We urged then and we urge now that section 315 be amended as follows:

In partial fulfillment of the obligation imposed upon a licensee under this chapter to operate in the public interest and to afford reasonable opportunities for the discussion of conflicting views on issues of public importance, each licensee shall afford reasonable opportunity for the use of its broadcasting station during the campaign for any public office of local, state or national importance, by the legally qualified candidates for such office; and shall afford such opportunity equitably to all such legally qualified candidates for such offices. Provided, that such licensee shall have no power of censorship over the material broadcast under the provisions of this section.

The key word is equitable, as a substitute for equal. We appreciate the phrase "equitable opportunities" is not a precise formulation. we do not intend it to be. The law should be to some extent flexible, so that the FCC may interpret it in the light of the broadcasters' experience and of community needs as registered at public hearings.

In the last resort the courts might be called upon for interpretation. Students of political broadcasting problems have suggested that broadcasters, in allotting time, might use such criteria as not only the number of votes a minority party had polled in the last election, but also the years it has been in existence, the seriousness of its purpose, and the bona fides of its candidates.

Our proposal recommends no statutory specification as to the length of time to be accorded candidates, or as to whether the time should be free or paid for. We did, however, propose a statutory requirement that some free time be accorded by the TV networks to all legally qualified candidates for the Presidency and Vice Presidency.

Section 315(a) as now written has left broadcasters free to exercise their option of according no time at all to political candidates, in preference to making equal time available to a plethora of candidates representing the major parties, the minority parties and fringe groups who have legally qualified candidates. Removal of the option,

coupled with the requirement that "equitable", not "equal", time be accorded all candidates would, we believe, provide more broadcasting opportunities to the minority parties, and at the same time facilitate the appearance on the air of the major party candidates in debate, panel or other types of programs.

To make ourselves perfectly clear, we are opposed to the passage of the resolution suspending the equal time provision without something to put in its place.

We are opposed to it being left to the discretion of the broadcasters as urged by Governor Collins that they as responsible broadcasters would attempt to provide an opportunity for minority parties, which leads me to the next point.

2. Suspension of section 315(a) during the 1960 Presidential campaign demonstrated that minority parties were in fact kept off the air.

Governor Collins' major argument has, therefore, been undercut by the experience that we have had under the suspension during the last Presidential campaign.

As a matter of fact, one would think that since the suspension was a trial suspension, that broadcasters would have been on their best behavior for that trial period, in order to buttress their argument for eventual repeal. However, the experience was not a good experience as demonstrated I believe by Mr. Hass' group for one, and also the reports that were made by the watchdog committee.

Senator Pastore's committee in its report on Senate Joint Resolution 207 said—

He (the broadcaster) is being offered this chance to show how he will meet his public service obligations during the 1960 Presidential and Vice Presidential campaign and the committee will have an opportunity to evaluate his performance in the next Congress.

The record is clear that the broadcasters did not meet their public service obligations during the 1960 presidential and vice-presidential campaign. As indicated above, minority parties were given short shrift as far as time was concerned. There was no attempt to present their points of view. As a matter of fact the utilization of the Nixon-Kennedy campaign broadcasts has been primarily for the purposes of getting a permanent repeal of section 315.

After the presidential campaign of 1960 the Senate appointed Senator Ralph Yarborough as chairman of the Subcommittee on Freedom of Communications to make an investigation of the handling of the 1960 campaign on radio and TV.

This was denoted as the so-called watchdog committee. Senator Yarborough's subcommittee did its work well. Senator Yarborough's report is an excellent one, and I feel that the report and the experience under that certainly would demonstrate that there is no justification for the suspension or the repeal eventually of 315.

The subcommittee, in part VI (p. 9) of its final report, transmitted to Chairman Magnuson January 6, 1961, declares:

The drive for suspension of section 315 permanently has some curious overtones. There seems to be a feeling on the part of some proponents of this type of legislation that those who are eminently qualified in the field of entertainment are better able to judge the format and content of political programs designed to enlighten the public than the candidates themselves. Those who test the public response and rate programs accordingly for entertainment value or the sale

of commercial products may not be the best judge to analyze the citizen's quest for information or his taste for political controversy. Programs of a political nature in our society are a paramount public service responsibility of licensees. And the interposition of the licensee between the candidate and the public does not mean that the licensee is to act as a filter, substituting his judgment for that of the candidate as to what the American people want to know.

If the Congressmen have read, not only the final recommendations in part VI, but all of part IV of Senator Yarborough's subcommittee's report, they will have learned that even as between the rights of candidates representing the two major parties, numerous complaints during the 1960 campaign were registered with the FCC against more than a few broadcasting stations.

We think some light is thrown upon the supposed political impartiality of all owners of broadcasting stations when we read in the FCC's report on the 1960 campaign that 50 stations editorialized during that period of time while only 23 broadcast replies.

3. Suspension of section 315 for the 1964 campaign with no provision made for the granting of "equitable time" to minority party presidential and vice presidential candidates would be of questionable constitutionality.

Permanent repeal of section 315 as applied to presidential elections would constitute a mandate by Congress for the perpetuation of the two major parties and the effective elimination of any nascent third party and of all minor parties. Does Congress have the right to pass a law which will have the effect of giving four men, representing the two major parties, a monopoly of the restricted airwaves?

It can be argued that if television had existed in 1860 and had then been the powerful force in political life that it is today, and if the Whigs and Democrats had had a monopoly of the airwaves, the newly formed Republican Party could never have sent Abraham Lincoln to the White House.

It should be noted that Senator Pastore, chairman of the Senate subcommittee on communications, said at a prior time, in the course of hearings on section 315:

And once the person is qualified (as a candidate) then the question arises if the people have a right to decide whether or not they shall vote for that man. I think the people have an equal right to hear what he has to say. * * * That is the philosophy behind equal time.

CONCLUSION

The ACLU's solution is not a simple, rule-of-thumb panacea, but is one calculated to protect the people's right to hear, at election time, all shades of political views, and so to enable them to decide what candidate they wish to vote for. We realize that the drive for repeal or suspension of section 315 makes much of the argument that if such action is taken the public will receive more opinion and information from the two major parties. This might be true, but we suggest that the first amendment was written not only to allow the speech of a favored few but to preserve the right of free speech for all—and the concomitant right of the public to hear all views.

The union believes that section 315 can and should be modified so as to open the door to a wider and balanced coverage on the air of election issues and candidates of both major and minority parties. To throw out the baby with the bath water would be indefensible.

Indeed, a vote for repeal of section 315 at any and all levels of candidacies would be a vote to give a perpetual monopoly over the most popular and widely followed medium of communication to the two major parties. Even a vote for suspension would constitute another long step, and an increasingly dangerous step, in the same direction.

Mr. ROGERS of Texas. Thank you, Mr. Speiser. Let me ask you one question about the use of the term "equitable." Where did you arrive at that term or by what yardstick did you arrive at that word?

Mr. SPEISER. Well, this was arrived at through a process very similar to the Congress. We have a radio-TV committee of the American Civil Liberties Union composed primarily of people who are active in those fields, and they suggested that language and it was adopted as a proposal by our board of directors.

I assume the origin of it is the term "equitable" within our judicial system in which courts of equity have historically made determinations that equity be done.

Mr. ROGERS of Texas. I was wondering if there was any such provision in any foreign country that you had any reference to.

Mr. SPEISER. One of the members of this committee is Charles Seippman, who used to be connected with the British Broadcasting Co. Our proposal is based on the experience in England in which minority parties are given some time—although not as much time as the major parties—but they are at least given some exposure time.

I do not believe that this is spelled out in any fashion for the British Broadcasting Co., but apparently their practices have been equitable as they have worked out without standard specified.

Of course the problem here is intensified by the fact that the mandate to the Federal Communications Commission itself is not the most definite standard that exists: "public interest, convenience, and necessity."

Yet under the pressures of making administrative determinations, I think that the FCC has worked out what is meant by "public interest, convenience, and necessity" and the Supreme Court has upheld this as being a sufficiently definite mandate for an administrative agency.

Mr. ROGERS of Texas. Mr. Kornegay?

Mr. KORNEGAY. Mr. Chairman, just one little observation. I, too, like the chairman, was fascinated with your term "equitable opportunities," and I believe I understand what you mean by it, and that is in determining the amount of time a particular candidate or party would get would be based on a number of factors. Of course, one of which would be the length of the life of the party.

Of course, this may be somewhat facetious, but in going back to your example of 1860, the newly formed Republican Party would have gotten little or no time under the theory of equitable opportunities; would it not?

Mr. SPEISER. Obviously we are suggesting that no one factor be a sine qua non, but there should be a combination of factors, and that certainly the length of time of existence of a party should not be considered absolutely essential for determining whether that party is entitled to any time. It is one of the factors to be considered, and I think that that is all you really can say. That, certainly, would also have been true for Theodore Roosevelt with his Bull Moose Party

or Progressive Party coming into existence in 1912. Nevertheless, it was a substantial political party just for that one campaign, and I think, therefore, it might have satisfied a number of factors to be considered. I suppose for a new party the number of names collected on petitions to place it on the ballot in the various States should be considered.

I suppose you could also consider the number of States in which it qualified to be placed on the ballot. These are other factors. I do not think that there should be any one factor, either for qualification or disqualification.

Mr. KORNEGAY. That is all; thank you, sir.

Mr. ROGERS of Texas. Mr. Younger?

Mr. YOUNGER. No questions because I think that the position of the Union is very clearly and concisely stated.

Mr. ROGERS of Texas. Mr. Cunningham.

Mr. CUNNINGHAM. Thank you, Mr. Chairman. Mr. Speiser, recognizing your position that others than the two major parties should be heard, would you think there would be any merit to having some yardstick such as a certain percentage of the vote that a party would need to have in a previous election in order to qualify?

Mr. SPEISER. Well, as I recall, Senator Clark had a proposal of this kind as a suggested alternative to the suspension. I would say that I think that this might be a pertinent factor to consider, but I would hate to see this as a sine qua non for obtaining equitable time, because as Mr. Kornegay indicated that if there is a requirement of 4 percent, which is the figure I believe Senator Clark suggested, then the Republican Party with Mr. Lincoln as its candidate would not have gotten time.

Theodore Roosevelt would not have been given time in the election of 1912.

Mr. CUNNINGHAM. Yes; but I am thinking of this, sir, as a problem that confronts the industry, the communications industry: I think unless you would have some yardstick, and in order to eliminate what might be real small parties or groups that have a real small following, I might even say nuisance types of party candidates, if they had to recognize all of them, I think the end result would naturally be that they would give no one any time, because there would be people who would form a party and put up candidates for the sole purpose of perhaps getting some publicity, and you have to draw the line somewhere. You may have as many as 25 or 50 parties in addition to the 2 major parties, and you can see that that would place a tremendous burden on the industry to the point where they would simply have to turn everyone down because if they give free time to the principal parties, then they are obligated to give free time to all of the others, and they would be out of business. They wouldn't be able to or they would have little time to sell.

Mr. SPEISER. Well, I think that perhaps the experience that existed prior to the suspension for just the two offices that existed in 1960 would answer that. Grant you this may be a danger. I just do not think it is a real danger.

First of all, the equal time provision was not suspended for other than the presidential and vice presidential offices in 1960, so that it

applied to all other offices and the networks managed to operate even under the existing "equal time" restriction.

Secondly, before 1960, it applied also to the presidential and vice presidential campaigns. Mr. Haas got time. I assume other minority parties got time, and I think that this is just one of the dangers that you face in a free society. In the political debate there may be much foolish talk made by people of no great responsibility, but I think that the public has a right to hear that and discard the ideas presented, if it wishes. As to whether the networks will be bankrupt by requiring them to provide time for foolish talk, as it were, I frankly don't think this is much of a danger, in the light of the profits that the TV and radio industry have made. There would be even less of a financial danger to them, if it is done as we have suggested on something less than an equal time basis. They would have to make some judgment as to whether, say 30 minutes, for the Democratic and 30 minutes for the Republican candidates could then be balanced, say with 5 minutes for a party with a much more limited scope, much more limited concern. For example, perhaps there is a Single-Tax Party really not interested in foreign relations, perhaps not interested in a broad range of political issues but just interested in getting its point across on a single point and I think 5 minutes may well be sufficient for a party of that type.

Mr. CUNNINGHAM. Extending this to the local area as contrasted to the national, your suggested amendment to section 315, which has been discussed here, you say: "Legally qualified candidates". Now, what do you have in mind when you say "legally qualified candidates"?

Mr. SPEISER. I recognize this does not cover all the potential political interests in our society. By legally qualified I mean qualified to be on the ballot in a particular election. Now, I recognize this does not cover the write-in situation, but I think that as a start this may be sufficient.

Mr. CUNNINGHAM. I am glad that you are aware of the write-in situation, because, Mr. Chairman, I had an experience which shows the complications that you get into. Some years ago I ran for this office, a Representative in Congress. I was the duly qualified candidate of my party. I was nominated in the primary election, and my opponent was legally nominated as the candidate of his party.

One of the stations invited us to participate together, in one 30-minute program, where we were asked questions by a panel of newsmen. About a month before the election, a gentleman who had never been heard of before issued a press release in which he stated that he also was announcing that he was a candidate for Congress.

Now this was long past the time when he could have run in the primary and had the people decide. He issued a press release that he is going to be a candidate for Congress. Well, he went to the station and said "You gave the Republican and the Democratic candidates free time, so therefore I want free time."

I think they made a bad judgment, but evidently being frightened by section 315, and after consulting with their legal counsel locally and back here they gave this gentleman a half hour.

They did not carry on the same type of program. They just gave him the half hour and he made a speech.

Now, I don't think that they needed to do that, and I went into it quite thoroughly and so did my opponent, who was legally qualified as a candidate.

We were both concerned over this. And it is very confusing in the law to determine just what a man's standing is when he has people write his name in a general election. Our Secretary of State, if I recall him correctly, said that his name would have to be counted. If he should happen to win, then he would be certified, and then they would ask him to pay his \$10 filing fee which is the only qualification we have in our State.

But up until the election, he had not even paid a \$10 filing fee, and you get into a maze of legal problems involving this matter.

The problem that really presents itself, as I mentioned, on the national scale, you see if they set a precedent by giving this gentleman a half hour of free time because they gave a half hour program to the duly nominated candidates, and if they give this man, who is asking that they write his name in, give him free time, which they did, then they are setting a precedent, and anybody that wants to get on it for 30 minutes has got an equal right, and they may have 50 people that they will have to give half an hour to.

If this situation should occur, it would be an intolerable burden, and the end result would be that they would give nobody any time because they couldn't afford to give that to everybody who asked people to write their name in.

Mr. SPEISER. I do not think that this committee can solve the problems in our electoral system under which minority parties are being kept off the ballott because of too stringent requirements for qualification on the ballot.

I agree that this is a problem in our society. Mr. Hass mentioned this situation, for example, of the difficulty, if not the impossibility, of his particular party qualifying for the ballot in Ohio and in California.

But I don't think that this committee can solve that particular problem, in that some party, even though it represented a definite minority point of view, was really interested in presenting a candidate but because of the high standards, the strict standards, was unable to qualify for the ballot.

I don't think this committee can solve that problem. I think, however, that this is a problem that is a dangerous one in our society.

Mr. CUNNINGHAM. My purpose in bringing it up is simply that if there is not anything, any yardstick or any qualifying factors, I think that we will end up eventually with no one being given any public service time, because the burden on the stations would be just intolerable. There ought to be some yardstick. As you said, Senator Clark suggested that they must receive X percentage of a vote in a previous election. I think something like that would have to be put in if we were to carry forward with the amendment that you suggest.

Mr. SPEISER. I see. Well, as I said, I would hate to see that as an absolute requirement for getting equitable time, but I think this certainly could be considered a valid factor. It could be spelled out perhaps with a certain percentage.

Mr. CUNNINGHAM. Thank you, sir.

Thank you, Mr. Chairman.

Mr. ROGERS of Texas. Mr. Speiser, I notice that you refer in your statement to the Socialist Labor Party, a long established Marxist. Now, what do you mean by that?

Mr. SPEISER. Well, I mean that most socialist parties consider themselves to be Marxist parties in that they are attempting to develop government ownership of major means of production. However, by Marxist I did not mean to impute to the Socialist Labor Party that it was a totalitarian party or was a Communist Party or had any connection with the Soviet Union.

I meant that their economic theories I believe are based on Karl Marx, but I don't believe at the same time they follow the interpretation as to the governmental theories, the political theories that are utilized in the Soviet Union.

Mr. ROGERS of Texas. Primarily state ownership of material wealth of the nation?

Mr. SPEISER. That is correct.

Mr. ROGERS of Texas. Now, in that regard, I wanted to clear this up to find out if you were intending to equate the Socialist Labor Party as a Marxist organization with the basic Communist ideologies.

Mr. SPEISER. No; I was not.

Mr. ROGERS of Texas. Just so that the record would be clear as to whether that was your intention. Now, the ACLU is an organization that does not run candidates for office, do you?

Mr. SPEISER. No. We are a nonpolitical, nonsectarian, "non-everything" organization.

Mr. ROGERS of Texas. Basically what is the ACLU?

Mr. SPEISER. The American Civil Liberties Union is an organization which is interested in protecting the rights that are guaranteed in the Bill of Rights. We do not do this in the political area in the sense that we do not run candidates for office.

We are not a party. We do this by handling cases in which we challenge the constitutionality of acts or administrative actions, in which we oppose or propose legislation or in which we attempt to educate the public, in protecting the basic rights spelled out in the Bill of Rights.

We have no political—there are many questions which are in the political area which we have no concern with. For example, medical care for the aged is not something with which we have any concern. There is no constitutional issue.

Mr. ROGERS of Texas. Have you tried to acquaint yourselves with the basic philosophies of these different organizations or minority groups that spring up around, through the country and who complain mostly about the loss of their rights or violation of their rights?

Mr. SPEISER. No, I don't think that we do that.

Mr. ROGERS of Texas. Where do you get your customers?

Mr. SPEISER. You mean the people who belong to us?

Mr. ROGERS of Texas. Yes.

Mr. SPEISER. We have about 60 thousand members who contribute on the average of about \$10 to our organization. They are from all over the country. We do not get any funds from any foundation, any tax-exempt foundation, because we do attempt to influence legislation more or less successfully.

Mr. ROGERS of Texas. Do you espouse the causes of minority groups primarily?

Mr. SPEISER. No. We espouse the right of minority groups to express themselves and to have a forum to be heard. We do espouse the rights, not the views, of minority groups. The views are totally irrelevant to our concern.

Mr. ROGERS of Texas. You mean by that, then, that you do not and would not espouse the philosophy of the Socialist Labor group from a Marxist standpoint?

Mr. SPEISER. Oh, no. We have absolutely no interest, and we are just as much——

Mr. ROGERS of Texas. But you are familiar with that background, I mean that sort of thinking, the Marxist thinking that we were talking about?

Mr. SPEISER. Oh, yes. However, we are just as much concerned about the fact that the Conservative Party does not get time on the air.

Mr. ROGERS of Texas. Yes.

Mr. SPEISER. Or any 1 of the 14 or 16 parties that did not get time on the air. We have no political alinement, and we have taken situations in which we have either provided counsel or filed amicus curiae briefs in cases ranging anywhere from the political left to the political right. Their positions are immaterial.

Mr. ROGERS of Texas. If the Socialist Labor Party, following the Marxist doctrine, should get into power, should become a major party and win the election as opposed to being the minority party at the present time, wouldn't their basic doctrine require them to take over the radio and television facilities and let the Government run them and let only those broadcast who had the approval of the Government agency?

Mr. SPEISER. This may be true, although I hate to ascribe that point of view to them; I don't know.

Mr. ROGERS of Texas. Surely; I understand.

Mr. SPEISER. But if you are asking me as to whether the American Civil Liberties Union would defend the right of individuals or groups to express themselves in the political arena, and those groups or individuals if they got into political power would end democratic rights in our society, we would still be in favor of permitting them to express themselves and would fight for their right to do so. The answer is "Yes." This is a danger that exists in a free society, but we think that it is a danger that is well worth having in a free society.

Mr. ROGERS of Texas. You don't espouse their doctrines but you espouse their rights to speak their doctrines?

Mr. SPEISER. Let me suggest perhaps a more critical example. George Lincoln Rockwell, who is the so-called head of the American Nazi Party, has turned to the American Civil Liberties Union on a number of occasions. We have provided counsel for him, and there is one case that went up to the New York Court of Appeals upholding his right to obtain a license to appear in a public park in New York City. This was a case in which his counsel was supplied by the American Civil Liberties Union. I would say all of the members of the American Civil Liberties Union disagree violently with any of the points of view expressed by George Lincoln Rockwell. Yet we provided counsel for him and took his case up.

Mr. ROGERS of Texas. But you were merely espousing his rights to be heard and his right to say what he thought, whether you agreed with it or not?

Mr. SPEISER. That is right; and as a matter of fact, there were many members of our organization who violently disagreed with our taking the case.

There is no unanimity in our organization, but there was a decision that his case did involve a free speech problem and we did provide counsel.

Mr. ROGERS of Texas. In regard to your position on equitable opportunity, is it your feeling that the question of what is equitable and what is not equitable would be a matter that would be within the discretion of the FCC?

Mr. SPEISER. Ultimately yes, and I think that the FCC is going to have to make some sort of ultimate determination on that. Initially of course, it is the broadcaster who is making that determination, but we have suggested in the past that in an election situation, that there be some more responsive action by the FCC when a situation arises, rather than a waiting for renewal time for the license to determine whether there had been a violation of any of the FCC's—

Mr. ROGERS of Texas. You do not think it does any good to give a dead man a blood transfusion?

Mr. SPEISER. That is right.

Mr. ROGERS of Texas. What would be your feeling or the feeling of your organization with regard to language, statutory language, that would provide penalties with regard to violations in affording equitable opportunity, if they were found guilty of failing to do it?

Mr. SPEISER. Well, you suggested criminal or civil penalties. I assume that that would require the FCC to go into a court in order to have a court impose civil or criminal penalties, or at least have judicial review of it.

My feeling is initially that you ought to start off with a consideration of civil penalties rather than criminal in this area.

Mr. ROGERS of Texas. Of course, my basic feeling as far as I am personally concerned is that the courts should never be infringed upon. As a matter of fact, I think there has been entirely too much infringement upon the courts, the powers that were intended to be vested in them in the first instance. My reference to civil and criminal penalties had to do more or less of course with following the criminal law out in this regard as well as any other. Now, as far as civil penalties are concerned, the exactment of civil penalties would certainly take along with it any authority that we vested in any organization to exact civil penalties would certainly carry with it the right of appeal and immediate appeal to the courts.

Mr. SPEISER. Yes.

Mr. ROGERS of Texas. As far as I am personally concerned.

Mr. SPEISER. Yes; I think that we would certainly agree with that, that that would have to be done. One suggestion that has been made in the past has been to give the FCC the power to suspend licenses upon the showing of some violation of the duty and responsibility of broadcasters. This I think would be a worthwhile thing.

Mr. ROGERS of Texas. That has not been wholeheartedly endorsed by the broadcasters.

Mr. SPEISER. I agree that there is probably a divergence of viewpoint between the broadcasters' views and ours.

Mr. ROGERS of Texas. Thank you very much, Mr. Speiser, for your testimony.

Mr. SPEISER. Mr. Chairman, if you like, I will send you some material from the American Civil Liberties Union so any questions you have about it you might get from that.

Mr. ROGERS of Texas. Thank you, sir.

Mr. SPEISER. Thank you for your courtesy and your time.

Mr. ROGERS of Texas. Thank you very much. I think, in all fairness, that the Chair should at this time, because we want to at least afford equal opportunity in these hearings, call attention to the subcommittee of a communication from a gentleman by the name of Mr. Lar Daly, with whom you are familiar. I think unless there is objection, that this letter ought to be included in the record. It is addressed to the chairman of the full committee, Mr. Oren Harris, and myself. Mr. Daly indicates his desire to come before the subcommittee. He says:

Unfortunately, I am unable, at this time, to afford the airplane fare to and from Washington, D.C. In view of the extreme importance of the proposed legislation, not only in respect to my candidacy for President of the United States in 1964, but also to the presidential aspirations of many other American citizens of which I have personal knowledge, I request that I be formally subpoenaed to give my testimony and the Commerce Committee advance me the minimum amount of \$100 expenses, which I will repay to the committee within 90 days.

Now, the subcommittee has no mechanics to afford anyone expense money or does not have jurisdiction to do so, and I bring this to the attention of the subcommittee so that if any of you want to personally advance Mr. Daly \$100, why, you will have the opportunity to do it.

Mr. KORNEGAY. How far does he have to come?

Mr. ROGERS of Texas. From Chicago. Certainly that isn't a matter that can be taken lightly, that Washington is far distant from a lot of places. I wish it was possible to furnish some means of bringing everyone before this subcommittee that wanted to be heard on it. But I think we must be realistic in this and I put this letter in the record at this time so that there won't be or so that we will be exerting every effort we can to be fully and completely fair in this matter.

(The letter referred to is as follows:)

844 WEST VERMONT STREET,
Chicago, Ill., March 5, 1963.

Representative OREN HARRIS,
Representative WALTER E. ROGERS,
Chairmen, respectively, House Commerce Committee, and House Communications Subcommittee, House Office Building, Washington, D.C.

CONGRESSMEN: A news story in today's (March 5) Chicago Tribune states "frantic" Frank Stanton, president of CBS, in testimony yesterday before Representative Rogers' subcommittee, said: "We're hog-tied right now in Chicago in an important citywide case which involves Lar Daly, a perennial candidate for office."

In reply, I flatly aver that Stanton is, as usual, suffering "electronic hallucinations" on the "equal time" issue.

I request the opportunity to give testimony in opposition to Representative Harris' bill to again suspend the equal time provisions of section 315(a) of the Federal Communications Act, as they would apply to the offices of President and Vice President of the United States in 1964, before Representative Rogers' subcommittee.

Unfortunately, I am unable, at this time, to afford the airplane fare to and from Washington, D.C. In view of the extreme importance of the proposed legislation, not only in respect to my candidacy for President of the United States in 1964, but also to the presidential aspirations of many other American citizens of which I have personal knowledge, I request that I be formally subpoenaed to give my testimony and the Commerce Committee advance me the minimum amount of \$100 expenses, which I will repay to the committee within 90 days.

Awaiting your mutual reply to this request at your earliest convenience, I remain,

Sincerely,

LAR DALY.

Mr. ROGERS of Texas. Did you have a question, Mr. Kornegay?

Mr. KORNEGAY. No, sir.

(Discussion off the record.)

Mr. ROGERS of Texas. Are there any further matters to come before the subcommittee?

If not, the subcommittee will stand adjourned, subject to the further call of the Chair.

(Whereupon, at 3:35 p.m., the subcommittee adjourned, subject to the call of the Chair.)

POLITICAL BROADCASTS—EQUAL TIME

FRIDAY, MARCH 22, 1963

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS AND POWER
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room 1334, Longworth House Office Building, Hon. Walter Rogers (chairman of the subcommittee) presiding.

Mr. ROGERS of Texas. The Subcommittee on Communications and Power will come to order for the further consideration of House Joint Resolution 247, introduced by Mr. Harris, to suspend for the 1964 campaign the equal time requirements of section 315 of the Communications Act of 1934 for the nominees for the office of President and Vice President.

We have several witnesses this morning including the chairman of the National Democratic Party and the chairman of the National Republican Party; however, word has been brought to me that Mr. Bailey, chairman of the Democratic Party has had to attend a funeral and will not be here until about 11 o'clock.

Mr. Miller is here. We have one witness, Mr. Hemphill, a member of the committee, who will be first recognized for whatever testimony he desires to give.

Mr. Hemphill is recognized at this time.

STATEMENT OF HON. ROBERT W. HEMPHILL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH CAROLINA

Mr. HEMPHILL. Thank you, Mr. Chairman, and members of the subcommittee.

In view of the distinguished gentlemen that you have following me I will file my written statement and would like to make a few brief comments.

Mr. ROGERS of Texas. Without objection your statement will be received for the record, Mr. Hemphill.

(The statement referred to follows:)

STATEMENT OF CONGRESSMAN ROBERT W. HEMPHILL, DEMOCRAT, UNITED STATES
CONGRESS, FIFTH DISTRICT OF SOUTH CAROLINA

Mr. Chairman and members of this subcommittee, I deeply appreciate your allowing me to appear before you today and testify on the proposed changes of section 315 of the Federal Communications Commission Act. I salute our beloved and distinguished chairman for introducing the legislation, and I have every hope and intent of helping to promote his efforts.

Whenever I approach any problem of the communications industry, I am again made aware of the fact that a part of our communication industry is regulated and part is not regulated. We have a free press and I would not advocate otherwise although I might favor some legislation which would require more integrity, but that is not the point here. The radio and television industry is regulated, but I do not give regulation credit for the integrity they have exhibited—I credit the fine people I know in the industry.

Because of my interest in this legislation, when an article appeared in the Lawrence Laurent column of the Washington Post, of January 24, 1963, I wrote to the people managing or running the television stations which serve my State. Let me be quick to point out that I do not have a television station in my district but we are most happy to be able to tune in on Columbia, Spartanburg, Florence, Charlotte, Greenville, and Asheville. These stations render a great service to my district. I wrote to them and their replies were detailed, helpful, and I shall pass on to this subcommittee some of the answers I received.

From a letter to me from Mr. Charles H. Crutchfield, executive vice president and general manager, Jefferson Standard Broadcasting Co., Charlotte, N.C., I received the following:

"First, regarding section 315, let me say that we have some very definite feelings about this portion of the Communications Act. These feelings are a matter of record with the FCC as a part of a political questionnaire which we filed with the Commission on Friday, January 11, 1963. In essence, we recommended the outright repeal of section 315 for the following reasons:

"(1) Section 315 was incorporated into the Act at a time when the broadcasting industry was in its infancy. The main trust of the section was to insure that all qualified candidates for public office received precisely equal treatment by an industry which offered vast potential but which had insufficient historical experience with political broadcasting upon which complete reliance could be based.

"This premise, in our opinion, is no longer applicable because we are convinced that we and our associates in broadcasting are now well-seasoned and thus, in the many years which have passed since section 315 was passed, have amassed such experience as to guarantee the exercising of journalistic judgment with maturity and integrity.

"(2) Further, at Commission direction, licensees have been and are operating under the so-called "fairness doctrine" in the broadcasting of controversial issues. This procedure, to the best of our knowledge, has been working with excellent success. Such success is particularly noteworthy because of the similarity of elements involved in controversial issues versus political broadcasts and the fact that the "fairness doctrine" eliminates many of the specific restrictions contained in section 315. Therefore, at the very least, the broadening of the "fairness doctrine" to include political broadcasting can continue to insure fair treatment to political candidates and remove unnecessary restrictions upon the broadcasters at the same time.

"(3) We believe that section 315 is unnecessary because there can be no doubt that were section 315 stricken from the Act the Commission has the inherent power to penalize any violator in the area of political broadcasts just as it does in any other broadcasting activity by license revocation, by fine, or as a consideration with license renewal. Such vested power at the Commission level should be sufficient to insure fair treatment by all broadcasters without the heavy restraints placed on journalistic freedom by section 315."

I wish to quote from a letter of my good friend, Mr. John Rivers, president, WCSC-TV, Charleston, S.C. Mr. Rivers is the one who wrote us such a significant letter when we were considering pay television which evidenced the unselfish attitude of the industry.

"It is my opinion that section 315 should be repealed. I hope it will be repealed in its entirety. I would much prefer to see Senate bill 252 passed but if there is no hope of success there, it will be better to have Senate bill 251 dealing only with the Presidency than to have the ludicrous situation of every splinter party demanding and getting equal time thus keeping all parties off the air.

"The repeal of section 315 will let majority parties have free access to broadcasting while the minority parties, who really have no effect on the election, can be denied unlimited access, particularly, to the networks. I submit that the network official or a station like my own which was clearly biased would needlessly jeopardize the right to stay in business.

"Every 3 years we have to come up for a license renewal and based on our own operational proceedings, almost every decision is made with the idea that it will not jeopardize the renewal of our license. So fairness to my mind is built into broadcasting because it is licensed."

Mr. G. Richard Shafto, executive vice president, the Broadcasting Co. of the South, Columbia, S.C., wrote me as follows:

"SENATOR PASTORE'S BILL S. 251

"New legislation which removes the equal time requirement of section 315 of the Communications Act will increase the usefulness and lower the cost of radio and television time to the political candidate. Section 315 is a handicap to providing free time because of the liability it imposes upon the broadcaster to do likewise for every legally qualified candidate. The problem arises, of course, because of the ever-broadening definition which the FCC has given to "candidate". This, as you know, now includes write-in candidates in most States. By the manner in which they allocated their facilities to presidential candidates in the last campaign during a period when section 315 was suspended with respect to these offices—broadcasters have proven themselves responsible. Total and permanent suspension of section 315 is the desired goal. Your own practical judgment can decide whether that goal can best be achieved by temporarily accepting S. 251, limited as it is to the year 1964, or by the route offered through S. 252 below.

"SENATOR PASTORE'S BILL S. 252

"From my limited vantage point—it seems to me preferable that we now achieve a permanent suspension of section 315 even though this bill relates only to the office of President, Vice President, Congressmen, and Governors. Then, a couple of years hence when experience proves the wisdom of this legislation—it would seem less difficult to have section 315 rescinded in its entirety.

"MR. MINOW'S COMMENTS ON FREE POLITICAL TIME

"Mr. Minow implies—but does not state—free political time would be achieved by regulation or by legislation. Certainly any plan to require broadcasters legally to furnish free time to political candidates could not be seriously considered in the face of the existing "equal time" requirements of section 315.

"Even if the present "equal time" requirements were deleted entirely from the Communications Act, it is difficult to see how we broadcasters could ever come up with any practical way of administering a law requiring free time to any political candidates. This would require that the law specify who was a qualified candidates, and I believe that in South Carolina it would be impossible to exclude any citizen from making some reasonably legitimate claim to being a qualified candidate. If we think we have had troubles with the present law, imagine the confusion and consternation which would come when candidates realized they would be able to avail themselves of huge blocks of television time on a free basis.

"Some broadcasters now take refuge in the fact that they will give time to no candidate lest they run up a liability among those who are not serious candidates but are only publicity seekers. If the law required them to give time to any of the candidates, they would be in a completely untenable position.

"Despite the risk of occasional demands on us by persons whose candidacy can hardly be regarded as serious—WIS-TV gave free prime evening time in the 1962 campaigns to these candidates:

"Two candidates, U.S. Senate, 30 minutes each, June primary.

"Two candidates, U.S. Senate, 30 minutes each, general election.

"Six candidates, Congressman, Second District, two 30-minute programs, June primary.

"Two candidates, Congressman, Second District, two 30-minute programs, general election.

"Five candidates, Governor of South Carolina, 30 minutes each, June primary.

"Two candidates, Lieutenant Governor of South Carolina, 30 minutes, June primary.

"State Senators in contested elections, two 30-minute programs.

"Fifteen House candidates, Richland County, specially produced 1-hour program, costs partially paid by candidates.

"In the case of the candidates for Governor and U.S. Senator, a video-taped "Meet the Press" type of interview was created by WIS-TV News Director Bob Hickman, assisted by Charles Wickenberg, then of the Charlotte Observer. These half-hour programs were produced by WIS-TV in evening time without charge. They were then made available to all other television stations in the State on condition that they (1) be broadcast without charge, (2) a similar WIS-TV tape of the opposing candidate also be broadcast without charge.

"Over and beyond these free broadcasts, many candidates elected to buy additional broadcast time; but the 'not so wealthy candidate,' described by Mr. Minow, received the opportunity to at least launch his campaign to a potential 227,600 television homes without cost.

"In summary, I like best S. 252, but would gladly settle for S. 251—then try again next year. If you and your associates could accomplish passage of either of Senator Pastore's bills, you will have gone a long way toward making more freetime available for political candidates."

From the Greenville station, I received the following statement from its president, Mr. R. A. Jolley, and I quote:

"First let me say that we certainly are in favor of repealing section 315 of the Communications Act. Realizing, however, that this might not be a practical position, at this time, we feel that everything possible should be done to pass Senator Pastore's bill, S. 252, which would permanently suspend section 315 for offices of President, Vice President, Congressmen, and Governors. It seems to us that the broadcasters demonstrated very clearly in the last presidential campaign that the industry as a whole can be relied upon to handle political programming in an equitable manner."

I have long been concerned with the cost of running a political campaign. America is a country which grew to greatness, in part, because the opportunities afforded every citizen to reach high offices, or attain great industrial recognition without the individual having to buy his way along. Heaven forbid if we should ever reach the point where a candidate is selected because of his ability to purchase the necessary advertising, which would naturally include radio and television time as well as billboard space and space in the paper. I salute radio and television station operations in North and South Carolina who have faced this problem honestly and with sympathy.

I quote from a letter I received from the chairman of the State Democratic Executive Committee of Georgia, the Honorable J. B. Fuqua:

"Based on experience here in Georgia, we feel that 315 prevents the radio and television stations from giving proper access to the voting public of the qualified candidates for public office. So long as they are required to give 'equal time' they are unable to feature the leading candidates on public service programs. The cost of campaigning has become so high that serious candidates should be able to take advantage of offers of free time by the broadcasting media.

"One of the problems with 315 is that no two people can really agree as to what constitutes 'equal time.' Where there are a multitude of candidates, many of whom may be in a race purely for personal publicity, it is impossible for the broadcast media to provide the kind of exposure to the public of the serious candidates which we believe they would otherwise do.

"Even if 315 were not repealed insofar as it relates to State and local candidates, at least, it should be suspended or repealed as it relates to candidates for Federal office."

Without the risk of being accused of the worst sort of vanity, I would like to quote from a letter I wrote to Mr. Crutchfield, and quote from his reply.

"I think the industry can police itself better than the FCC in the field of politics. When we had similar legislation during the past session of Congress, as you know, we endeavored to make several beneficial changes to give the industry more latitude. In reading your letter I find I am completely in accord with the point you made. I have often thought of the first two points outlined but have not considered the third before.

"I have long hoped we would reduce the amount of campaign time. When I first entered politics our South Carolina primaries were in August and we spent the entire summer just running around shaking hands, eating barbecue, visiting every nook and corner, and generally exerting ourselves in a person-to-person contact. At that time the communication media had not been developed to the extent it could relieve the candidates of the necessity of a person-to-person contact, which is still an accepted procedure in South Carolina. Presently our primary is in June and the general election in November. I recall just last

year that Olin Johnston began running in January and continued until election day in November. I have no idea how much money it cost or how much time it took him away from his duties.

"If we want to capitalize on the experience of seniority, a very necessary thing in the legislative process, both here and in the State capitals of the Nation, we are going to have to recognize that the candidate who is campaigning for reelection must necessarily take away from the people he serves his services during that portion of the time he is campaigning. His opponent on the other hand has considerable freedom of action. I sound as if I am tooting my own horn a little, but I am sincerely concerned and I think the cutting down of campaign time would be beneficial to the Nation, and the electorate as a whole. If we were to attempt to monitor this by legislation of any kind, we would probably have to prohibit announcements of political nature before the time of the broadcast. I feel this would be difficult but I believe it could be accomplished.

"Until we impress upon the people of this Nation the necessity of choosing a candidate for his ability to serve and to represent, regardless of his particular pulchritude, we are going to be faced with a great reluctance on the part of older candidates when invited to appear against younger (and necessarily fresher) candidates. If you agree to debate with some opponent, who has neither stature, experience or record, you give him stature. Just how we could solve this problem I do not know, and I fear we will continue to be beset with people who enter political life to advertise themselves or for pure vanity. While I have every confidence in the people's ability to discern, I think we must recognize the problems involved when the Government does pay part of the cost.

"Frankly, I would not dare to predict the time when we might hope to arrive at such a plateau of sophistication and discernment in our political strivings that we could eliminate the complaints out of which have arisen section 315 and which presently engages our attention. I think we who are candidates every 2 years, or every 4 or 6 years, as the case may be, have a great obligation to work toward freedom of communication and blanket communication in our elections.

"While I appreciate the generosity of the networks in giving their time for the debates of 1960, as a cold business proposition, you have to pay overhead and expenses to support a political broadcast just as you do any other. I would never subscribe to legislation or an idea that would limit the profit the industry might hope for from political broadcasts as I consider these broadcasts to be legitimate broadcasts."

I now quote from Mr. Crutchfield's reply:

"Your letter of January 30 contains many thought-provoking items that point directly at the problems briefly discussed in our previous correspondence. You have raised important questions which seek amplification of the statements I made in my last letter to you.

"There can be no question that the cost of campaigning grows steeper with each subsequent election. Yet, this is probably as natural as evolution of competitive endeavor as all other aspects of American life. In every field competition is keener, costs are higher, communications are better, all of which places heavier and heavier burdens upon any man, firm, or even government attempting to influence others. It's the price we all willingly pay to enjoy the highest standard of living in the world. That's not a pious excuse, but a practical explanation.

"However, you make a fundamental democratic point in observing that if campaign costs are left to run unrestrained, the man with the greatest finances with which to create and implement the most powerful campaign can run roughshod over his poorer but perhaps better qualified opponent. Should this happen, of course, our elective system would then have been subverted. The point you make is based on the premise that in any competitive contest the one who has the most resources and used them to the best advantage usually emerges victorious. While this could possibly happen, the basic merit of the candidate's qualifications cannot be overlooked. Were a less qualified candidate to spend more money than his opponent, the fact of the matter is, the American people have a unique and abiding ability to see through sham and pretense. Anyone who underestimates the inherent intelligence of the people of this Nation is in for a bitter surprise.

"Another vital consideration in this whole question is the right of the American public to be fully informed on each candidate before going to the polling place. If restrictions were placed on candidates' campaign activities by gov-

ernment regulation to solve the campaign cost problem, what would happen to our democratic process as a result? Would it not have the effect of partially severing the free communications link between the candidate and the public? Which is the greater evil, high campaign costs, or an uninformed electorate?

"No one can deny that the American people are better informed today than ever before in history. Mass communications media have made it possible. Old campaign methods are obsolete. In a single television broadcast today, on WBTB for example, a candidate can reach approximately 300,000 eligible voters within a 75-mile radius. The intimacy of the medium allows the public to both study him and analyze what he has to say. If that single broadcast costs the candidate \$500, what would the cost be to him in time and money to reach these same people with as personal contact by any other method? By automobile, bus, or campaign train, it would take him weeks and untold expense to accomplish the same purpose, were it even physically possible. In this light, television is actually more economical for the benefits received. My point here, Bob, is that campaign costs must be reviewed in the light of what is achieved. Certainly more is being spent but much more is being accomplished in public enlightenment, too.

"If we are agreed, then, that costs are high and could, at some future date, reach the point of denying candidacy to all but the rich (or those who would be forced to accept money from private interest), and if we are agreed that any restrictions placed upon campaign activities raises an equally serious problem in usurping the public's right of full information on candidates and their platforms, let me suggest some ideas as possible solutions:

"(1) Reduce the amount of campaign time between primaries and general elections or between nominating conventions and elections. Destroy the motive of one candidate starting earlier than another in order to develop advantageous 'leadtime.' With instantaneous communications now available for the candidates' use in reaching the public, I see no reason why campaign lengths cannot be reduced while still providing all candidates with ample public exposure. Short campaigns should automatically reduce campaign costs and the hazards of artificial restraints have been avoided.

"(2) Let the Government share in the costs by providing a means of Federal subsidy covering part of campaign expenses. If the public is the beneficiary of an unfettered flow of information about candidates and issues, should not the public share in the cost of their being provided the opportunity to hear where the various candidates stand on the issues confronting the people, which allows them to make knowledgeable decisions at the polls? This, of course, can also serve to significantly reduce a candidate's campaign cost.

"I understand that several bills have already been considered in Congress which were aimed in the direction of a Federal subsidy, some of which singled out certain media as being eligible while other limited Federal funds to no more than equal that of the candidate's local expenditure up to a predetermined limit. Any singling out of media, in my opinion, is unwarranted discrimination and the placing of limitations on expenditures seems to me to be self-defeating through the imposition of unnecessary restraints.

"(3) Let the communications media assist in the dissemination of political information. In the field of broadcasting, some steps have already been taken to remove some of the shackles that have hindered it from rendering full and complete service to the people. I refer here to the revision of section 315 to exclude bona fide newscasts and bona fide news interviews. This has opened a door to us which heretofore has been closed. Further, through Senate Joint Resolution 207, section 315 was set aside for the 1960 presidential and vice-presidential campaigns. The Kennedy-Nixon debates resulted from that relaxation of the rules and the free time given by the networks and stations must have totaled several million dollars. Certainly that could be considered a saving of significant proportions.

"Section 315 is back in force again and I must reiterate that for so long as it remains, our freedom of action in giving of our time has far too many unnecessary strings attached to it. Were section 315 completely and permanently removed, I have absolute confidence that the broadcasting industry would respond with unprecedented gifts of time to candidates at all levels of public office. Despite broadcasting's performance in the 1960 presidential campaign, if Congress or the Commission still has sufficient doubt as to the validity of this confidence, perhaps a temporary trial period, as you suggested, would offer ample proof. Therefore, as a practical matter it may be the wiser course to com-

promise with the temporary suspension of section 315 as a stepping stone to permanent revocation. If that can be done, the country, the candidates, and the broadcasters will all have received a great benefit. For only with the limitation of "fairness," which isn't a limitation at all, campaign costs for television at least, can be substantially reduced at all levels of public office by permitting the candidates in great numbers to use the medium in unprecedented fashion without charge.

"Even if the candidates took the money saved from that portion of their television campaign which was given free by the stations and spent it on other media, anyone with the least amount of objectivity could see that rather than aiding his competitors, he is performing one of the most vital services the American people need."

From Mr. Walter Brown, President of the Spartanburg, South Carolina station, I received this comment:

"Needless to say, your views and mind coincide with reference to the threat to sound democracy in this country by the excessive use of money in political campaigns. I was at my place in Georgia over the weekend and read where they are spending a million dollars over there for a new Governor's mansion. I guess they figure if they spend a million dollars to win a Governor's race, the victor should live in a million-dollar house. This is all so contrary to the spirit of good, wholesome democracy.

"I think everybody realizes something should be done to control and regulate the use of money in political campaigns, but as Mark Twain said about the weather—everybody talks about it and does nothing. I do hope that on both the National and the State level some steps can be taken which will stop this trend where only a rich man or a tool of special interests can be elected to public office. This is one of the reasons why I feel that section 315 can be suspended where free television time can be extended without restraints. Of course, I feel that the broadcasters should be protected to thwart people from running for office just to get free television time. We have always carried the joint debates in South Carolina free on our radio station. We have followed a similar policy in television, however, I do not think South Carolina broadcasters have made as much progress as we should have in promoting debates among candidates on the state level. To some extent, this may be attributed to the reluctance of candidates to enter into such an arrangement, but this is only one facet of the evil of money in politics. It extends to other media, to hiring workers, and many other demands for money in waging a political campaign."

I hope my comments are apropos to the high purposes of the legislation introduced by Chairman Harris. I would support the abolition of section 315 in the Federal Communications Act on a trial basis. That is, suspend the provision for two years. Such would give us time to evaluate the necessity, the good and the bad, containing the "equal time" mandate provision in the law.

Again let me thank you for allowing me to appear.

Mr. HEMPHILL. I want to salute our distinguished committee chairman for introducing this legislation. I think it is a step in the direction that we have been thinking for some time.

I have here a written statement in which I quote from various people in the communications industry, at least that portion which is regulated, which arose out of the fact that on the 24th of January of this year I read in the Washington Post a column which called to my attention the possibility of legislation on this subject.

I wrote to each of the people that I knew, personally, in the television industry, and the reason I wrote to them was because none of these people are in my district, and I do not have any interest in any television or radio station, and very seldom even use the media of communications. I have found them to be people of such integrity.

I recall that when we had the pay television question before this committee, one of them whom I quote here, wrote and said, "let's not have pay television, we are making enough now and the American people deserve the entertainment and the education and the information at the cheapest possible rate."

Those are the kinds of people I quote from. Their letters of response were letters of detail and letters of integrity which I salute.

Now, Mr. Chairman, if it were left to me I would propose that we do away entirely with section 315 on a temporary or probationary basis, because I have confidence in the industry. If that is not possible before this committee I certainly want to endorse wholeheartedly House Joint Resolution 247 introduced by our distinguished chairman.

I think it is a wonderful step in the right direction.

Mr. ROGERS of Texas. Mr. Hull, do you have any questions?

Mr. HULL. No.

Mr. ROGERS of Texas. Mr. Younger?

Mr. YOUNGER. Yes.

I am glad to have our distinguished colleague before the committee. I did not understand your statement about section 315 being repealed either temporarily or permanently. What did you mean by that?

Mr. HEMPHILL. Well, in reality, if we repeal section 315 and we found that this led to certain abuses, the Congress of the United States meets every year and it certainly could go back and reinstate this part of the U.S. statutes in the event that there were abuses if it was repealed.

Now, when I said "temporary," I would advocate that it be suspended for a certain length of time to give the industry a chance to show us that, as they claim, and I think with integrity and sincerity, that in the event the section were repealed that they would certainly be fair to every person who is a candidate for public office.

Mr. YOUNGER. Do you have in mind that the electronic news gathering agencies should have the same freedom as the press, newspapers, and magazines?

Mr. HEMPHILL. I would hope that they would have.

Mr. YOUNGER. You think there is no difference between a news-gathering agency that is using the public domain than one that is absolutely free enterprise and the Government has nothing to do with it?

Mr. HEMPHILL. We have a free press and I subscribe to that. This is another means of communication. I have confidence in the integrity of the industry and I believe that if they were given the same freedoms of publication of news that certainly they would live up to the confidence I have here expressed.

Mr. YOUNGER. You think there is no difference between a newspaper and a radio station that has to have a license and has to be governed by the FCC?

Mr. HEMPHILL. Well, of course, there is a difference.

Mr. Younger. Then what is the difference, in your opinion? That is what I am trying to get at.

Mr. HEMPHILL. There are many differences, as the distinguished gentleman from California well knows. In the radio and television business we only have a limited spectrum, we can only accommodate so many people on the air. In addition to that we have set up a regulatory agency for the purpose of licensing and determining the qualification.

We don't have that in the newspaper business. Anybody can publish a newspaper. There are some that abuse the privilege highly, but nevertheless, these people are in competition with the newspaper people and while I am not toting their load, I think we ought to do everything we can to make sure that they have every advantage that they should have as a part of the American industrial picture.

Mr. YOUNGER. You think they should have all of the freedoms that the press should have?

Mr. HEMPHILL. In the publication of news?

Mr. YOUNGER. Yes.

Mr. HEMPHILL. Yes.

Mr. YOUNGER. That is all, Mr. Chairman.

Mr. ROGERS of Texas. Mr. Harris, do you have any questions?

Mr. HARRIS. No question. I would only like to say that I want to thank our colleague and member of our committee for helping to make this record in support of the legislation.

I introduced the bill at the request of the administration. It is identical with the legislation which was requested and supported by the previous administration and by the Republican and Democratic National Parties.

This is an effort to do something that is of some importance in my judgment, for the 1964 campaign.

I prefer it to be done this year instead of having to wait until next year and run the risk of getting involved with all sorts of imponderables which may happen as you so well know.

I have some sympathy with the gentleman's views with reference to outright repeal, though I cannot go along with it. I do not believe that it is practical, I do not believe it is the proper thing.

I think it would get the broadcasting industry involved in political questions to an extent that it would reverberate throughout the Nation.

I personally would be for extending it to State officials at this time, though I recognize the problems there.

We are trying to do what we can now to help this great industry to meet the responsibilities that the Congress has given it to serve the public.

I think it has been demonstrated very well that it was advantageous and beneficial in the 1960 campaign and I say this not in a partisan spirit at all. Hindsight is always better than foresight. I say it in an objective way. In my judgment, the broadcasting industry demonstrated its willingness to serve the American public and our democratic institutions by the contributions it has made. I think we can expect even greater benefits in the 1964 campaign if we provide the authority for going ahead.

As chairman of the committee and a Member of the House of Representatives—and the gentleman being a Member himself—I appreciate his helping us to make the record here in support of this legislation at this time.

Mr. HEMPHILL. I certainly thank my distinguished chairman, and I will say to him here that I intend to back any legislation that the committee reports with all my strength and support.

Mr. HARRIS. We have two votes in now.

Mr. HEMPHILL. I might say also that I have tried to treat here the growing problem of the cost of running for public office. It is a terrible thing to think that because the media of communications is now the source of information that the public depends on instead of what we used to have in the old days as stump speaking, that the cost can be prohibitive.

Most of the Members of Congress and Members of the Senate I know, most of the public officeholders I know, are people whose service to the public has taken them away from their business or their profession to such an extent that they cannot make any money and generally if they are like I am they are pretty well strapped financially, and it gives me concern because it means in the future that only rich men are going to be able to run for public office. It is going to eliminate the kind of people I know and served with and have found to be the finest people in the world.

Mr. ROGERS of Texas. Thank you, Mr. Hemphill, for your fine contribution.

The chairman now recognizes the distinguished National Chairman of the Republican Party, Mr. William Miller.

Mr. Miller.

STATEMENT OF HON. WILLIAM E. MILLER, CHAIRMAN, REPUBLICAN NATIONAL COMMITTEE, WASHINGTON, D.C.

Mr. MILLER. Mr. Chairman and members of the subcommittee.

I have a short statement which I would like to read at this point, if it is satisfactory with the Chair.

Mr. ROGERS of Texas. You may proceed.

Mr. MILLER. I appreciate this opportunity to appear before in full support of House Joint Resolution 247, which, as I understand it, would suspend for the 1964 presidential campaign the "equal time" restriction of section 315 of the Communications Act of 1934, as amended.

Because we suspended the application of section 315 for the duration of the 1960 presidential campaign the result, of course, was the staging of the "great debates" between the presidential candidates Richard M. Nixon and John F. Kennedy.

There is no doubt that these debates were a major innovation in the conduct of American presidential campaigns and made a great contribution to the general understanding on the part of the American people of the issues and personalities involved.

It has been estimated that at least 70 million people watched the first debate; one poll which I saw has reported that well over half of the Nation's voters said that the debates influenced their choice of candidates.

So, in supporting a like suspension for the 1964 presidential election it may well be that another series of debates between the presidential candidates would be the principal result.

The enactment of the resolution, however, would not restrict the networks to the offer only of confrontation formats, but would allow them to give equal time to the presidential candidates of the two major parties even though not to be used simultaneously.

Technically speaking the enactment of this resolution could permit the networks to grant favored treatment to the candidate of one of the major parties but it must be presumed and I think it can be presumed as a result of the performance in 1960, that the networks will operate in the public interest and that if the equal time allocated to the major candidates is not to be in the form of a debate that then there will be careful inspection and scrutiny to see that equal time in fact means equal time as to the hour of the day, day of the week, competing programs, transmission by all of the affiliate stations at comparable times, et cetera.

There is no doubt in my mind that it would be impossible for the presidential nominees to reach through any other medium as many voters at one time as can be reached through television.

It has been stated that the television networks in 1960 gave the two presidential candidates approximately \$6 million worth of free time. In so doing the networks performed a great public service. If the television and radio networks had been forced by section 315 to grant equal time not only to the 2 major parties but to the more than 10 minor parties who nominated presidential and vice presidential candidates in 1960, they obviously could not have afforded to do so.

Equally obvious is the fact that they should not be forced to do so in 1964. The 10 minor parties in 1960 shared less than 1 percent of the vote among them. The Nation should not be deprived of the opportunity to see and hear the two major presidential candidates merely because of the provision then requiring equal time for splinter party nominees.

The cost of presidential campaigns is increasing campaign by campaign and unless some means and methods are found to permit in the United States the conduct of effective campaigns at reduced costs, we will be encouraging the direct intervention of the Government itself in the subsidization of national political campaigns.

This I would resist strenuously. I, therefore, believe it to be in the national interest that we now suspend the restrictions placed on broadcasters by Government that they may voluntarily render a service which indeed, in my judgment, is in the greatest public interest.

Mr. ROGERS of Texas. Thank you, Mr. Miller.

Do you have any questions, Mr. Moss?

Mr. MOSS. I have one, Mr. Chairman.

In the last paragraph, in referring to the suspension of restrictions is that in line with the restrictions proposed in the resolution?

Mr. MILLER. Yes, I am supporting the resolution itself. The restrictions as incorporated in section 315.

Mr. MOSS. I thank you. I think it is a very clear and excellent statement. I find myself in agreement.

Mr. MILLER. Thank you, Mr. Moss.

Mr. ROGERS of Texas. Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman.

I am glad to welcome our leader before the committee.

Mr. MILLER. It is very nice to be here, Mr. Younger.

Mr. YOUNGER. Two things. Do you believe that section 315 should be suspended in its entirety?

Mr. MILLER. You mean do I believe that section 315 should be repealed? No; I do not.

Mr. YOUNGER. Or suspended even temporarily in its entirety? This applies only to—

Mr. MILLER. The equal time provision.

Mr. YOUNGER. Yes.

Mr. MILLER. No; I do not think I would go that far, Mr. Younger. I am in favor of restricting the equal time provision at this time for the presidential candidates as incorporated in the resolution introduced by the distinguished chairman of this committee.

When you have the equal time provision suspended for the presidential candidates you have the eyes of the Nation focused upon this particular campaign.

I think that public interest and the public judgment and censure which follows public interest would beyond any question of doubt prompt the networks to be utterly fair in conducting the campaign and in allocating equal time to the major candidates, because, as I say, it would have a very deep public interest and would be watched very closely by the public.

When you go beyond that and go into other phases and into other campaigns and into other races I myself am not prepared to state at this time that I would favor leaving to the discretion of the networks themselves the political future of all people who run for public office at State and local levels in this country.

Mr. YOUNGER. Do you believe that there is a difference between the press and the radio and television?

Mr. MILLER. I think there is a vast difference. The radio and television use the airwaves. The radio and television are granted a privilege by this Government to transmit through the airwaves, which they do not own, their programs.

This is why, of course, there has to be a Government regulation, otherwise, you would have every area in the country jammed to a point where you could not get a decent reception of any kind from any television or radio station.

I think there is a vast difference between television and radio broadcasting and the privilege which is accorded this by Government than let us say, a newspaper publication or a magazine publication.

We do circumscribe magazines and newspapers with certain suits on libel and slander, of course, but beyond that they have no restriction at all.

As Mr. Hemphill stated, you have no restriction as to the number of newspapers which can be printed in any one town or any one area and their success depends pretty much on the type of newspaper that they publish, but in the case of television or radio you have, of necessity, a Government stepping in saying that you can have one station in any area.

Now, I would not be prepared to say that we ought to leave the political destinies of Republicans and Democrats alike to the discretion of the owners of one station covering one whole broad area as far as equal time and other restrictions are concerned.

So I am in favor of this resolution as limited to the presidential campaign of 1964, and no more.

Mr. YOUNGER. In your statement you use the words "candidate" and "nominee," interchangeably.

Now, which do you mean?

Mr. MILLER. I mean nominee. I mean the nominee nominated by the Republican National Convention and the Democratic National Convention.

Mr. YOUNGER. The suspension should be only after the nominees have been determined by the respective parties?

Mr. MILLER. Exactly.

Mr. YOUNGER. And not somebody who says, "I am just a candidate."

Mr. MILLER. Exactly. I am talking only about those persons nominated by the conventions of the two major parties.

Mr. YOUNGER. You were speaking about the great debates. Do you really think that those exhibitions that we had in the last campaign were debates?

Mr. MILLER. Well, I don't think that you could probably say they were debates in the Lincoln-Douglas tradition; that is, the format was such that the candidates themselves were not able to determine the subjects under discussion, were not able to select the areas of discussion, but certainly I think, I must say in utter fairness that I think the networks did a good job in selecting the topics which were of national interest, in selecting the areas of discussion which were the important areas of national concern and I think that they were fair in the way that the format was constructed and in the way that the so-called debate was conducted.

Mr. YOUNGER. If in the negotiations you have anything to do with it would you prefer to have an out-and-out debate on a definite subject or a press interview, as was used the last time?

Mr. MILLER. I would rather lean toward the out and out debate rather than the press interview, because I think the press interview gives too much jurisdiction and too much authority and too much control over the general topics of discussion to the questioners rather than to the debaters.

Mr. YOUNGER. That is all.

Mr. ROGERS of Texas. Mr. Hull.

Mr. HULL. No questions, Mr. Chairman.

Mr. ROGERS of Texas. Mr. Cunningham?

Mr. CUNNINGHAM. I do not believe I have any questions.

Mr. ROGERS of Texas. Mr. Harris?

Mr. HARRIS. Let Mr. Broyhill go ahead.

Mr. BROYHILL. I have no questions.

Mr. ROGERS of Texas. Mr. Harris?

Mr. HARRIS. Mr. Chairman, do you have any questions?

Mr. ROGERS of Texas. Mr. Miller, my only question is this. You are speaking on behalf of the Republican Party and as its national chairman and that is the position of the party?

Mr. MILLER. That is correct.

Mr. ROGERS of Texas. Thank you very much.

Mr. Harris?

Mr. HARRIS. I wish to say that I appreciate the appearance of the gentleman from New York not only as chairman of one of our great national political parties but as a Member of Congress who will be participating in the consideration of this matter in the House of Representatives if and when the committee reports the bill and a rule can be obtained.

It is my feeling that before we should undertake to vote on a proposition as important as this one is, we should know the position of both party headquarters and the heads of both of our great national parties.

I know the gentleman from New York has a very busy schedule. For you to take the time to come here and make this record, sir, will, in my judgment, help the consideration of this legislation a great deal.

I was interested in the gentleman's statement about the extent to which the Congress should suspend the operation of section 315.

I think the comment that to limit it to the candidates for President and Vice President is very good because the attention of the American public is focused on this election, and that constitutes a valuable safeguard against possible abuses.

Do you see any reason, though, why it should not be extended to such State offices as Governor and to the office of United States Senator provided the same restrictions as to fairness apply?

Mr. MILLER. Well, I do not, Mr. Chairman, except that I can well see that this would open the door probably to tremendous pressure for even further extension.

In other words, if you suspended it for the purpose of gubernatorial campaigns and for the purpose of campaigns let us say for the U.S. Senate, which are statewide, I am sure that then there would be ensuing pressure for a suspension for candidates for the House of Representatives, for mayoralty candidates, particularly in the large cities, and I am not so sure, Mr. Chairman, at this time, having had only one previous experience with this suspension in one presidential election, that I would be in a position to publicly support a suspension beyond that incorporated in the resolution which you so wisely introduced.

I think that it might lead to pressure which might result in the enactment of legislation or the enactment of legislation suspending or repealing section 315 that would place such a burden upon the networks that they would be perhaps then prone not to make their facilities available at any level or in a position where they could then make their own decisions as to which elections they believe by themselves to be important, whether it be the statewide election in my State as compared to the statewide election in your State, or in another State, or whether they might deem a mayoralty campaign in one city to be more important than in another, or depending upon how the network or the affiliated station in that area viewed it, I am afraid where you get off the national level and get into State and local levels and you are leaving it entirely to the discretion, then, of not the networks alone but of the stations in the areas and in the States and in the cities to determine whether or not they are going to offer these facilities based upon their right to do so because of the suspension or repeal of 315, I could visualize some difficulties.

Mr. HARRIS. I suspect the gentleman is correct, that we should have a further test or trial and more experience in this field.

Mr. MILLER. That is my only point. I would not state this morning, Mr. Chairman, that I at all times in the future would take this same position.

Mr. HARRIS. But we might as well face the fact. Just let us face it. I have a feeling that the broadcasters in my State of Arkansas would be just as fair in State matters as the networks have been and will be insofar as the Nation is concerned.

So, in the 1962 campaign we found that the candidates for Governor in California were invited to appear on "Meet the Press," or "Face the Nation," or whatever it was. This was permissible under the provision of law which we reported out of this committee 4 years ago.

Mr. MILLER. That was the amendment of 1959.

Mr. HARRIS. Yes; that is right. By this devious method of using news interviews it was done.

Mr. MILLER. Yes.

Mr. HARRIS. Now, the candidates for the U.S. Senate in the State of Massachusetts were at one time or another scheduled to appear by using this devious method. I know the networks were endeavoring to perform a public service, and they did. It was legitimate, but I think we would have to confess that it was devious. Would you agree with that? That way they had to bring these candidates to the attention not only of Massachusetts and California, but they had to present them before the whole Nation.

Maybe that was all right. Naturally, the people of the United States are interested in all of the United States. But the point is that we permit the industry through devious means to serve a particular city when we do not give them the same opportunity to serve any given State.

In my judgment the extension would be just as fair and equitable.

For that reason, I do think that the time will come when consideration should be given to such an extension.

Mr. MILLER. But, Mr. Chairman, if I may make an observation, the very fact that these networks or stations have to do it under existing statute by devious means in my mind is one of the very, very salient reasons why having to resort to devious means they absolutely bend over backwards using the devious means fairly.

Where, if you had a suspension or an outright repeal so they did not have to use devious means and there would be then no governmental restriction which would prevent them from giving one candidate unequal time you might have a more difficult situation.

Mr. ROGERS of Texas. I thoroughly agree. I say to our colleague, with your emphasis on being fair, that we should, but I would like to call your attention to the resolution itself.

On page 2 we provide, and I think it is important to notice these restrictions we have, on page 2, No. 1: We provide nothing in the foregoing shall be construed as relieving broadcasters from the obligation imposed upon them under this act to operate in the public interest.

I know that is a broad generalization, but I think that most of us know what it means.

Mr. MILLER. Of course it is broadcasters because the original statute refers to the licensee and it does not refer to the networks.

Mr. HARRIS. Yes, sir. All right. I know that is true, but in the next section it does.

Section 2. The FCC shall require broadcast stations and networks to make such reports that may be necessary to enable the Commission to make a detailed report to Congress, and so forth.

Mr. MILLER. Yes.

Mr. HARRIS. Well, now, it would seem to me with these requirements that we have in the law, it would be incumbent not only upon the stations but also upon the networks to be fair and to operate in the public interest. Particularly so since each of the networks themselves own a maximum of five stations, and those stations would come in the same category as all other stations with reference to performance in the public interest.

Mr. MILLER. Yes. You see, under section 2 you are saying the networks should make reports to enable the Commission to make a detailed report to the Congress not later than May 1, 1965.

That was the very reason, Mr. Chairman, that I said that later, after we get this report and the Congress has it and makes a study of it, it may well be that my position later would not be the position I take this morning in connection with this, but it would depend somewhat upon the experience.

Mr. HARRIS. Gentleman, I want to say to the gentleman that I share his views and I am thoroughly in accord with your feeling about this at this time.

Mr. MILLER. Thank you, Mr. Chairman.

Mr. HARRIS. But I did want to make the record with regard to future considerations after we may have some additional experience.

The chairman of this subcommittee and other members of the subcommittee will recall that on one occasion a good many years ago we attempted to do something about this on a broader scale and in doing so we attempted to devise a formula of some kind that would protect minority candidates, and minority parties, third parties, independents, and so forth.

But we found ourselves hopelessly bogged down in the mire of that consideration and came up with no result at that time. That was either 6 or 8 years ago, I am not sure.

Then we came to the suspension insofar as the presidential and vice presidential candidates are concerned. So this matter has been considered over a long period of time and we have not arrived at a solution as yet except for presidential and vice presidential candidates. But I believe the time is coming, but maybe we are not quite ready for it. Just as in my judgment I think the time is coming when we are going to permit the televising and broadcasting of hearings like these today. I think it would be of tremendous interest to the American people to have an opportunity to hear you and see you today as you present the position of the Republican National Party, one of the great political parties of this country.

I think the time will come when we will open up congressional hearings for that purpose. I do not think we are quite ready for it, but I do feel it is coming and we might as well prepare for it.

Mr. MILLER. I agree.

Mr. HARRIS. Thank you very much, Mr. Chairman.

Mr. ROGERS of Texas. Mr. Miller, I am sure that you and the Republican National Committee have gone into this matter in detail and discussed it very thoroughly, and in answer to a question of Mr. Younger, I believe, a moment ago you said that you were confining your endorsement to this resolution.

Mr. MILLER. That's right.

Mr. ROGERS of Texas. And that you did not know whether in the future you might hold the same feeling.

Is it your feeling, Mr. Miller, and the feeling of the committee that should this resolution be made a permanent resolution or a permanent amendment to the Communications Act that it might create a situation where we might be limiting the political situation in the United States to two major parties?

Mr. MILLER. That would suit me fine, because I am a great believer in the fact that the freedoms and liberties we enjoy are different from any other country and ensue from the two-party system.

Mr. ROGERS of Texas. But if this had been in effect back when Abraham Lincoln came along there would not be any Republican Party?

Mr. MILLER. You might go back farther in the Democratic Party. I would say I am a firm believer in the two-party system and I think in my—in any Presidential election you merely take the statistics in the preceding presidential election to determine the major parties. I was an assistant prosecutor at the Nuremberg trials and I saw what splinter parties do to a country as it did to Germany prior to the rise of Hitler in 1933 and I would hope we would always have a two-party system in the United States.

Mr. ROGERS of Texas. You would not deny the people the right to form a third party if they desired to do so?

Mr. MILLER. Of course not. As a matter of fact, we have one in New York.

Mr. ROGERS of Texas. Yes. You do feel that unless the Congress keeps a tight rein on this situation that it could get into a situation where it would be completely out of control?

Mr. MILLER. I think one of two things would result, Mr. Chairman. Either you would have so many splinter parties that the networks would give no time to any party because it would be so burdensome that it would almost amount to a confiscation of property without due process of law if they were forced to give 10 or 12 or 15 candidates equal time during the course of a whole campaign or so that they would either go out of business if they were forced to do that or they would not give time to any candidate and thus the American public would lose the opportunity of hearing and seeing the major candidates.

Mr. ROGERS of Texas. Actually, if you follow the premise which you outlined so well a minute ago about the use of public domain by these broadcasters should you get into the situation you have outlined here there could be a great clamor by some to turn this whole business over to the Government on the ground it was Government property they were using.

Mr. MILLER. That is right.

Mr. ROGERS of Texas. So, unless we do take a long realistic look at it we could get into quite a problem.

Mr. MILLER. It is a problem fraught with many difficulties, particularly so where the public interest is so much at stake.

Mr. ROGERS of Texas. Thank you very much, Mr. Miller.

Mr. MILLER. Thank you, Mr. Chairman and gentlemen.

Mr. ROGERS of Texas. The chair stated earlier, due to a funeral our next witness is not here yet. Mr. Williamson, have you heard anything regarding Mr. Bailey?

Mr. WILLIAMSON. Mr. Brightman is here with the chairman's statement and he is awaiting word from Mr. Bailey.

Mr. ROGERS of Texas. Mr. Brightman, do you have any idea when he will be here?

Mr. BRIGHTMAN. The last word I had he had not left the services. They were going to call me when he left the services and they are out on River Road quite a distance away.

I apologize for his absence. He had expected to be able to be here in time when he accepted this engagement. The services were delayed in starting and I have his statement, I am prepared to read it if you wish me to.

Mr. ROGERS of Texas. I think that the subcommittee, without objection, will stand in recess until 11:15.

(Whereupon, at 10:55 a.m., the subcommittee recessed to reconvene at 11:25 a.m., the same day.)

Mr. ROGERS of Texas. The Subcommittee on Communications and Power will come to order for further consideration of pending business.

Mr. Brightman, do you have any further word from the chairman?

Mr. BRIGHTMAN. No, sir; I have not been able to get any word. I have checked my office and we have not heard here, sir.

Mr. ROGERS of Texas. Would you like to act as his alter ego and present his statement?

Mr. BRIGHTMAN. I would be delighted to read his statement and answer any questions if you desire.

Mr. ROGERS of Texas. Fine, if you will state your name, please, sir, for identification purposes and proceed.

STATEMENTS OF SAMUEL C. BRIGHTMAN, DEPUTY CHAIRMAN FOR PUBLIC AFFAIRS, AND JOHN M. BAILEY, CHAIRMAN, DEMOCRATIC NATIONAL COMMITTEE

Mr. BRIGHTMAN. I am Samuel C. Brightman and I am deputy chairman for public affairs of the Democratic National Committee. I will now read Mr. Bailey's statement.

I submit this statement to your subcommittee today in reference to your discussion of the proposed revision of section 315 of the Federal Communications Act, as outlined in House Joint Resolution 247.

As a spokesman for the Democratic Party, I wholeheartedly support a suspension next year of section 315 as it pertains to presidential and vice presidential candidates in the 1964 national election. May I respectfully suggest that the suspension go into effect September 1, 1964, and continue through election day of the same year.

I believe that most of us in the political field and in the broadcasting industry agree that the 1960 suspension concerning presidential and vice presidential candidates was a success.

It served the public interest admirably. The broadcasters were freed of the former practice of following meticulously spelled out rules for granting equal time to all comers—to candidates of all parties regardless of their following—as had been the situation in the past. For the most part the Nation's broadcasters in 1960 met their new responsibility with a spirit of fair play and objectivity.

Our people saw and heard the candidates on television and radio. They obtained a maximum exposure to the presidential and vice presidential candidates of both major political parties and to their opinions on the issues which confronted our Nation during that campaign.

I also believe that with the suspension of section 315 in 1960, for presidential and vice presidential candidates that the so-called splinter candidates who desired to run were also accorded a very fair presentation of their views and platforms in relation to the general interest in these candidates as expressed by the public.

For these reasons I support a similar suspension in 1964 of section 315 as it applies to presidential and vice presidential candidates.

As for other candidates in the 1964 elections, I believe they should still receive the protection afforded to them by the full provisions of section 315 as it now stands.

I believe that this protection is essential for candidates other than those running for president and vice president, for in political contests on a lower level than the two major offices, I regret to say that our office and others concerned with equal time, still receive reports of abuses by certain smaller stations and broadcasters throughout the Nation.

And may I remind this committee that section 315 also prevents stations so inclined from overcharging candidates for broadcast time and from censoring a candidate's subject matter.

Until we have conclusive, concrete evidence that there will be no abuses, by any broadcaster no matter how large or small, against any legally qualified candidate, no matter how significant or insignificant the office he may be seeking, I feel that a deterrent to such abuses is mandatory.

This protection can only be realized at this time by continuing the traditional enforcement of the full provisions of section 315 as it was originally conceived, for all candidates other than those seeking the office of the President or Vice President.

Mr. ROGERS of Texas. Thank you, Mr. Brightman.

Mr. MOSS, do you have any questions?

Mr. MOSS. No questions, Mr. Chairman.

Mr. ROGERS of Texas. Mr. Younger?

Mr. YOUNGER. Mr. Brightman, the chairman uses the word "candidates" in his statement, in 1964, instead of "nominees" and yet he qualified it later on that the suspension does not go into effect until September 1, which would be after the meeting of the national convention.

Now there is a difference.

Mr. BRIGHTMAN. Yes. Our feeling on the September 1st date is that this would be a step, at least, towards shortening the campaign.

Mr. YOUNGER. Then you do not believe the suspension should go into effect as soon as you have determined the nominees?

Mr. BRIGHTMAN. We have no objection to doing it that way. The September 1 date was merely a suggestion to shorten the duration of the campaign.

The nominees would both still be receiving the news coverage. Under the 1959 revision of section 315 they would be covered by networks and local stations quite generously. I would see no point in

the so-called debates occurring before Labor Day. But we certainly have no objection to having the suspension occur when the nominees are chosen.

Mr. YOUNGER. No further questions.

Mr. ROGERS of Texas. Mr. Hull?

Mr. HULL. No questions.

Mr. BROYHILL. No questions, Mr. Chairman.

Mr. ROGERS of Texas. Mr. Harris?

Mr. HARRIS. No questions.

Mr. ROGERS of Texas. Mr. Brightman, in answering those questions, of course, you are speaking on behalf of the National Democratic Committee, or are you in position to do that?

Mr. BRIGHTMAN. I hope I am, sir. I have been with them since 1947 and this has been my responsibility, the field of communications and public relations, and I have talked these matters over with the chairman very carefully before this appearance so I feel that I can say I am reflecting his views.

Mr. ROGERS of Texas. This has been a matter of great concern to the committee, has it not, Mr. Brightman?

Mr. BRIGHTMAN. It has, indeed. It is very important to us.

We have had—we were very pleased with the results of the Presidential suspension, but I must say we have had experience with either misunderstandings or attempted violations of the protection of 315 in congressional, senatorial, and gubernatorial races and that is the reason I think it is important that that protection be continued. We even had a situation with Senator Hayden, where a station attempted to treat him unfairly and it was necessary to invoke section 315 to provide him fair treatment.

Mr. ROGERS of Texas. Your support of this legislation, then, is confined to the joint resolution before the committee?

I believe the chairman has come in now.

Mr. BAILEY, if you will come forward we have an alter ego here sitting in for you.

Mr. BRIGHTMAN. You got here in time for the questioning period, sir.

Mr. BAILEY. I am sorry, gentlemen, but I had to go to a funeral this morning.

Mr. ROGERS of Texas. We understand.

Mr. BAILEY. All right, Mr. Rogers.

Mr. ROGERS of Texas. Mr. Bailey, if you will identify yourself for the record.

Mr. BAILEY. I am John M. Bailey, chairman of the Democratic National Committee.

Mr. ROGERS of Texas. Your statement has been read by Mr. Brightman and is included in the record, Mr. Bailey, and the chairman of the National Republican Committee has previously testified on this subject.

Do you have a further statement to make at this time?

Mr. BAILEY. No, I have not. I will be glad to answer any questions in line with the statement that has been read by Mr. Brightman on my behalf.

Mr. ROGERS of Texas. Mr. Moss, do you have any questions?

Mr. MOSS. No questions.

Mr. ROGERS of Texas. Mr. Younger?

Mr. YOUNGER. Only one. What is your feeling on completely rescinding section 315?

Mr. BAILEY. I think in my statement I said that I was against the complete abolishment of this rule because I think that there is still a necessity for it on lower offices other than the President of the United States, and I think—Mr. Brightman, you have that green book here?

Mr. BRIGHTMAN. Yes.

Mr. BAILEY. And I think you gentlemen notice this book here, which is of quite some size, dealt with some of the conflicts that resulted in the 1960 election on the question of equal time, price, and the rest, so it is not something that we can just ignore.

That is the final report of the Committee on Commerce, U.S. Senate, prepared by the Subcommittee on Communications.

I think you will find that there could be an awful number of disputes, and I had a matter I thought you might be interested in.

In the last campaign Senator Hayden, of Arizona, who is the dean of the Senate, got involved in the question which only the fact that we still had section 315 kept him from not being able to get equal time and equal, fair treatment.

So I will—I feel very strongly that up to this time, until we can be absolutely sure that on all levels there would be no abuses in the case of President and Vice President.

Mr. ROGERS of Texas. Mr. Hull?

Mr. HULL. I have no questions.

Mr. ROGERS of Texas. Mr. Harris, do you have any comments?

Mr. HARRIS. Except to say I want to thank you, Mr. Bailey, for your appearance here. As I said to Mr. Miller, chairman of the Republican National Committee, we feel that this legislation is of such importance and urgency that we should have the views of the heads of the two great national committees. I want to say that I am in accord with your statement that you have presented here today, although I do not see what the effect would be of the date of September 1.

The resolution refers to nominees. When a candidate becomes a nominee for whatever party then the suspension of the law would become effective.

Incidentally, do you know when the Democratic Convention will be held?

Mr. BAILEY. I assume it will be held sometime the month of June, July, or August.

(Laughter.)

Mr. HARRIS. Well, that does give us some information that there will be one.

Mr. BAILEY. I am sure, Mr. Harris, we will have a convention.

Mr. HARRIS. Well, there has been no date set for either party.

Mr. BAILEY. There has not been for either party. In fact, no site for either party has as yet been selected.

I would like to say again, September 1, I think by that time all the primaries are over, we have gotten down to the business where both national conventions should be over by that time, and maybe I could say August 15 or September 15, I mean, you can pick a date out, but I do think it should be after the convention.

Mr. HARRIS. For all practical purposes I think it would be along about the 1st of September before there would actually be any effect from this resolution. So I do not think the date is really important.

I do want to thank you for your appearance here this morning.

Mr. BAILEY. I want to thank you, Mr. Harris, for being so kind, that I could not be here and read the statement myself, but as I said other things happened over which I had no control and I appreciate the fact that you gentlemen were good enough to condescend to let me come in at the end and I know Mr. Brightman could have perhaps done a better job if he had been allowed to complete it.

Mr. HARRIS. He has done all right.

Mr. ROGERS of Texas. Mr. Bailey, I am asking Mr. Brightman this question: You have addressed yourself to this problem since you have been national chairman, have you not?

Mr. BAILEY. Yes, sir; although, you see, I became national chairman after the last national election. I was not national chairman during the election.

Mr. ROGERS of Texas. Yes.

Mr. BAILEY. I became national chairman in January, although I do know, having been connected with the campaign, how well this worked out at the presidential level, and the radio and television companies did a tremendous job.

Mr. ROGERS of Texas. This has been discussed, has it not, though, Mr. Bailey, with the national committee?

Mr. BAILEY. Very definitely. I feel that I have complete authority to speak for the national committee.

Mr. ROGERS of Texas. It is your feeling that insofar as the entire problem is concerned any action on it at the present time should be confined to House Joint Resolution 247?

Mr. BAILEY. Just to the President and Vice President, sir.

Mr. ROGERS of Texas. You feel that any further action on it should not be taken until we have some definite and conclusive assurances that abuses will not result?

Mr. BAILEY. That I feel very strongly on. I notice that Senator Hartke of my party thinks it all should be removed, but I disagree with him. I think we in the Democratic Party often disagree on various things, but I think definitely on this that just the two top offices, and until we can have some definite legislation or something else and be definitely sure.

We are not worried about the national networks, but when you get down into the smaller communities and smaller districts, things can happen. We ought to be able to take care of them.

Mr. ROGERS of Texas. I would hope that Senator Hartke was speaking for Senator Hartke and not for the Democratic Party.

Certainly he was not speaking for me in the statement he had made in that regard.

Mr. BAILEY. He was not speaking for the Democratic National Committee, I am sure he was speaking for himself.

Mr. ROGERS of Texas. I know of a number of other Democrats who feel the same way.

Mr. HARRIS. I have a question, Mr. Chairman.

Mr. ROGERS of Texas. Yes, Mr. Harris.

Mr. HARRIS. Mr. Chairman, do you think it is fair and in the public interest for the owner of a broadcasting facility to inaugurate an editorial policy during a campaign or any office, in which he takes a position for a particular candidate and then on the basis of the fairness principle he announces that he is making time available for anyone who wants to speak for the other candidates?

Mr. BAILEY. I think if he gives equal time and equal opportunity, when I say "time," that he does not give the time period at 7 o'clock in the morning while he is doing editorializing at a prime radio time.

I think that if he wishes to editorialize he may, but he has to give the man who he is editorializing against the same kind of time, and importantly, the same prime time, that either the man or a spokesman for him can do it.

Of course, talking about radio and television, of course, the newspaper editorializes and I suppose we have the letters to the editors on the other side, but that is not the same thing.

Does that answer your question?

Mr. HARRIS. Yes, I think so, in a way.

As an example, an owner of a station made available prime time to candidates for a State office and a congressional office and then during evening prime time the owner of the facility broadcast his support for a given candidate.

As time went on the opposing candidates for the State office and the congressional office was in the same community. The station made available the facility to those two opposing candidates. They both were taken down on tape.

The second tape, however, turned out to be exceedingly bad and it could not be broadcast at all, when editorializing each evening during prime time for a given candidate the station owner would simply announce that he would make time available for the opposing candidate. However, it was rather difficult for the opposing candidate to take advantage of the offer.

Well, now, the point I raise: Is that really meeting the spirit and the letter of the law?

Mr. BAILEY. No, when you spell it out that way, Mr. Congressman, I do not believe it is. My idea would be that if he announced that on certain evenings, 3, 4, or 5 days from now he was going to speak in favor of X candidate and that X candidate would be given sufficient notice to either have somebody appear in person or to have it taped, or be broadcast at approximately either before or after, but it gets into exactly how it is handled, and I would say that the other candidate is at a disadvantage, anyhow, because the general public might well believe that this well thought of radio station was supporting this candidate when, in fact, it was the personal opinion of the owner or the person editorializing.

This is one of the reasons I think that these people are on license from the Federal Government; they have a license, and that is one of the reasons why I think this law should be kept in effect, so that we can have, I say "we," I mean the people—you, representatives of the people—shall be able to keep this thing under very close scrutiny.

Mr. HARRIS. I think there are many instances where there might be similar experience.

Mr. BAILEY. I was looking through this book, this is 1960, there are 600 pages of incidents. So, therefore, I think there is a necessity of keeping the law on the books.

Mr. HARRIS. I think if the broadcasting industry does not take cognizance of these experiences and puts its own house in order, it might be very difficult for Congress to do anything about it.

Mr. ROGERS of Texas. Mr. Moss has a question.

Mr. MOSS. On this matter of local campaigns, I requested the Library of Congress to develop some figures for me.

I have not gotten all of them, but it would appear that the matter of third party candidates in races other than the presidency and the vice presidency is not a major problem.

For instance, in 1962, the general elections, in only 41 house districts—were there third-party candidates, so they had an opportunity in 394 districts to give equal time and without any restriction show what broadcasting could do to aid in stimulating election interest.

There were only 9 out of 39 senatorial contests, so at least in 30 of them they had an opportunity to demonstrate without the problem of a third party, what they could do.

There were only 13 governorships out of 35, where there was a third party candidate. So they had 22 races.

I think before we go beyond that which is contemplated in this resolution, broadcasting should show that they have utilized the opportunities available to them and there has been no such showing, in my judgment.

Mr. BAILEY. I think those figures are very interesting Congressman. I think people have the impression that there are a lot more third, fourth, fifth party candidates in some of these races than your figures would show.

Mr. YOUNGER. Will the gentleman yield?

Mr. MOSS. Yes.

Mr. YOUNGER. There is the other problem, of course, which arose in California of a man who said, "I am a write-in candidate"; he was not a candidate in the sense of a party candidate, and on the ticket as a result of the primary, but he claimed to be a write-in candidate and asked for equal time.

So we will have to more or less define what a candidate is, because anybody under that regulation, saying that he is a write-in candidate, might lead to equal time. We have to clarify that a little bit.

Mr. MOSS. I think this research went to the general elections.

Mr. BAILEY. You mean, Mr. Congressman, the man can stand up and say, "I'm a write-in candidate, I want somebody to write my name in and that means I am a candidate." Therefore, you would have as a candidate the number of eligible voters you had in the district.

Mr. YOUNGER. They were confronted with that problem in California after Nixon and Brown appeared on a telecast which was really a news telecast, this man from Sacramento wrote in and he demanded equal time, and they were wrestling with that problem, they were afraid they were going to have to give him time.

Mr. HARRIS. In my State we have a law that provides anyone who wants to become a write-in candidate may do so provided he gives proper notice, 48 hours prior to the election.

Mr. ROGERS of Texas. Of course, Mr. Bailey, the basic problem involved here has to do with the election laws of the several States. You have 50 different types of situations and what we are faced with, the primary problem we are faced with here is what some people might term crackpots or opening the door to crackpots. As long as a man is a bona fide candidate of a bona fide political party I think you and I and everyone else would agree he should receive equal treatment.

Mr. BAILEY. We have the problem of the person who is nonpetitioned, but also the person who goes out—after the nomination in my State you can go out and get a petition by X thousands of names, and your name could go on the ballot or the machine, they have been checked to see that they are regular voters and he has gone through the motions and I assume he should receive the same protection.

Mr. HULL. If he gets a certain percent of the voters of the State, or any percent?

Mr. BAILEY. In many States the percentage of what he has to get differs. Some States it is one-half of 1 percent of the voters in his district or in a statewide contest.

I think last time the thought was that to run independently for the Senate you would have to get 7,000 names, which would have to be certificated by the registrar of voters in the various communities and ordered to go on the ballot as an independent candidate.

Mr. HULL. Then he would be a bona fide candidate?

Mr. BAILEY. Yes.

Mr. HULL. Irrespective of State law?

Mr. BAILEY. No, in the State, all these are bound by the State law. I mean the State law sets up the requirements of what a man must get to go on the ballot as an independent candidate after either the primary or the nominating conventions are over.

Mr. HULL. In case the State does not have a particular law?

Mr. BAILEY. Congressman, you have me stuck, I assumed that all States had dealt with that.

Mr. HULL. I do not know. It brings up an interesting angle to it, and Mr. Moss just said he is going to get the Library of Congress to check it.

Mr. BAILEY. Would you send me a memo on that Congressman, if you would be so kind, because I must assume they were in regular order.

Mr. ROGERS of Texas. Mr. Chairman, I think you pointed up the proposition that this is not a simple problem, it is not one that can be settled by just a few observations and I think we are all conscious that what we are doing here is working with a situation that would only be temporary and is intended to be only temporary and is only to touch the primary problem we are faced with insofar as the national elections are concerned.

Mr. BAILEY. Right.

Mr. ROGERS of Texas. Do we have any further questions?

Mr. HARRIS, do you have any further questions?

Mr. HARRIS. Since the question was raised and if Mr. Moss is going to get the memorandum from the Congressional Library on it I wonder if there would be any objection to have the memorandum included in the record?

Mr. ROGERS of Texas. Without objection it will be included.

(The following letter was later received from Mr. Moss:)

HOUSE OF REPRESENTATIVES,
Washington, D.C., March 26, 1963.

HON. WALTER ROGERS,
New House Office Building,
Washington, D.C.

DEAR COLLEAGUE: The Library of Congress has completed its survey of the pertinent provisions of the statutes of the several States relating to the qualification of independent candidates in general elections.

The compilation discloses that 36 States have legal provisions spelling out the requirements for qualifying as an independent. The remaining 14 States have no provisions of law dealing with independent candidates for elective office. More extensive research would be necessary to disclose all the facts which might be required for committee consideration.

I am requesting this compilation be placed in the record under the reservation I made at the time of the appearance of the Honorable John M. Bailey, Chairman of the Democratic Committee.

Sincerely,

JOHN E. MOSS,
Member of Congress.

Mr. ROGERS of Texas. Any further questions?

(There was no response.)

Mr. ROGERS of Texas. If not, the subcommittee will stand adjourned subject to further call of the Chair.

(The following material was submitted for the record:)

RED BANK, N.J., March 5, 1963.

HON. OREN HARRIS,
House Office Building, Washington, D.C.

DEAR MR. HARRIS: In reference to your House Commerce Committee hearing on the proposal to suspend the equal-time provisions of the Federal Communications Act, allow me to register my emphatic disapproval of any such proposal.

If we are to continue functioning as a democracy, then all viewpoints must be heard. Minor parties, which have contributed so much to the history of this Nation, must continue to have access to the public eye and ear.

Many students of recent political history in the United States feel that there is very little basic difference between the two major parties. If these observers are correct, then the "great debate" was not so great after all.

I urge you, Mr. Harris, to resist Mr. Stanton and Mr. Sarnoff and to let the equal-time provisions remain as they are, for the protection and enlightenment of the public.

Very truly yours,

ALLEN STRASBURGER.

THE CONSERVATIVE PARTY OF NEW YORK STATE,
New York, N.Y., April 9, 1963.

SUBCOMMITTEE ON COMMUNICATIONS AND POWER,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
New House Office Building, Washington, D.C.

DEAR SIRs: We understand that your committee has under consideration a joint resolution which would suspend the equal-time provisions of the Communications Act of 1934 for purposes of the 1964 presidential campaign. It is the purpose of this letter to voice the strong objection of the Conservative Party of New York to this resolution.

The Conservative Party of New York, a legally recognized political party which realized 141,877 votes for its gubernatorial candidate in the 1962 election, may be compelled to run a separate candidate for the Presidency in 1964, under circumstances where only that candidate will pose meaningful policy alternatives to the programs of the Republican and Democratic nominees. Furthermore, any presidential candidate run by the Conservative Party in New York State would undoubtedly be on the ballot in a number of other States, as well.

We submit that it would be most decidedly in the public interest that any Conservative Party presidential candidate be afforded the equal-time guarantees

of the Communications Act of 1934, at least with respect to broadcasting facilities in New York State and in any other States where that candidate achieves a ballot position. Furthermore, should such a candidate achieve a ballot position in 10 or more States, it would be imperative that the full equal-time guarantees of present law be extended to that candidate.

Thank you for your consideration of these remarks. I trust that they will be included in the record of your hearings on this matter.

We would appreciate being advised of any further hearings held by congressional committees concerning this subject.

Very truly yours,

KIERAN O'DOHERTY,
Chairman, Committee on National Affairs.

NEW BEDFORD, MASS., April 10, 1963.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
U.S. House of Representatives,
(Care of Mr. W. E. Williamson, Clerk).

DEAR SIR: This letter is written in protest, and to request the defeat of, House Joint Resolution 247 and all other bills intended to restrict the rights of minority-party candidates to equal opportunity on TV and radio.

I strongly favor free political discussion on TV and radio, and I strongly object to the monopolization of TV and radio for political use by the Republican and Democratic Parties. The corporations in the TV and radio business are using airwaves that are the acknowledged property of the people of the United States, and that it has long been recognized by Congress that these corporations are obliged to grant the use of their facilities to all candidates for a particular office if they grant the use to one candidate for that office.

The argument is false that by restricting free speech on TV and radio to Republican and Democratic candidates democracy is extended. All candidates are political equals in their right to seek office. The proposed laws are a long step toward the complete suppression of minority views and a serious and far-reaching blow at the democratic freedoms guaranteed by the Bill of Rights of the U.S. Constitution.

Sincerely yours,

LOUIS FRANKEL.

MIAMI, FLA., April 1, 1963.

HON. GEORGE A. SMATHERS,
Washington, D.C.

SIR: We, the undersigned citizens of the United States and State of Florida, protest against the intention of the adoption of bills S. 251 and S. 252.

We request the defeat of these bills and other bills intended to restrict the equal opportunity rights of minority-party candidates on TV and radio.

We strongly favor free political discussion on TV and radio and we object to the monopolization of TV and radio by only the Republican and Democratic Parties.

The corporations in the TV and radio business are using airwaves that are acknowledged property of the people of the United States. It has been long recognized by Congress that these corporations are obliged to grant the use of their facilities to all candidates for a particular office if they grant the use to one candidate for that office.

The argument, that by restricting free speech on TV and radio to Republican and Democratic candidates is democracy extended, is a false one. Candidates are political equals in their rights to seek office.

The proposed laws are a long step toward the complete suppression of minority views and a serious and far-reaching blow at the democratic freedom guaranteed by the Bill of Rights of the U.S. Constitution.

Truly,

JOSEPH SESTOK.
ROSE SESTOK.
MARIN DEKOVICH.
ESTHER DEKOVICH.
LILLIAN BECK.
SAL BECK.
TERRY EVANS.

APPENDIX A

CONGRESS POWER TO SUSPEND STATUTE BY JOINT RESOLUTION

MARCH 28, 1963.

The following is submitted in response to your request for a memorandum relating to the legal effect of using a joint resolution for the purpose of suspending a statute. Specifically, the legal effect of using House Joint Resolution 247, 88th Congress, to suspend the operation of section 315 of the Communications Act of 1934 for candidates for President and Vice President of the United States during the 1964 campaign.

Bills and joint resolutions (except joint resolutions proposing amendments to the Constitution) are used by the Congress in exercising its power to enact legislation which can become effective only after approval by the President or passage over his veto. Both are subject to the same rules while being considered by the Congress, both (except joint resolutions proposing amendments to the Constitution) are presented to the President for his approval, and both, when enacted into law, have the same legal effect. The Administrator of General Services recognizes this fact by numbering both acts and joint resolutions as "public laws" and by abandoning the former practice of designating acts as "public acts" and joint resolutions as "public resolutions."

The House Rules and Manual for the 88th Congress at section 397 states:

"Another development of the modern practice is the joint resolution, which is a bill so far as the processes of the Congress in relation to it are concerned * * * with the exception of joint resolutions proposing amendments to the Constitution * * *, all these resolutions are sent to the President for approval and have the full force of law."

Insofar as the question of suspending the operation of a statute is concerned, the case of *Levey v. Stockslager* (129 U.S.470 (1889)), is particularly pertinent. That case involved the suspension of an act of Congress approved March 2, 1867, by a joint resolution approved March 30, 1867. The court in its opinion stated at page 475:

"The principal question argued at the bar was as to the effect of the joint resolution in suspending the execution of the prior act. There is nothing in the suggestion of the relator that the joint resolution intended only a suspension of the execution of the act during the existence of the 40th Congress, and until that Congress should further order. We do not think that such is the proper construction of the joint resolution. It suspends the execution of the act "until the further order of the Congress," that is, until the further order of the legislative body called, in section 1, of article I, of the Constitution, "a Congress of the United States," consisting of a Senate and House of Representatives, in which are declared to be vested all legislative powers granted by the Constitution. The joint resolution was one of the character mentioned in section 7, of article I, of the Constitution, to which the concurrence of the Senate and House of Representatives was necessary, and which was approved by the President, and took effect only on such approval. It had all the characteristics and effects of the act of March 2, 1867, which became a law by the approval of the President. Until Congress should further order, the operation of the act of March 2, 1867, was by the joint resolution effectually suspended."

I trust that this case will resolve any doubt which you might have with respect to the power of the Congress to suspend the operation of section 315 of the Communications Act of 1934 with respect to candidates for President and Vice President of the United States during the 1964 campaign by enactment of House Joint Resolution 247, 88th Congress.

Respectfully submitted.

ROBERT F. GUTHRIE.
Assistant Counsel.

(Whereupon, at 11:56 a.m., the subcommittee adjourned subject to call of the Chair.)

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