

Y 4
In 8/4

1019

91-57
In 8/4
91-57
4

91-57 POLITICAL BROADCASTING—1970

GOVERNMENT

Storage

EIVED

25 1970

THE LIBRARY
KANSAS STATE UNIVERSITY

HEARINGS

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS AND POWER

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

NINETY-FIRST CONGRESS

SECOND SESSION

ON

H.R. 13721, H.R. 13722, H.R. 13751, H.R. 13752,
H.R. 13935, H.R. 14047, and H.R. 14511

BILLS TO AMEND THE COMMUNICATIONS ACT OF 1934 TO
PROVIDE CANDIDATES FOR CONGRESIONAL OFFICES WITH
CERTAIN OPPORTUNITIES TO PURCHASE BROADCAST TIME
FROM TELEVISION BROADCAST STATIONS

AND

S. 3637

AN ACT TO AMEND SECTION 315 OF THE COMMUNICATIONS ACT
OF 1934 WITH RESPECT TO EQUAL-TIME REQUIREMENTS
FOR CANDIDATES FOR PUBLIC OFFICE, AND FOR OTHER
PURPOSES

JUNE 2, 3, AND 4, 1970

Serial No. 91-57

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

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1970

46-491

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION



COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HARLEY O. STAGGERS, West Virginia, *Chairman*

SAMUEL N. FRIEDEL, Maryland
TORBERT H. MACDONALD, Massachusetts
JOHN JARMAN, Oklahoma
JOHN E. MOSS, California
JOHN D. DINGELL, Michigan
PAUL G. ROGERS, Florida
LIONEL VAN DEERLIN, California
J. J. PICKLE, Texas
FRED B. ROONEY, Pennsylvania
JOHN M. MURPHY, New York
DAVID E. SATTERFIELD III, Virginia
BROCK ADAMS, Washington
RICHARD L. OTTINGER, New York
RAY BLANTON, Tennessee
W. S. (BILL) STUCKEY, Jr., Georgia
PETER N. KYROS, Maine
BOB ECKHARDT, Texas
ROBERT O. TIERNAN, Rhode Island
RICHARDSON PREYER, North Carolina

WILLIAM L. SPRINGER, Illinois
SAMUEL L. DEVINE, Ohio
ANCHER NELSEN, Minnesota
HASTINGS KEITH, Massachusetts
GLENN CUNNINGHAM, Nebraska
JAMES T. BROYHILL, North Carolina
JAMES HARVEY, Michigan
ALBERT W. WATSON, South Carolina
TIM LEE CARTER, Kentucky
G. ROBERT WATKINS, Pennsylvania
DONALD G. BROTZMAN, Colorado
CLARENCE J. BROWN, Ohio
DAN KUYKENDALL, Tennessee
JOE SKUBITZ, Kansas
FLETCHER THOMPSON, Georgia
JAMES F. HASTINGS, New York

W. E. WILLIAMSON, *Clerk*

KENNETH J. PAINTER, *Assistant Clerk*

Professional Staff

JAMES M. MENDER, Jr.
WILLIAM J. DIXON

ROBERT F. GUTHRIE
KURT BORCHARDT

SUBCOMMITTEE ON COMMUNICATIONS AND POWER

TORBERT H. MACDONALD, Massachusetts, *Chairman*

LIONEL VAN DEERLIN, California
FRED B. ROONEY, Pennsylvania
RICHARD L. OTTINGER, New York
ROBERT O. TIERNAN, Rhode Island

JAMES T. BROYHILL, North Carolina
JAMES HARVEY, Michigan
DONALD G. BROTZMAN, Colorado
CLARENCE J. BROWN, Ohio

CONTENTS

Hearings held on—	Page
June 2, 1970.....	1
June 3, 1970.....	37
June 4, 1970.....	67
Text of—	
H.R. 13721.....	2
H.R. 13722.....	2
H.R. 13751.....	2
H.R. 13752.....	2
H.R. 13935.....	2
H.R. 14047.....	2
H.R. 14511.....	2
S. 3637.....	4
Statement of—	
Alexander Herbert E., director, Citizens' Research Foundation.....	91
Burch, Hon. Dean, Chairman, Federal Communications Commission.....	7
Comstock, Paul B., vice president and general counsel, National Association of Broadcasters.....	99
DuVal, Clive L., II, member, House of Delegates, State of Virginia.....	55
Erlick, Everett H., group vice president and general counsel, American Broadcasting Cos., Inc.....	73
Hemenway, Russell D., national director, National Committee for an Effective Congress.....	37
Jencks, Richard W., president, Columbia Broadcasting System/Broadcast Group.....	67
Kay, Richard, American Independent Party, Cleveland, Ohio.....	57
Nickerson, Eugene H., county executive, Nassau County, New York.....	31
Reid, Hon. Ogden R., a Representative in Congress from the State of New York.....	5
Summers, John, National Association of Broadcasters.....	99
Additional material submitted for the record by—	
American Independent Party, Cleveland, Ohio:	
Carbondale B/Casting Co. (WCDL), Carbondale, Pa., FCC ruling re section 10:315 requirement of equal facilities for political candidates.....	64
FCC Public Notice 87560, Robert J. Dieli, Columbus, Ohio, re section 10:315 requirement of equal opportunities.....	62
Communications Workers of America, Joseph A. Beirne, president, statement.....	110
Federal Bar Council, Committee on Legislation, Richard A. Givens, chairman, letter to Mr. W. E. Williamson, Clerk, Interstate and Foreign Commerce Committee, dated June 18, 1970, with report attached.....	115
Federal Communications Commission:	
Appendix A—Memorandum of the FCC concerning an approach to revision of section 315 of the Communications Act.....	15
Separate statement of Commissioner Kenneth A. Cox, FCC, on proposed amendments with regard to political broadcasting.....	18
Separate statement of Robert Wells, Commissioner, FCC, on H.R. 13721 and identical bills and S. 3637.....	19
Statement of Commissioner Robert T. Bartley, FCC.....	19
National Association of Educational Broadcasters, William G. Harley, president, statement.....	109
National Broadcasting Co., Inc., Julian Goodman, president, statement.....	87
National Committee for an Effective Congress, statement of Russell D. Hemenway, before the Subcommittee on Communications, Committee on Commerce, U.S. Senate, October 22, 1969.....	40
Socialist Labor Party of America, National Executive Committee, Nathan Karp, national secretary, letter dated June 5, 1970, to Chairman Staggers.....	116

IV

ORGANIZATIONS REPRESENTED AT HEARINGS

American Broadcasting Cos., Inc., Everett H. Erlick, group vice president and general counsel.

American Independent Party, Richard Kay, Cleveland, Ohio.

Citizens' Research Foundation, Herbert E. Alexander, director.

Columbia Broadcasting System/Broadcast Group, Richard W. Jencks, president.

Federal Communications Commission, Hon. Dean Burch, Chairman.

National Association of Broadcasters:

Comstock, Paul B., vice president and general counsel.

Summers, John.

National Committee for an Effective Congress, Russell D. Hemenway, national director.

POLITICAL BROADCASTING—1970

TUESDAY, JUNE 2, 1970

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

The subcommittee met at 10 a.m., pursuant to notice, in room 2318, Rayburn House Office Building, Hon. Torbert H. Macdonald (chairman of the subcommittee) presiding.

Mr. MACDONALD. The hearing will come to order.

Today our Subcommittee on Communications and Power is starting hearings on H.R. 13721, which I am sponsor of, several identical house bills and S. 3637 passed by the Senate. Among cosponsors on H.R. 13721 are three members of the subcommittee, my colleagues Mr. Ottinger of New York, Mr. Tiernan, and Mr. Harvey of Michigan.

All of these bills relate to political broadcasts.

The House bills would entitle candidates for the U.S. Senate and House of Representatives, to purchase specified periods of television broadcast time and would fix the ceiling on the rates which could be charged for that time.

S. 3637 as passed by the Senate on April 14 of this year, differs, even though they were identical before amendments were attached to the bill.

Some 23 members cosponsored this bill and many of us testified before the Senate, but the Senate bill as passed repeals the equal opportunities provisions of the Communications Act, which is the well-known section 315(a) with respect to candidates for President and Vice President.

It limits the charge that could be made by any broadcasting station to any legally qualified candidate for public office to the lowest charge of that station for the same amount of time in that time period.

It limits the amount that may be spent in a general election on television, radio, or CATV for or on behalf of any candidate for the office of President, Vice President, U.S. Senate, or U.S. Congressman, to a charge of 7 cents multiplied by the number of votes cast for legally qualified candidates for that same office in the last election and requires that consistent with other community needs broadcast licensees make a reasonable amount of time available between 7:30 p.m. and 10:30 p.m. for candidates for Federal elective offices.

What is covered by these bills immediately suggests what is not covered. Primary campaigns are not covered. Perhaps consideration should be given to including them. In certain States and obviously some districts, nomination in the primary is tantamount to election to office.

Also, is it meaningful to fix limits on cost for amounts of television program time for candidates for office but ignore incidental costs such as the cost of production to be used during that program time?

These observations are made to suggest that perhaps other factors not dealt with in the bills before the subcommittee should be taken into account.

Political broadcasting is a subject that each of us on the subcommittee knows about in our own way from our own personal experience. Moreover it has been the subject of study by many persons over the years. Yet no subject is more complex, controversial, or more important, in my judgment, to our system of Government.

These hearings will be held without regard to partisan political considerations or other such factors as to what may favor incumbents or challengers. Our purpose here will be to serve the public interest. In the context of political broadcasting this means enacting legislation that permits the electronic mass media, the TV, radio, and CATV to be used to best inform the American voter of the issues and candidates in any election at the lowest reasonable cost to the candidates and to the political parties.

(The text of H.R. 13721, H.R. 13722, H.R. 13751, H.R. 13752, H.R. 13935, H.R. 14047, H.R. 14511, and S. 3637 follows:)

[H.R. 13721, 91st Cong., first sess., introduced by Mr. Macdonald of Massachusetts (for himself, Mr. Tiernan, Mr. Podell, Mr. Harvey, Mr. St. Onge, Mr. Rosenthal, Mr. Leggett, Mr. Burlison of Missouri, Mr. Eckhardt, Mr. Ottinger, Mr. Burton of Utah, Mr. Bolling, Mr. Murphy of New York, Mr. Daniels of New Jersey, Mr. Esch, Mr. Hathaway, Mr. Gonzalez, Mr. Reid of New York, Mr. Sisk, Mr. Button, Mr. Moss, Mr. Adams, Mr. Bingham, Mr. Dent, and Mr. Howard) on September 10, 1969;

[H.R. 13722, 91st Cong., first sess., introduced by Mr. Macdonald of Massachusetts (for himself, Mr. Thompson of New Jersey, Mr. Meeds, Mr. Karth, Mr. Sandman, Mrs. Mink, Mr. Reigle, Mr. McCarthy, Mr. Moorhead, and Mr. Mikva) on September 10, 1969;

[H.R. 13751, 91st Cong., first sess., introduced by Mr. Kyros on September 11, 1969;

[H.R. 13752, 91st Cong., first sess., introduced by Mr. Lowenstein on September 11, 1969;

[H.R. 13935, 91st Cong., first sess., introduced by Mr. Morse on September 23, 1969;

[H.R. 14047, 91st Cong., first sess., introduced by Mr. Corman on September 29, 1969; and

[H.R. 14511, 91st Cong., first sess., introduced by Mr. Udall on October 23, 1969, are identical as follows:]

A BILL To amend the Communications Act of 1934 to provide candidates for congressional offices with certain opportunities to purchase broadcast time from television broadcasting stations

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Part I of title III of the Communications Act of 1934 is amended by adding at the end thereof the following new section:

"TELEVISION BROADCAST TIME FOR CANDIDATES FOR CONGRESSIONAL OFFICES

"SEC. 331. (a) For purposes of this section—

"(1) The term 'broadcast area' means the A contour area of a television broadcasting station, as determined under regulations of the Commission.

"(2) The term 'legally qualified candidate' includes only candidates in general elections.

"(3) The term 'Representative in Congress' includes the Resident Commissioner from the Commonwealth of Puerto Rico.

"(4) The term 'television broadcasting station' means a television broadcasting station operating on a channel regularly assigned by the Commission under this Act to the television broadcasting station's community.

"(b) Each legally qualified candidate for the office of Representative in Congress or United States Senator shall be provided, in accordance with subsection (d), opportunities to purchase broadcast time from the television broadcasting stations required under subsection (c) to provide such opportunities to such candidate.

"(c) (1) Each legally qualified candidate for the office of Representative in Congress elected from a congressional district shall be provided opportunities to purchase broadcast time from each television broadcasting station located in such district and from any other television broadcasting station whose broadcast area population comprises at least one-third of the population of such district.

"(2) Each legally qualified candidate for the office of Representative in Congress elected at large from a State or for the office of United States Senator from a State shall be provided opportunities to purchase broadcast time from each television broadcasting station located in such State and from any other television broadcasting station which has at least one-fifth of its broadcast area population residing in such State.

"(3) The population of each State, congressional district, and broadcast area shall be determined by the Commission on the basis of the latest available census information from the Department of Commerce.

"(d) The opportunities to purchase broadcast time required to be provided by television broadcasting stations under this section shall be provided as follows:

"(1) The broadcast time required to be provided shall be provided during the five-week period ending on the date of each general election held to select Representatives in Congress and United States Senators. Not later than the sixtieth day preceding the date of such election (or if a primary election to select candidates for such election is to be held after such sixtieth day, not later than the forty-second day preceding the date of such election), each legally qualified candidate in such election for the office of Representative in Congress or the office of United States Senator may apply (in such manner as the Commission shall by regulation prescribe) to any television broadcasting station, required under subsection (c) to provide opportunities to purchase broadcast time to such candidate, to purchase the broadcast time described in paragraph (2) of this subsection. Not later than the fortieth day preceding the date of such election, each television broadcasting station which has received any application under the preceding sentence to purchase broadcast time shall provide each applicant with a schedule of the broadcast time which may be purchased by the applicant. Such schedule shall be made in accordance with the requirements of this section.

"(2) (A) Each legally qualified candidate for the office of Representative in Congress shall, with respect to each general election in which he is running, be entitled to purchase—

"(i) sixty one-minute announcements or the equivalent (as determined under regulations of the Commission); and

"(ii) a thirty-minute program-length broadcast or the equivalent (as determined under regulations of the Commission) from each television broadcasting station required under subsection (c) to provide opportunities to such candidate to purchase broadcast time.

"(B) Each legally qualified candidate for the office of United States Senator shall, with respect to each general election in which he is running, be entitled to purchase—

"(i) one hundred and twenty one-minute segments of broadcast time or the equivalent (as determined under regulations of the Commission); and

"(ii) a thirty-minute program-length broadcast or the equivalent (as determined under regulations of the Commission) from each television broadcasting station required under subsection (c) to provide opportunities to such candidate to purchase broadcast time.

"(C) If more than one television broadcasting station is required under subsection (c) to provide a candidate with opportunities to purchase broadcast time, all the television broadcast stations so required to provide such candidate with such opportunities shall divide equally among themselves (in accordance with regulations of the Commission) the responsibility to provide to the candidate the opportunity to purchase broadcast time described in clause (i) of subparagraph (A) or (B) of this paragraph, as the case may be.

"(3) Each candidate shall be given the opportunity to purchase broadcast time during the continuous three-hour period of each broadcast day which reflects the highest published rates of the station, or during such other period as the candidate may request.

"(4) The rates charged a candidate for broadcast time purchased under this section shall not exceed—

"(A) thirty per centum of the charges made for comparable use of such station for other purposes for the announcements described in clause (i) of subparagraph (A) or (B) of paragraph (2), as the case may be; and

"(B) twenty per centum of the charges made for comparable use of such station for other purposes for the program time described in clause (ii) of subparagraph (A) or (B) of paragraph (2), as the case may be.

The Commission shall have the authority to require licensees to keep such records as may be necessary to determine the sale price of broadcast time during the four-month period preceding the date of the general election. Upon application of a candidate, the Commission shall promptly review the station's records to determine whether the station is in compliance with this Act and take such steps as may be necessary to bring the station into compliance."

SEC. 2. The amendments made by section 1 of this Act shall be applied in accordance with the provisions of section 315 of the Communications Act of 1934.

SEC. 3. The amendments made by section 1 of this Act shall apply with respect to candidates in general elections held on or after the one hundred and eightieth day following the date of the enactment of this Act.

[S. 3637, 91st Cong., second sess., referred to the Committee on Interstate and Foreign Commerce, April 15, 1970]

AN ACT To amend section 315 of the Communications Act of 1934 with respect to equal-time requirements for candidates for public office, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the first sentence of section 315(a) of the Communications Act of 1934, as amended (47 U.S.C. 315 (a)), is amended by striking out the colon and inserting in lieu thereof a comma and the following: "except that the foregoing requirement shall not apply to the use of a broadcasting station by legally qualified candidates for the office of President and Vice President of the United States:".

(b) Section 315(b) of that Act is amended to read as follows:

"(b) The charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office shall not exceed the lowest unit charge of the station for the same amount of time in the same time period. The Commission shall require licensees to keep such records as may be necessary to carry out the provisions of this subsection. Information in such records shall be considered confidential for the purpose of section 1905 of title 18 of the United States Code, except that such information may be disclosed to such officers or employees of the Commission as is necessary for the purpose of this subsection or when relevant in any proceeding under this Act."

SEC. 2. (a) Section 315 of the Communications Act of 1934 is further amended by redesignating subsection (c) as subsection (d) and by inserting before such subsection the following new subsection:

"(c) The total of (1) the amounts expended on the electronic media by any legally qualified candidate for the office of the President or Vice President of the United States, United States Senator or United States Representative for such office in an election other than a primary election, and (2) the amounts expended by other persons, associations, groups, or committees on behalf of such candidate on the electronic media, shall not exceed an amount equal to 7 cents multiplied by the number of votes cast for all legally qualified candidates for such office in the last preceding such election, or \$20,000, whichever is the greater: *Provided*, That where there has been no election for the office of United States Senator in the immediate preceding two years, the limitation on the amount expended shall be 5 cents multiplied by the highest total popular vote cast for any statewide office in the preceding two years, or \$20,000 whichever is greater: *Provided further*, That consistent with the other needs of the commu-

nity broadcast licensees shall make a reasonable amount of time available for legally qualified candidates for Federal elective offices during the hours 7:30-10:30 post meridiem."

(b) The amendment made by this section shall be effective after thirty days following the date of enactment of this Act.

Mr. MACDONALD. Our first witness this morning is the Honorable Ogden R. Reid of New York. Mr. Reid has a statement he would like to present to the committee.

Welcome, Mr. Reid. Proceed as you see fit.

STATEMENT OF HON. OGDEN R. REID, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. REID. Mr. Chairman, I very much appreciate this opportunity to indicate my strong support of H.R. 13721, to amend the Communications Act of 1934 to provide candidates for congressional offices with certain opportunities to purchase broadcast time from television broadcasting stations, of which I am a cosponsor.

As the members of the committee know, the cost of campaigning has risen at an alarming rate in recent years. According to the National Committee for an Effective Congress, which has shown real leadership on this matter, total spending has doubled since 1956, rising to \$300 million in 1968. It costs most candidates more than \$200,000 to run for the Senate, and \$50,000 for the House. Frequently, the cost is much higher, particularly in my own State of New York.

Recent studies have shown that the high cost of television is directly responsible for much of this increase in campaign costs. While overall campaign costs were doubling between 1956 and 1968, the amount spent for political television increased 900 percent, to a total of \$27.4 million. It is clear that, in many States and congressional districts, television will remain the most effective campaign medium. As long as the rates remain prohibitive, high campaign costs will preclude the candidacy of many qualified persons.

H.R. 13721 would help solve that problem by providing all congressional candidates with minimal amounts of television spot and program time at discounted rates during the 5 weeks before each general election. Each candidate for the Senate could buy a total of 120 1-minute prime time segments, or the money equivalent of this in other spot time, at 30 percent of the rate normally charged for comparable use. Responsibility for providing the time would be equally divided among all the television stations in the State. In addition, Senate candidates would be entitled to purchase one 30-minute prime time program, or its money equivalent in shorter or nonprime segments, from each of the stations in the State at 20 percent of the rate charged for comparable use.

Each candidate for the House of Representatives could buy a total of 60 1-minute prime time segments, or the money equivalent of this in other spot time, at 30 percent of the regular rate. Again, responsibility for giving the time would be equally divided among all the stations in the district. In addition, each House candidate could buy one 30-minute prime-time program from each station in the district, at 20 percent of the rate charged for comparable use.

A House or Senate candidate could use some or all of the time allotted, or none of it. If he did not choose to buy on any given station,

that time would be sacrificed from his total. The candidate could use the spots and programs as he wished, and he would not be prohibited from buying whatever additional time he wanted at the regular rates.

In my judgment, this bill would be a great step forward in increasing the accessibility of public office to those other than the very wealthy. Even candidates without substantial financial resources would have at least some access to the voters via television and all competing candidates would get equal benefit. However even the reduced rates we are proposing are high enough to discourage the use of TV by those whose candidacy is not serious and those in high-cost metropolitan areas where TV is not now used.

In my testimony before the Subcommittee on Communications, Senate Committee on Commerce, on October 23, 1969, I mentioned the fact that most candidates in the New York metropolitan area do not use television as a major campaign resource. In my judgment, it would be a waste of campaign resources to buy 100 percent of the New York metropolitan market to reach a congressional district which represents less than 3 percent of that market. The money spent for a 1-minute spot at New York prices would enable a candidate to get his message to every member of his constituency by other means.

As the members of the committee know, the broadcasters have nonetheless expressed concern that the use of reduced rate time under this bill by over 100 potential candidates for Congress in the New York metropolitan television area would seriously disrupt commercial broadcasting and would be an imposition upon both the broadcaster and the public. I would contend that at even 30 percent of current television costs, the price would still be too high to make television an effective use of campaign funds by a candidate for the House of Representatives. An efficient campaign would find better ways to allocate resources, and I foresee no disruption of commercial broadcasting as a result of this legislation.

I urge early approval of H.R. 13721, rather than S. 3637, by the committee. It is my understanding that the Senate-passed bill would bring the cost of purchased time down to the lowest rate charged large commercial advertisers, possibly reducing political air-time rates by one-third. Nonpartisan studies have suggested a reduction of 50 percent to help candidates who are not wealthy; H.R. 13721 would reduce costs by at least 70 percent. We must have legislation along these lines if all candidates, regardless of means, are to have proper access to commercial time on the publicly licensed air. The networks can afford to do this to fulfill their public responsibility which is now being questioned by some.

Mr. MACDONALD. Thank you Mr. Reid, for sharing your views with us this morning.

Mr. REID. Thank you, Mr. Chairman, it has been my pleasure.

Mr. MACDONALD. As our next witness today we welcome again the Honorable Dean Burch, Chairman of the Federal Communications Commission.

It is nice to see you again, Mr. Chairman.

STATEMENT OF HON. DEAN BURCH, CHAIRMAN, FEDERAL
COMMUNICATIONS COMMISSION

Mr. BURCH. Thank you, sir.

Mr. Chairman, members of the committee, I am pleased to be here today to present the views of the FCC on H.R. 13721 and identical bills as well as S. 3637, bills to amend the Communications Act of 1934 with respect to political broadcasts. Before I address myself to the specifics of each bill, however, I would like to emphasize the importance of, and need for, legislation in the area of political broadcasting and to advance a general suggestion.

It is fundamental to the American democratic process that the electorate be informed of the issues in any campaign. Broadcasting has been an important source of information in this area. Candidates are relying more than ever on the electronic media to reach the electorate. As the Twentieth Century Fund Commission on Campaign Costs in the Electronic Era reported, " * * * the fact that many politicians believe that broadcasting is of major importance tends to make it so." ¹ And such beliefs appear justified; a candidate can reach more people by purchasing broadcast time than by the use of any other medium. Ninety-five percent of all American homes have television sets. The average American home has its television set turned on for more than 5½ hours daily. Indeed adult Americans spend more time watching television than in any other activity with the sole exception of sleeping and working. Finally, radio and television are the major sources of most news, including news about candidates for national and State offices.

The costs of campaigning for elective office in the United States have increased greatly in recent years, and the rising costs of electronic campaigning have played a significant role in this increase. Total spending for political broadcasts in general elections has more than quadrupled in 12 years from \$9.9 million in 1956 to \$40.4 million in 1968.

I might add, Mr. Chairman, those are the best figures that we have available but I do not intend to suggest that they are accurate by any means.

Any effort to reform the law with regard to political broadcasting should have two major objectives. First, the legislation should promote the widest and most penetrating airing possible of views and issues in an election. Second, the reform should try to minimize the cost of campaigning for office, while at the same time preserving the traditional concept of fairness which has been the longstanding premise of political broadcasting law.

There are basically two types of programing designed to illuminate political campaigns. The first is that provided by the licensee, as broadcast journalist, in his newscasts, documentaries, on the spot coverage of

¹ Twentieth Century Fund Commission on Campaign Costs in the Electronic Era, *Voters' Time*, p. 8 (New York, 1969).

news events, and news interviews. In the 1959 amendments, Congress wisely exempted these news categories from the equal opportunities requirement of section 315. As a result the broadcast journalist has been able markedly to serve the public interest. We suggest some further remedial changes so as to accommodate innovations in this news area which are of a bona fide nature—that is, programs that do not technically fit the 1959 exemption but which are regularly scheduled, under the control of the licensee, and designed to illuminate some issue of importance rather than to promote the candidacy of any person.

We would be glad to develop this point further, and to work with committee counsel on specific statutory language, if the subcommittee so desires.

The second type of political broadcast programing is equally important. It is the presentation of the issues by the candidate himself or his supporters, in their own language rather than through the editorial selectivity of the broadcast journalist. In short, it is his use of broadcasting as an electronic speaking platform or soapbox.

Unlike the 1959 amendments applicable to broadcast journalism, there have been no improvements in the basic statutory scheme as to this second type, and we agree that the time has long since come for such improvements.

A first improvement should be in facilitating free time for political candidates, and broadcasters have long claimed that section 315 in its present form discourages affording such free time because they have to make time available to fringe candidates, such as the candidates of the Socialist Labor, Socialist Worker, and Vegetarian parties. Although it is not clear, outside the presidential field, that this equal time requirement is the sole impediment which is often claimed to be, we strongly believe that this particular obstacle can be appropriately and simply removed without any detriment to the public interest. We therefore again call the subcommittee's attention to draft legislation and an accompanying explanation which were presented to the Senate Commerce Committee and are attached as appendix A to this statement (see p. 15).

In any general election other than nonpartisan ones, the draft legislation would make the equal opportunities requirement as to free time applicable only to major party candidates, and would leave fringe candidates under the general fairness requirement. The draft legislation would also define major candidates very broadly so as to include any significant candidate—such as Henry Wallace, the candidate of the Progressive Party in 1948; Strom Thurmond of the Dixiecrats in 1948; or George Wallace of the American Independent Party in the last election. The figures in the draft legislation are presented only as possible guidelines. They suggest that the candidate's party must have garnered two percent of the vote in the State in the last election or if the candidate represents a new party, that petitions must be submitted, signed by voters equaling 1 percent of the votes cast in the last election. To obtain time on the national networks as distinguished from individual stations, there would also be a requirement that the candidate be on the ballot in at least two thirds of the States.

As a personal matter, I served on the 20th century commission on electronic campaigning and we did considerable study on this particu-

lar problem and came up with a formula which, although similar, was considerably different. We did not consider petitions, for example, and I think the research in that study is excellent on the problem of trying to define a significant candidate as opposed to a major party candidate. I would commend that study to the committee.

In short, section 315 in its present form would appear, as is claimed, to inhibit broadcasters from affording free time to major presidential candidates, and does so, we urge without any significant practical compensating benefits. The effect of section 315 is not that the Socialist Labor or Vegetarian candidate gets free time; rather no one gets any substantial amounts of free time for political broadcasts. Further and most important, there would appear to be little, if any, public benefit from insuring equal treatment for candidates whose public support is insignificant. We repeat that, in defining the major party candidate, we would urge the selection of a numerical figure which will insure equality to any candidate who had significant public support, regardless of what his chances of winning may be.

With this as background, I turn now to the pending bills before this committee:

H.R. 13721

H.R. 13721 and other identical bills would provide candidates for congressional offices with certain opportunities to purchase time on television broadcasting stations at reduced rates. The commission appreciates the purposes of these bills, but we do not support them for several policy reasons.

First the bill requires the broadcaster to allocate a certain amount of time and at reduced rates to candidates for offices of Congressman and Senator. We believe that the broadcaster should not be compelled to give reduced rates for just those specific campaigns; and that a more general approach should be followed.

A political broadcast is a form of controversial issue programming—a most important kind because the issue is who shall represent the people, and that issue is vital in a republic. The broadcast licensee now has considerable discretion in selecting the controversial issues which are of the greatest significance to his area. We believe that similarly, the licensee should retain the discretion to determine the important campaigns in his area which most warrant affording broadcast time. For example, the campaigns for Governor, mayor or even members of the school board may have in a given area, at a given time very great elements of controversy and need for illumination of the issues. (We leave aside here the Presidency, which is the election of greatest importance to all the American people and therefore deserves special consideration). As to the political races for which time is made available, such time would be afforded at reduced rates.

In short the Commission supports the notion of reduced rates for political campaigns, but believes that such reduced rates should apply to all political time sold, whatever the office involved.

Second, with respect to the time to be afforded, we raise the question whether the provision of spot announcements at reduced rates would serve the public interest. The bill provides that Congressmen are entitled to 60, and Senators to 120 1-minute commercials or the equivalent. Under this provision, the extensive use of 1-minute spots,

or more numerous spots as short as 10 seconds, would thus be facilitated or perhaps even encouraged.

The Commission understands why candidates have increasingly turned to the political spot. In or adjacent to a high rated program, it can attract the attention of many viewers who would not watch a half hour political broadcast, and its audience can be assumed to contain a much higher proportion of uncommitted voters. Nevertheless, we would raise the issue as to how much short presentations—varying from a few seconds to 60 seconds—really contribute to an informed electorate, to a serious discussion of issues. Specifically, we question whether the congressional policy should not be to promote longer program presentations.

Third, as to the appropriate reduced rates, H.R. 13721 specified 30 or 20 percent of the regular rates or a price reduction of 70 or 80 percent. The Commission does not regulate rates and we suggest that the appropriate method of reducing political broadcast rates is a matter of policy to be determined by Congress. However, we raise the question whether the broadcaster should have to make such a drastic reduction available to all candidates, including fringe candidates, or only to those having a significant bearing on the electoral process. That is, if a reduction of 70 or 80 percent is to be required, then perhaps the major party scheme for free time proposed in our draft, which appears as appendix A to this statement and which I have already discussed, should be used here. I shall discuss this issue in greater detail in our analysis of the reduced rate provision of S. 3637.

Finally there are a number of areas where the bills might be clarified. Rather than go into them here, I would suggest that we simply make our staff available to work with committee counsel, to the extent you find desirable.

S. 3637

We move now to the three principal provinces of S. 3637. Section 1(a) of the bill would amend section 315(a) of the Communications Act, as amended (47 U.S.C. § 315(a)) to exempt broadcasts by candidates for President or Vice President of the United States from the requirement that if a licensee permits a legally qualified candidate to use his broadcast station, he must afford equal opportunities to all other such candidates for that office in the use of his station.

As the subcommittee knows, Congress suspended the equal opportunities provision for the 1960 presidential campaign with respect to use of a station by nominees for the offices of President and Vice President of the United States. This suspension allowed the networks to broadcast the Kennedy-Nixon debates of 1960. The debates contributed substantially to informing the electorate as to the issues and views of the two major candidates in that election since the audience for the TV debates totaled 280 million. Significantly, they were broadcast at no charge to the candidates. Without suspension of the equal opportunities provision, networks and broadcast stations would have been legally obligated to grant equal free time to the 14 fringe candidates in that campaign.

In 1960 the radio and television networks provided 82 hours and 36 minutes free time for political broadcasts. In 1964 and 1968, how-

ever, when the equal opportunities provision was back in effect, the networks afforded only 26 to 27 hours of free time in each election, almost all of which occurred in exempt programing. More significantly, in 1960 the television networks provided over 39 hours of free political broadcast time, while in 1964 and 1968 they afforded only 4½ and 3 hours, respectively.

In view of the benefits to the Nation from the experience gained in the 1960 suspension, the Commission believes that remedial action in this area is clearly called for. Our preference would be the major party proposal which I have described. Our proposal would retain the equal opportunities concept as to all significant candidates, and still permit the broadcaster to provide free time for debates, if the candidates agreed, or a series of discussions of the great issues, back to back, or other programs having formats which the candidates and broadcasters could agree on.

If the Commission's alternative is not adopted, we would not object to the approach of S. 3637. We have previously supported a further suspension of the equal opportunities provision for the offices of President and Vice President. Repeal of this provision would leave political broadcasts subject to the fairness doctrine. We have no doubt that the networks would act with scrupulous fairness. We point out that their actions in a presidential campaign are subject to a most intense spotlight. As to the individual licensee, we would again depend on the good faith application of the fairness principle, with the observation that the abuses since the repeal is restricted to these two offices. Finally, we would not expect abuse of the greater discretion thus bestowed on the broadcaster with respect to major third party candidates. If experience should show that the repeal does lead to significant abuse, Congress could, of course, take corrective action before the next election.

Section 1(b) of S. 3637 would amend section 315(b) of the Communications Act, as amended (47 U.S.C. 315(b)) to provide that charges for the use of any broadcasting station by any legally qualified candidate for any public office shall not exceed the station's lowest unit charge for the same amount of time in the same time period. The bill also provides that the Commission shall require licensees to keep the records necessary to carry out the provisions of the subsection and that such records be considered confidential for the purposes of title 18, United States Code, section 1905 except for necessary disclosures to Commission offices and employees. This provision would apply only to rates for purchase of time on a broadcast station, and thus would not cover television studio charges, line and mobile unit charges for remote pickups, video tape charges, or other customary extra charges which are production oriented. This provision is applicable to all legally qualified candidates—a term which includes candidates in a primary election. It is not, however, applicable to political broadcasts which do not involve a use by the candidate himself.²

The intent of this provision as is true of H.R. 13721 is to provide lower broadcast rates for political candidates. We support the general concept of time being made available to candidates at reduced

² For the Commission's construction of the term "use" in this connection, see Capitol Broadcasting Co., Inc. (WRAL-TV), 8 F.C.C. 2d 975 (1967).

rates. The concept of lowest unit charge would be quite variable in application because of the many kinds of rates and combination packages available. Indeed, broadcast stations and networks vary greatly among themselves in their rate structures. Generally their charges for purchase of time are based on several variables. One is the time period. Prime time, usually in the evening hours for television, costs more than daytime hours. Another variable is volume of time purchased by one advertiser. Generally, the quantity buyer pays less per minute of advertising than the small advertiser. In addition many stations offer flight plans, preemptible rates, combination packages, or run-of-schedule rates whereby purchasers receive discounts of varying degree for allowing the broadcaster to insert their commercials in any unsold positions, fairly distributed among various time periods. Section 1(b) of S. 3637 would require that broadcast stations allow all political candidates the volume discounts. The station may charge prime-time rates for prime time political broadcasts, but must afford to all political candidates the lowest rates which are afforded to volume purchasers for that time period even though the same volume is not ordered.

As I mentioned before with regard to H.R. 13721, this provision is one of several possible ways in which Congress could reduce direct costs for political broadcast time. It is a formula which allows each station to provide reduced charges according to its own rate schedule. The Commission believes the exact formula for the reduction of rates is a matter of congressional policy and accordingly we do not support one method over another. We simply urge that Congress adopt the approach which will provide the most desirable results and at the same time be capable of practical and efficient administration.

We can give the committee a rough estimate of the reductions which would be effective by enactment of section 1(b). Although we do not require individual broadcast stations to disclose their rate schedules to us, our staff recently surveyed the Washington television stations as to the quantity discounts they offer at the present time and their policies on political broadcast rates. We wanted to ascertain the nature of the discounts which the bill would provide.

Of the six commercial television stations in Washington, two give political candidates a 50-percent across-the-board reduction, one allows a 50-percent discount for spot advertisements and approximately 25 percent for programs of 5 minutes or more, one allows candidates for discount given to quantity purchasers, which is between 25 and 33 percent, and two have no policy at all of affording reduced rates to political candidates. The 50 percent, 25 percent, and quantity discounts parallel almost exactly the largest discounts provided by each station to volume advertisers. Of the two stations with no political discounts, one provides quantity discounts of up to 25 percent and the other affords volume purchasers between 50 and 61.4 percent reductions. We may conclude from these figures that candidates can expect discounts which vary greatly from station to station.³

In addition to reducing political broadcast rates, new section 315(b) would provide that information in records kept by licensees under Commission requirements be considered confidential for purposes

³ We could of course anticipate complaints under this provision, should it be enacted, and would process such complaints in line with prior precedents. E.g., letter to Triangle Publications, Inc. (WFBH), FCC 67-544 (May 3, 1967) (run-of-the-schedule rates).

of 18 U.S.C. 1905, which prohibits disclosure of information only by Government employees. If the language of section 315(b) contemplates some broader confidentiality for such data, it would constitute a change in existing practices. Thus under Commission rules the licensee must retain for 2 years and "permit public inspection of a complete record of all requests for broadcast time made by or on behalf of candidates for public office, together with an appropriate notation showing the disposition made by the licensee of such requests and the charges made, if any, if the request is granted."⁴ Without the continuation of some such rule, it would be difficult, if not impossible, for one candidate to obtain information concerning time and charges made available to others. Accordingly we do not construe the provision as to confidentiality to require any modification for this salutary rule, and request clarification if we are wrong in this respect.

Section 2 of S. 3637 would redesignate section 315(c) as 315(d) and insert a new subsection (c) to provide a limit on the amount to be spent on the electronic media by or on behalf of candidates for Federal elective office, that is, President, Vice President, Senator, and U.S. Representative. This subsection would apply only to general elections, not primaries. The rate provision of section 1(b) of the bill on the other hand, applies to both primaries and general elections. Also section 2 encompasses all electronic media, whereas the rest of section 315 applies only to broadcast stations. The electronic media include community antenna television (CATV) systems as well as radio and television stations.

The Commission has recently issued rules which in effect make the requirements of section 315 applicable to CATV systems.⁵ The Commission has stated its view that if it has ample authority to do so. Since the Congress is now considering revisions of section 315 we believe it appropriate to bring these recent actions to the subcommittee's attention.

Section 2 of the bill S. 3637 applies to expenditures by the candidate himself and by other persons, associations, groups, or committees on behalf of such candidate. The other provisions of section 315, relating to equal opportunities in the use of a station and to charges for political broadcasts, apply only to the candidate. Thus a station may charge a committee buying time on behalf of a candidate, but not for his use, the full rate of that time period under subsection (b) although such expenditures by committees are included in the overall spending limit contemplated by subsection (c).

In view of the provision for enhanced free time and for discount time, the Commission believes that a spending limit would be appropriate. However, the Commission is not an expert in the area and thus takes no position on the feasibility of such a limit or whether it should be of the kind proposed in S. 3637. Thus, this aspect of S. 3637 is a policy matter not coming within the expertise of the Commission. I will therefore restrict my comments to the Commission's role in the enforcement of the provision.

The candidates could of course be held responsible for any violations and presumably the House or Senate would consider not seating a suc-

⁴ See 47 CFR, secs. 73.120(d), 73.290(d), and 73.657(d) for Commission Rule, pertaining to AM, FM, and television respectively.

⁵ 47 CFR, secs. 74.1113, 74.1115.

cessful candidate found to be in violation. In addition, section 501 of the Communications Act makes it a crime for any person willfully and knowingly to fail to comply with the Communications Act. Criminal prosecution would be the responsibility of the Department of Justice.

Our power in enforcing the spending limit would be distinct from the sanctions available to the Congress and the Department of Justice. First the Commission has available a number of administrative sanctions under the Communications Act against a broadcast license which willfully and knowingly participates in a violation of this provision. Second, the Commission could consider adopting rules to facilitate the enforcement of section 315(c). Thus, the Commission could promulgate rules requiring the broadcast station or CATV system to use reasonable prudence to assure itself that it was not a knowing and willful party to a violation of the provision by obtaining and the specific representation of the candidate or his authorized agent that the expenditure is within the limits prescribed by S. 3637.

Here I note that enforcement of the spending limit was the subject of concern during the floor debate on this bill in the Senate. The fear was expressed that opponents could buy an ad "on behalf of" a candidate and thereby put him over the spending limit. It seems to us that the best means of aiding enforcement of the spending limit provision would be to amend the statute to require the candidate or a designated representative to authorize in writing any spending for political broadcasts or other use of the electronic media, and to represent to the station or CATV system that the expenditure in question is within the limits specified by S. 3637. In that way the candidate would be accountable for all funds expended by him or his behalf for the electronic media. Broadcast stations or CATV operators would obtain and rely upon the assurance of the candidate or his authorized representative. We believe that this places the burden and responsibility where it properly belongs—upon the candidate.

Also with respect to enforcement it has been suggested that upon complaint the Commission could survey the broadcast stations in a candidate's campaign area. Such an approach would be quite impracticable. The Commission has neither the staff nor facilities available for an immediate telephone poll. For presidential candidates a poll would have to include every radio, television, and CATV operator in the country. For a senatorial candidate, a poll would have to include every station in the State, as well as stations in nearby cities in adjacent areas. Even in the case of a candidate for U.S. House of Representatives we would not know which stations had been used by the candidate and we would therefore have to call all possible outlets. We do not have the staff to handle such a survey.⁶

Even if the Commission revises its questionnaire forms to obtain the relevant information on the spending limit, we also foresee a problem in obtaining the results of our biennial political broadcast survey questionnaires prior to the seating of elected Senators and Congressmen. Heretofore we have not been able to complete our tabulation until well into the year following the election. We will have to revise our questionnaire forms to enable accurate reflection of the amount spent

⁶ We have not, of course, described all the enforcement problems which might arise. For example, there could be problems with the so-called slate announcement, particularly those which do not mention candidates.

by or on behalf of each candidate on every station. These forms will have to be sent to all CATV operators in addition to broadcast licensees. The returned forms will have to be coded by station, candidate, State, and congressional district. This we expect will take longer than the interval between the election and the convening of the next Congress.

The final sentence of proposed section 315(c) would require that, consistent with the needs of the community, broadcasters make a reasonable amount of time available in the 7:30-10:30 p.m. time segment for candidates for Federal elective offices. The Commission has long held that the providing of time for political broadcasts is an important element of service in the public interest.⁷ We therefore are in accord with the purpose of this provision. However, we believe that it is unsound to restrict the provision solely to Federal elective offices. My prior discussion on H.R. 13721 is equally pertinent here.

In sum, the Commission supports the concept of reduced rates for candidates and prefers an approach such as S. 3637 which encompasses candidates for all offices. As to repeal of the equal opportunities provision for the offices of President and Vice President, the Commission would prefer enactment of its suggested alternative but would not object to the repeal embodied in S. 3637. We take no position on the spending limit proposed in S. 3637, and simply have pointed out some enforcement considerations.

That concludes my statement, and I should be glad to respond to your questions, and to cooperate fully with you in this most important undertaking.

(Appendix A, attached to Chairman Burch's prepared statement, follows:)

APPENDIX A. MEMORANDUM OF THE FEDERAL COMMUNICATIONS COMMISSION CONCERNING AN APPROACH TO REVISION OF SECTION 315 OF THE COMMUNICATIONS ACT

This memorandum explains a draft proposal, attached hereto, on an approach concerning the amendment of section 315 of the Communications Act with respect to the apportioning of free time among legally qualified candidates for public office. The problems which have arisen under section 315 are in its requirement of equal free time to all legally qualified candidates, and this proposal therefore does not deal with paid political broadcast time. Where a station licensee sells time to one legally qualified candidate for a public office the requirements of section 315 would remain the same. Where he gives time, the essence of the proposal would be to limit the requirement for equal time to those candidates who demonstrate that they are substantial factors in the election.

The attached draft deals with the problem under section 315 of requiring stations to give equal time to "fringe" candidates where free time is given to candidates in whom there is substantial public interest. The proposal covers only general elections. In primary elections the present provisions of section 315 would remain fully applicable. While there may also be primary elections where some revision of section 315 would produce salutary results, the formula used in this proposal could not be applied, since it is basically tied to the success a candidate's party achieved in the previous elections. No practicable alternative for primary elections has presented itself at this time, and no change in the equal time requirements of section 315 with respect to primaries is being suggested.

⁷ See, e.g., "Farmers Educational and Cooperative Union of America v. WDAY, Inc." 360 U.S. 525 (1959); Commission Policy on Programing, FCC, 60-970, 20 R.R. 1901 (July 29, 1960); Memorandum of Federal Communications Commission Concerning Interpretation of Second Sentence of Section 315(a), Communications Act of 1934, as amended, printed in hearings on H.J. Res. 247, before a subcommittee of the House Committee on Interstate and Foreign Commerce, 88th Cong., 1st sess. at 84 (1963).

The draft proposal provides that whenever a broadcast licensee permits a legally qualified candidate for President or Vice President in the general election to use its facilities free of charge, it must provide an equal opportunity to every other such candidate who (i) is the nominee of a political party which appeared on the ballot for those offices in the last election in at least 34 of the several States, and whose candidates received at least 2 per centum of the total popular vote cast; or (ii) is supported in his candidacy by petitions filed under the laws of the several States which petitions in the aggregate bear a number of signatures equal to at least 1 per centum of the total popular vote cast in the preceding presidential election and which signatures are valid under the laws of the States in which they are filed. In addition, his name would have to appear on the ballot in at least 34 of the several States.

In those cases where a legally qualified candidate for one of these offices does not meet the requirement of (i) and (ii) *supra*, he would be entitled to equal opportunity on stations located in States where his party received at least 2 per centum of the total popular vote cast in the preceding presidential election or if his candidacy is supported by petitions filed under the laws of the particular State which in the aggregate bear a number of signatures equal to at least 1 per centum of the total popular vote cast in such State in the preceding presidential election.

With respect to legally qualified candidates who do not meet any of the above criteria, licensees would still be bound by the requirements of the "Fairness Doctrine," but they would not be required to afford equal opportunity.

Legally qualified candidates for all other public offices whether Federal, State, County, Municipal, or other political subdivisions—would be afforded equal opportunity if (i) they are the nominee of a political party whose candidate in the preceding general election received at least 2 per centum of the total popular vote cast for that office; or (ii) the candidacy is supported by valid petitions filed under the law of the State which in the aggregate bear a number of signatures of persons eligible to vote for that particular office equal to at least 1 per centum of the total popular vote cast for that office in the preceding general election. A licensee would be bound by the "Fairness Doctrine" with respect to any legally qualified candidate for any such office who does not meet the above criteria.

The attached draft proposal thus is based upon the approach that the entitlement of legally qualified candidates for the Office of President or Vice President to equal free broadcast time should bear a realistic relationship to the demonstrated interest of the public in their candidacy. If a legally qualified candidate for the Office of President or Vice President is the nominee of a political party which appeared on the ballot in at least 34 of the States in the preceding presidential election, and whose candidates in that election received 2 per centum of the total popular vote, he is entitled to equal time.

Whether the qualifying percentage should be 2 per cent or some other figure is, of course, a policy question, and the 2 per cent standard requires further study. However, it should be noted on this question that in the 1948 election the candidates of the States Rights Party and the Progressive Party each received slightly more than 2 percent of the total vote. (A listing of their vote percentages is appended hereto.) The draft is also based on the proposition that even though a party received 2 per cent of the total vote, national coverage would not be mandatory unless it was on the ballot in at least 34 States. For it would not seem equitable to require national coverage upon an equal time basis where the party itself had made no national effort or showing.

Provision is also made for candidates of parties, which did not exist at the time of the preceding presidential election, candidates who are independent, and candidates whose parties may be making a nationwide effort for the first time. In these cases, equal time on a national basis may be secured by petitions with a number of signatures equal to at least 1 per cent of the total vote, if the candidate is qualified to appear on the ballot in at least 34 States. The validity of the petitions would be a matter of State law.

Here again the appropriateness of the 1 per cent figure may require further study. This figure was selected, rather than the 2 per cent figure, because of the great difficulty inherent in the petition route.

Where a candidate does not make a nationwide effort, he may nevertheless secure equal time in individual States where his candidacy is supported by petitions filed under the laws of the particular State with signatures equal to at least

1 percent of the total popular vote cast in that State in the preceding presidential election, or where his party polled 2 percent of the vote in the previous election.

As indicated above, in the 1946 presidential election the two "minor party" candidates each received a little better than 2 percent of the total popular vote, and were of significant interest. But, since the States Rights candidate received his votes from only 15 States, this party in a succeeding election would be entitled to compulsory equal time only in those States where 2 percent of the vote was received—absent a broader-based effort demonstrated by obtaining a place on the ballot in 34 States. This combination of factors is based upon a compromise with respect to a candidate's right to the free use of broadcasting facilities, the impact of his use upon the time available for other candidates, and the demonstrated interest of the public in the candidacy.

Finally, it should be noted that the "Fairness Doctrine" would remain applicable as to all other candidates.

The draft takes the same approach with respect to candidates for all other partisan elections. If the approach is sound, it would appear desirable to apply it across-the-board. The formula under which candidates would be entitled to equal opportunities is similar to the one used for presidential and vice-presidential candidates.

In this connection, it is recognized that a deeper study than time has permitted would be useful, particularly with respect to the precise percentages to be used, the relationship of the percentage levels for petition as opposed to previous votes obtained and the number of States on whose ballots a candidate must appear.

A BILL To amend section 315 of the Communications Act of 1934, as amended, so that with respect to free broadcast time in general election campaigns the equal opportunities provision of that section shall only apply to certain legally qualified candidates for public office, and for other purposes

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

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

(2) By deleting the word "subsection" in the penultimate sentence of subsection (a) and inserting in lieu thereof the word "section".

(3) by redesignating subsection (c) as subsection (f) and inserting before such subsection the following new subsection:

"(c) If any licensee shall permit any legally qualified candidate in the general election for the office of President or Vice President to use a broadcast station without charge he shall afford equal opportunity in the use of such station to—

"(1) all other legally qualified candidates for such office who are nominees of a political party which appeared on the ballot in at least 34 of the several States in the preceding presidential election and whose candidates in that election received at least two per centum of the total popular vote cast;

"(2) all other legally qualified candidates for such office who are qualified to appear on the ballot in at least 34 of the several States and whose candidates are supported by petitions filed under the laws of the several States which in the aggregate bear a number of signatures valid under the laws of the States equal to at least one per centum of the total popular vote cast in the preceding presidential election;

"(3) all other legally qualified candidates for such office who are nominees of a political party whose candidates in the preceding presidential election received at least two per centum of the total popular vote cast in the State where the broadcast station is located; and

"(4) all other legally qualified candidates for such office whose candidacies are supported by petitions filed under the laws of the State in which the broadcast station is located and which in the aggregate bear a number of signatures valid under the laws of the State equal to at least one per centum of the total popular vote cast in such State in the preceding presidential election.

"(d) If any licensee shall permit any legally qualified candidate for any partisan public office other than the office of President or Vice President to use a broadcast station without charge, he shall afford equal opportunity in the use of such station to—

"(1) all other legally qualified candidates for that office who are nominees of a political party whose candidate in the preceding general election received at least two per centum of the total popular vote cast for such office; and

"(2) all other legally qualified candidates for that office whose candidacy is supported by petitions filed under the laws of the State in which he seeks election and which in the aggregate bear a number of signatures of persons eligible to vote for that particular office, valid under the laws of the State, and equal to at least one per centum of the total popular vote cast for that office in the preceding general election.

"(e) If any licensee shall permit any legally qualified candidate for any non-partisan public office to use a broadcast station without charge, he shall afford equal opportunity in the use of such station to all other legally qualified candidates for that office."

Mr. BURCH. I do have some dissenting and concurring statements from the Commission that I would either read or insert for the record.

Mr. MACDONALD. You may insert them in the record and without objection it is so ordered.

(The documents referred to follow:)

SEPARATE STATEMENT OF COMMISSIONER KENNETH A. COX, FEDERAL COMMUNICATIONS COMMISSION, ON PROPOSED AMENDMENTS WITH REGARD TO POLITICAL BROADCASTING

I concur generally in the statement presented by Chairman Burch on behalf of the Commission, but would like to add a few comments of my own.

When this matter was before the Senate Committee on Commerce last fall, specific attention was given to the proposals of the Twentieth Century Fund Commission on Campaign Costs in the Electronic Era. I don't know whether that Commission's plan will figure in this Subcommittee's deliberations or not. If so, I would like again to submit my views on the very provocative proposals submitted by the Twentieth Century Fund Commission.

I am more favorably disposed than my colleagues to the proposals of the Twentieth Century Fund Commission. I think its central concept of the simultaneous presentation of the presidential candidates on all broadcast outlets, though subject to the sharpest criticism, has real merit. Since such programming would be offered only during a short period once every four years, I do not think it would seriously interfere with the public's access to a broad range of broadcast programming. Indeed, the time devoted to such simultaneous programming would occupy only a few hundredths of one percent of the programming of a typical station during the four year cycle. Surely the careful and intelligent choice of our chief executive merits this much attention, even though it would involve a fleeting loss of alternative programming.

Those not wishing to watch or listen to such programming would have the option of turning off their sets, which is what I'm sure many of them now do when the national networks present political conventions, presidential messages, the funerals of national or international leaders, or other programming which is substantially identical on all of them. Indeed, if there is concern over the prospect of the total elimination of other program choices, it occurs to me that the proposal might be modified to require only simultaneous presentation on the three television and four radio networks. This would mean that those living in areas receiving one or more non-network services would continue to have other programming available to them, though I would hope that the networks' concentration on this presidential programming would build overwhelming interest in it, as was the case in 1960 when the Kennedy-Nixon debates were presented in this way.

It is unfortunate, but undoubtedly true, that some of our people will always turn away from programming dealing with the public's business if alternative entertainment programming is available. However, since for four years they will have had the option to avoid programming dealing with local and statewide issues and campaigns, as well as other broadcasts featuring national and international problems and the candidates for both Houses of Congress, I do not think it is unreasonable to try at least to attract their attention to the process of electing our presidents. To try to build a desire for escapism into high principle seems to me frivolous.

I think the Twentieth Century Fund Commission's report represents the result of long and careful study by able and experienced men. I think their proposals deserve the most serious consideration.

Finally, with respect to the bills now before the Subcommittee, I believe the Federal Communications Commission does have expertise with respect to proposed limitations on overall expenditures on the electronic media. I favor such a limitation and believe we should make any data we have available to the Subcommittee to assist it in formulating the best possible method of dealing with escalating campaign costs.

SEPARATE STATEMENT OF ROBERT WELLS, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION, ON H.R. 13721 AND IDENTICAL BILLS AND S. 3637

I support the general philosophy of the draft legislation set forth in Appendix A to the Chairman's statement. I believe that if freed from the requirements of section 315 in the manner proposed, broadcasters would provide significant amounts of free time to major candidates. I also agree with the proposed suspension of section 315 with respect to nominees for the offices of President and Vice President of the United States.

I disagree with the philosophy of requiring reduced rates for use of broadcast facilities by candidates. Section 315 now prohibits charges for political broadcasts which exceed charges for comparable uses of station facilities for other purposes. This is only fair. However, requiring reduced rates for political broadcasts is, I believe, unfair to the broadcast industry.

I share the general concern over the increasingly high costs of campaigning for public office. However, the cost of broadcast time is only one aspect of the problem, and reduction of broadcast rates is only one of many apparently realistic solutions to the problem of rising campaign costs. I respectfully suggest that the proposed bills deal only with a part of the general problem, and discriminate against the broadcasting industry.

STATEMENT OF COMMISSIONER ROBERT T. BARTLEY, FEDERAL COMMUNICATIONS COMMISSION

I dissent to that portion of the Statement which supports a requirement that all stations make time available in the 7:30-10:30 p.m. time segment for candidates for Federal elective offices.

Mr. BROTZMAN. Could we have the Chairman relate who concurred and who dissented?

Mr. BURCH. Commissioner Bartley dissented to that portion of the bill S. 3637 which would require that prime time be made available for political statements. Commissioner Cox concurred generally in the statement that I made but pointed out that he was very much taken by the approach of the 20th Century Fund and recommended it to the subcommittee for its attention.

Commissioner Wells concurred again generally in the statement but dissents from that portion which would require that broadcasters give reduced rates for political purposes. He feels that this is simply one of the elements that has again caused political campaigns to become more expensive and he does not think that the broadcast industry should share the whole burden of reducing political expenditures.

Commissioner Johnson concurs but without a statement.

Mr. MACDONALD. I want to thank you very much for coming here, and secondly, I would like to thank you for your statement in which it is obvious that cooperation between the subcommittee and the Commission and staff will follow. I think, of course, that for once the committee can offer some expertise to the experts downtown, with a different point of view.

But I certainly appreciate the spirit of the Commission.

I was a little surprised though, Mr. Burch—on page 6 you state “the licensee should retain discretion to determine important campaigns in his area which most warrant the affording of broadcasting time.”

Don't you think that would be gilding the lily a little bit? They have an awfully lot of power now. The station can say “I think the race for mayor of the city within the District is more important.”

I would think that they should not be the sole arbitrators of what political programs should be seen on their station. Supposedly they operate in the public interest. I would think that it is within the right of this Congress and especially this committee in its dealings with you to see to it that their powers are curbed, not increased at this point.

Mr. BURCH. Mr. Chairman, in response to that, I think that we were commenting on the fact this bill would establish that senatorial, congressional, and presidential races are ipso facto in the public interest and I think concomitant to that might well be that the broadcaster, if he follows through those three races, might somehow slough off the Governor or mayor or the school board because there is just so much broadcast time available.

The reason we took this position is that, I think as the Congress knows, some congressional races are lost before they even begin.

Somebody is bound to win and somebody is bound to lose even though the campaign is played out. So senatorial races are in the same category whereas there may be very, very hot Governors races in that particular area.

We do have administrative sanctions and we do have complaint procedures against the stations which will not cover political broadcasting in the public interest and we felt those sanctions were available.

Mr. MACDONALD. That is taking the long range point of view for which of course I don't blame you. Take it from the point of view of the candidate. By the time you process his complaint, the election is over, he is defeated, and then you call the station in and slap them on the wrist and say, “That wasn't right, don't do it again.”

What happens to the fellow who is beaten because of some unfair tactics on the part of the station?

Mr. BURCH. I understand that problem very well. I am afraid in some respects that may very well be one of those problems to which there is no good solution, but we do feel that broadcasters generally are required by us to know what is going on in their community, to know what the issues are in their community and those issues which have the greatest public interest.

We felt that simply designating three races as those having great public interest was not entirely proper.

Mr. MACDONALD. Along that line, I am not picking on the stations in Boston, or the stations I know best, and I know the quota that you make them broadcast in the public interest. They have an editorial policy and a man from the station will get on and give 1-minute or 2-minute editorials about “Let's keep the streets clean” or “let's get rid of the trash” and that sort of thing, and then say, “This program was brought to you as a public service.”

I would think that there is no greater public service that the stations can do than to let the public see the candidates who are running

for the more important offices and stop the pseudopublic-service business and actually give some public service.

Do you have any comment about that?

MR. BURCH. Yes, we do not have a quota, Mr. Chairman, as to public service in terms of having 3 percent or 1 percent or an hour a week or anything of that nature. We have never felt those formulas are capable of being enforced or even being promulgated.

But I would agree with you that a station which does take a firm position for wide roads and free beer is not doing a great deal for public service.

But I question here whether the Commission or even the Congress for that matter has the capability of going into every manager's mind in this country and impressing upon him what is in the public interest as opposed to what he concluded it to be.

I think there is a great element of discretion that he must retain in deciding those areas which he will engage in.

MR. MACDONALD. To change the subject a little bit, don't you feel that it is important to have a bill of this type go into areas which are one-party oriented?

Don't you think it is a disservice to those people who come from one-party areas not to have the limitations apply to the primaries because the people who get elected to the same job?

It is more especially true I would guess in the House, but I can think of States with senatorial seats that are decided just about the same way.

MR. BURCH. Are you talking about the limitation of spending provisions of S. 3637?

MR. MACDONALD. Yes, I am.

MR. BURCH. I agree wholeheartedly that limitations on spending are a desirable thing. I don't have any idea how these figures were drawn up.

As I understand, this was pretty much written on the floor of the Senate and I don't know whether there is a real relationship between what a campaign costs and these figures or not. What I would say is this: I think there should be a limitation on spending but, if there is to be one, it should be enforced.

The tragedy of the political campaigning with which I am familiar is that we have the Corrupt Practices Act and other things which are observed in the breach more than in the observance and it cheapens the whole political climate. It cheapens the candidates, both the winners and the losers, and tends to develop a cynicism among those who watch political campaigns and for that reason, whatever the limitations, it must be observed by candidates.

And the point we make is that we can't enforce it. The House and Senate will have to enforce it.

MR. MACDONALD. Right, but my point is, what is your opinion as to whether this should be extended to include primaries?

MR. BURCH. As to spending limit?

MR. MACDONALD. Yes.

MR. BURCH. I suspect that it should. If it is to be meaningful, certainly it should.

MR. MACDONALD. And second, a problem I thought was not covered in the Senate bill is something which should be in any campaign

budget. Of course, many Congressmen of modest means take their wife and dog and kids and sit down in front of the camera and discuss issues, whereas others to my own personal knowledge, will go to some rather hot shot advertising agency and say, "okay, here is x number of dollars. Make me a public figure."

And in some campaigns that I know of the candidate himself never spoke. I think it was strictly production. Don't you think that should be curbed? Don't you think if this is to be in the public interest, we don't want the voters merely to find out who has the best advertising agency?

I am speaking of the member of the public who would like to find out who has the best brains, and who has the most to say and the most to offer. The way it is going, whoever gets the best advertising agency first has a better spot than the other candidates. Don't you think this should be curbed?

Therefore my specific question: Don't you think that there should be a limitation not only on the purchase of air time, but also on the production costs that precede the air time?

Mr. BURCH. If I may, I would like to skirt around that question a little bit before I answer it directly. There is a very serious divergence of opinion on that point as to whether or not a candidate is marketed as soap and therefore the best advertising agency will elect their man.

First of all, I think candidates have a responsibility to themselves to choose the best means to present themselves to the public and I think there should be competition to the greatest extent possible.

So I would not for example be in favor of saying that nobody can have an advertising agency.

Mr. MACDONALD. No, I am not saying that.

Mr. BURCH. But to get to the question of production itself, it seems logical to me if you are going to limit the amount of money that a person can spend purchasing time, it would follow naturally that some restrictions be placed on the amount of money that may be spent preparing for that time.

For example, under this bill, you might be limited to x number of dollars that you can spend on radio and television. You might very well spend \$5 million advertising those programs in the newspapers so that people would watch them, which would, I think, pervert the purpose of the bill.

The purpose as I understand it, is to cut political spending, not to require the broadcasting industry to subsidize campaigning in effect.

So the answer to your question is, yes, that would seem quite logical to me. How you do it, I don't know.

Mr. MACDONALD. I agree. This is not an easy subject but I would like to point out in defense of the broadcast industry that after these bills are introduced, a number of stations across the country offered voluntary reductions, so they not all just have dollar signs in their eyes. But where the abuse is, it has been very grave.

We have lost some colleagues here who have protested that they were not fairly treated, and as I said earlier, when they go to protest, then everything is over and the fellow is seated here.

Mr. BURCH. We have always taken the position at the Commission that if 315 were suspended, and frankly the Commission does not

particularly go along with the idea of simply extending it to President and Vice President, that broadcasters would come in with free time because this is controversial programing and I think they would like to do it.

Mr. MACDONALD. My last observation, rather than a question, but in dispute of some of the things you said on page 19 about all of the candidates coming under this bill, en mass, a concrete example is that in my State there are four candidates now for Democratic nomination for Governor.

On the Republican side we have some for the Governor, three people running for the Senate and there is a good deal of interest always in Massachusetts about the statewide offices.

The office of attorney general is an important position under the government of Massachusetts. And the mayors are all up for reelection. If we put through a bill that would encompass all of these people, it would turn broadcasting for about 3 months into nothing but political debates and arguments and advertising.

So while I agree that I don't think Congress should say that their job is more important than the Governor or anything like that, but I am just saying if you don't stop someplace, the stations are going to be overburdened.

Mr. BURCH. That is of course basically the Commission's objections to the theory of the House bill in setting a quota of time which is available for a particular candidate which the broadcast stations must grant.

Because quite obviously, if you have a number of candidates for Congress, each getting 60 minutes, and a number for the Senate each getting 120 minutes, there is going to be very little left for anyone else in that particular area if the stations must provide that much time during a reasonable period of time before the elections.

It is a very difficult subject.

Mr. MACDONALD. In conclusion I would think the makeup of the administration, the President, Vice President, and the Senate and House has a good deal closer bearing on the operation of the station than does even the government of that State.

Mr. BURCH. I recognize the practicality of that, but nevertheless I think that the public interest would be broad enough to include other races.

Mr. MACDONALD. Thank you again, Mr. Burch.

Mr. Broyhill.

Mr. BROYHILL. I have no questions.

Mr. MACDONALD. Mr. Harvey?

Mr. HARVEY. Mr. Chairman, I would like to congratulate you on your statement.

I think it is a fine one and it points out what a knotty problem we have before us here to decide really. I was one of those who introduced H.R. 13721 which would have provided an opportunity for the candidates to buy time at a lower rate.

At the time of the introducing it, however, I expressed the fact that I was bothered that this was just one medium that we were talking about and I think in most areas of the country candidates are equally bothered that the other medium are equally troublesome.

In other words, newspapers advertising, for example, in Michigan will charge the highest advertising rate to political candidates, period. Certainly I think you would agree with me that in fairness candidates should not have to pay more than any other advertiser, either on the same schedule or for the same time or the same amount of time or same hour of the day.

They should be treated the same as any other advertiser, I think.

Mr. BURCH. That is correct.

Mr. HARVEY. Certainly their advertisement is no more offensive than selling cars or beer or anything else for that matter.

It is an ad.

Mr. BURCH. The sum of 315 presently does provide that they shall not be charged more.

Mr. HARVEY. The same is not true of newspaper advertising. In listening to your testimony I was struck by somewhat of a contradiction. On page 2 where you outline our goals you say first of all the legislation should promote the widest and most penetrating area possible. Assuming that this is one of your major goals, which I believe it should be, and that was basically the purpose of the original bill I introduced, then why should we put limits on it at all?

Why should we not leave the limits up to the broadcaster in terms of spending? Well, whether you put it in terms of spending or in terms of time, you are limiting the amount that can be spent by the candidate.

Mr. BURCH. Yes. I think that probably—this is my personal opinion, not that of the Commission, but my own personal opinion is that if Government and politics are to maintain the prestige that they must enjoy I think there is a practical limit beyond which spending must be curtailed.

I think there have been instances where too much money has been spent on an election and I think it tends to downgrade the whole area. That is the only practical reason for it.

I think there is a limit beyond which you cannot further enlighten the public on a particular issue. You are simply huckstering at that point. I think the ideal political campaign would be one in which you have two opponents who are intelligent and make their views known and the people actually make a choice between the two.

I am not sure political campaigns always work that way but I think that is the way they should work. I think the limitations are a practical thing which, if enforced, would be helpful.

If not enforced it would be a waste of time and a pity to write any more legislation of this sort.

Mr. HARVEY. I guess that is all I have, Mr. Chairman.

Mr. MACDONALD. Mr. Brotzman.

Mr. BROTZMAN. Thank you, Mr. Chairman.

I too, Mr. Chairman, would like to offer my—

Mr. BURCH. Mr. Brotzman, could I add one thing to Mr. Harvey? Again, Mr. Harvey, I don't know whether this limitation bill is effective or proper. I don't know how the figures were arrived at or whether they make any particular sense.

All I would say is that generally I think maybe some restriction would be advisable but I don't know whether this is the approach or not.

Mr. HARVEY. Thank you.

Mr. BROTZMAN. Mr. Chairman, as I said, I would like to congratulate you on a very thorough statement. In fact you have raised a lot of questions, and I actually wish I had time to read your testimony in detail before cross examining you.

One thing you said that certainly did strike home is that whatever law comes out of this committee and is ultimately passed by the Congress, it has to be an enforceable law rather than some kind of sham.

If I understand correctly, you feel S. 3637 does not measure up in this particular respect and when I say that, I would understand that some of this enforcement would fall to your particular Commission, is that right?

Mr. BURCH. Yes.

Mr. BROTZMAN. Do I understand that you don't have the staff, and you don't have the funds, to properly enforce this law?

Mr. BURCH. That is correct. The bill is rather silent on how it is to be enforced.

Mr. BROTZMAN. I can't find it myself. I can't tell whether this is a violation of a criminal statute in title 18 of the United States Code or if it is strictly an amendment to the Communications Act.

Mr. BURCH. Title 18, United States Code, section 1905 is simply restriction on the Commission from disclosing information which we get in the course of our endeavors.

Section 501 of the Communications Act is a criminal act which says that any person who knowingly violates the act is guilty of crime. Although it was alluded to in the debate on the Senate side, there is no requirement in this bill, for example, as to how a candidate would designate either himself or someone else to be his representative to purchase time, and absent some sort of provision like that, I don't know how a licensee would have any way of knowing whether this was in excess of the amount a candidate could spend or not.

Mr. BROTZMAN. That is right, Mr. Chairman. This gives rise to the old device where a candidate can set up as many committees as he wishes and go ahead and buy television time.

Mr. MACDONALD. Would the gentleman yield, because I am confused now? I thought the bill spoke of money spent by the candidate or on behalf of the candidate. That would seem to me to close that loophole pretty tight.

Mr. BURCH. It would except I don't know how a station would have any way of knowing whether a particular committee was authorized by the candidate to purchase time or not.

Mr. MACDONALD. Because of the very good suggestion you have which is not in the bill of making the candidate sign authorizations and send it to the stations.

Mr. BROTZMAN. Right, Mr. Chairman, but I was talking about the bill in its present form. You could have a mere volunteer buy some television time. Your suggestion is the only one that I can think of: There has to be something to pin the responsibility on the candidate himself.

Now I will yield to the gentleman from Ohio.

Mr. BROWN. You also have a problem unrelated to the advocacy of an individual candidate or the advocacy of an individual viewpoint.

Suppose in one of the elections being held today, somebody purchased time just to say, "Don't let the black voters take over our State."

I don't think I even have to tell you what the State is. It becomes a fairly clear argument in favor of one candidate.

Mr. BURCH. You also have related problems of slate-type announcements where you say, "Vote Democratic," "Vote Republican," and who do you charge those to?

The bill is unclear on that point.

I think discussion of the issues which the candidates have gotten into is even more significant because you can back a candidate by backing the issues which he has brought in the campaign and never mention his name but win a lot of votes for him.

Mr. BROTZMAN. In your written testimony, is the appendix a suggested bill relative to the suspension of the 315?

Mr. BURCH. Yes, sir; it is a memorandum and a piece of draft legislation which the Commission prepared 2 years ago.

Mr. BROTZMAN. Has it ever been considered really by a congressional committee to your knowledge, Mr. Chairman.

Mr. BURCH. It was submitted to both this committee and the Senate but to my knowledge it has not been considered formally in the sense of hearings or even the bill introduced in either body.

Mr. BROTZMAN. I have not had the opportunity to read the history of this legislation which found its way through the Senate, but I understand from what you said that much of the bill was written on the floor; is that correct?

Mr. BURCH. No, sir; only that portion dealing with limitations on spending. The original bill does not contain that provision. The first two portions of the bill were unanimously reported to the Senate and that provision was added on the floor and it may very well have been the result of a considerable study but I don't have any knowledge of it.

Mr. BROTZMAN. But I will understand the position of the Commission relative to the suspension of 315 to be that you would prefer something like that contained in the appendix A as distinguished from the provision in the bill that came over to the House; namely, S. 3637.

Mr. BURCH. Yes, sir.

Mr. BROTZMAN. Thank you very much, Mr. Chairman.

Mr. MACDONALD. Mr. Brown.

Mr. BROWN. Mr. Chairman, Milton Friedman is a gentleman who seems to have some influence in our society, his argument is that any subsidy should be paid directly to the beneficiary rather than indirectly to a third party.

This bill would subsidize the candidates directly rather than force the electronic media to subsidize the candidate.

Mr. BURCH. I think that argument could well be made.

Mr. BROWN. What is the role of the electronic media in the area of public information and subsidizing campaigns?

What is the position of public broadcasting with reference to this legislation and the utilization of that media or that part of the electronic medium?

Mr. BURCH. They do not sell time, Congressman Brown, and my understanding is that they do tend to make large amounts of free time available to candidates in their particular area.

I suppose that they would not have an objection to this but I again say that off the top of my head.

Mr. BROWN. This committee, the Congress, and the taxpayer are asked to subsidize public broadcasting to bring to the people that which commercial broadcasting does not consider economically profitable.

This legislation asks commercial broadcasters, people who are in business for profit, to subsidize politicians; we will have the public subsidizing public broadcasting.

Why not put the campaign on public broadcasting stations? The vehicle is already there to provide this kind of service.

Mr. BURCH. Well, if you are asking my opinion as to why we don't do that, I don't know what the Congress might want to do in that regard.

I think there are several reasons why it would not be done from a practical point of view. One is that public broadcasting is not available to all of the people in the country.

Mr. BROWN. Neither is commercial broadcasting in a sense.

There are certain congressional districts where one station in the middle of the district will carry the load subsidizing the campaign. You may have other congressional districts where broadcasting stations will not be asked to subsidize at all because the candidates do not use the broadcasting medium but instead use newspapers or billboards or some other medium.

It seems to me that this legislation really discriminates between broadcasters.

Any comment?

Mr. BURCH. It certainly could have, that practical effect. There is no doubt about that.

Mr. BROWN. Let me ask a question in reference to the more important offices.

Who decides what the more important offices are? It seems to me that our system is set up on the basis of a tripartite government, local, State, and National, and there are some people who might consider that the race for State supreme court justice in certain situations more important than the race for the Congress from that area.

We are asked to decide which are the more important offices in this legislation.

Mr. BURCH. That is the effect of the legislation. The legislation determines that at least the President, Vice President, and Congressmen and Senators are important enough in the House bill at least to have certain time allocated.

That is the objection the Commission has to that particular bill. We feel that the broadcaster has knowledge of his local area, he knows what is going on there, and he should have some discretion as to putting on the Governor rather than congressional candidates and senatorial candidates.

I think we always agree the presidential race is quite important but I don't think there is a problem getting that covered. But I concur with what you said.

Mr. BROWN. There might be different views as to what are the most important offices.

Perhaps the percentage of eligible voters for an office could be an objective test, but I am not sure who can make the subjective test

as to what are the more important offices. This is particularly true where a one-party system operates; there a congressional race is pro forma with the real contests in the primary elections.

I don't want to intrude on the time of the next witness, Mr. Chairman, but I do have two or three other basic questions that I would like to pursue. There are nearly as many licensed television stations now as there are daily newspapers, and almost as many daily AM and FM radio stations as there are weekly newspapers according to testimony presented to this subcommittee.

Do not these facts raise questions in the minds of the FCC about the significance and fairness of the equal time doctrine?

Mr. BURCH. In what respect, Congressman Brown?

Mr. BROWN. In respect that if we believe in the multiplicity of voices and diversity of outlets as a guarantee of freedom and diverse viewpoints, since in some communities now there are less newspapers than there are radio and TV stations, should we free the broadcast industry completely and let them make all of these decisions that we seem to want to make for them?

Mr. BURCH. I can't say that the Commission has ever considered the question in that particular context.

Mr. BROWN. As TV and radio stations exceed the number of newspapers the same principles of press freedom that apply to newspapers might be as appropriately applied to the licensed electronic media.

There is another point that I would like to raise. If the objective is a discussion of the issues and not necessarily just the exposure of the candidates, then should we limit this to major parties? Issues are raised in certain areas of the country by those who take no part in the majority parties.

Did the Commission go to the defense of the two-party system or to the principle of trying to get a discussion of the issues?

Mr. BURCH. The Commission position on that question is that section 315 should be suspended as to major parties but provision should be made for significant candidates and we went to some detail as to what we thought might be a guideline as to what is a significant candidate.

I think, quite obviously, that there must always be room in this country for emergence of the new thought, a new idea, or new political fraternity or party or what have you.

So I think that must be protected. On the other hand, I think it is somewhat useless to maintain that, because we have a number of small parties that do not have any possibility of winning an election, that thereby we should deny the major candidates a chance to be heard because of 315.

Mr. BROWN. Doesn't that speak to the logic and desirability behind 315 more than it does to the question? If you believe that the local TV and radio stations might make a better judgment as to what are the significant candidates and issues then you refute the idea of maintaining 315; the whole thing ought to be thrown out. Local TV and radio stations should make decisions the same way newspapers and other local media do.

Mr. BURCH. Well, I hate to answer that yes or no because that gets into the question of the fairness doctrine, whether you observe that,

and a number of other areas that I had not thought enough about to answer.

Mr. BROWN. Thank you.

Mr. MACDONALD. Mr. Chairman, before you leave, this area remains sort of clouded over. I have always thought very highly of your performance since you have been down there, but are you equating in your own mind newspapers and broadcasters?

Mr. BURCH. No, I am not.

Mr. MACDONALD. It seems, in the answer to Mr. Brown, that you did not clearly differentiate between something that is given by the public through your agency and supposedly run in the public interest, the only reason for being is to serve the public, and a newspaper that anyone with some money can go out and buy and take their chances.

You are not taking any chance if you get a TV station these days. So I would think that if that is what you feel, and I hope it is not what you feel, but that is what was left sort of up in the air, I hope you bear in mind very clearly that these broadcasters are there just on sufferance, that they serve the public, and therefore the public will be subsidizing politicians, to use the phrase of my colleague from Ohio, not the broadcasters, because the public has given them the right to operate and I think none of us should lose that very basic fact among all of the words that are flown around here.

Mr. BURCH. Congressman Macdonald, first of all, I did not mean to imply that I was equating broadcasters with newspapers, but I think that Congressman Brown was speaking of the effect of newspapers and radio, and I don't think anyone will deny that they are both sources of news and we have to make that comparison occasionally.

Also I would have to point out that we do license stations in the public interest and they are licensed at the sufferance of the U.S. Government. However, they are commercial stations.

They are operated for profit and I think we have always kept that in mind in our regulation on these occasions, both at the congressional and Commission level.

Mr. MACDONALD. Some people have criticized you for taking that attitude, not particularly this presently composed board, but in the past, many people have said that the Commission goes overboard in regulating the commercial aspects and not regulating enough the public aspects.

Mr. BURCH. I appreciate that criticism and I think it is made a number of times. It is a difficult charge to refute sometimes.

It is an easy charge to make, sir.

Mr. BROWN. I would like to comment as my question is involved. Here we are discussing an economic limitation to be placed by law on one medium to resolve a problem which affects many different licensed and unlicensed media.

I can see regulating the electronic media in certain areas, but I have some question in my mind about the degree. What we are concerned with here deals not so much with the media as it does with our inability to make the Corrupt Practices Act work.

What we ought to do is give our attention to the Corrupt Practices Act. We have to deal with all campaign expense problems, not just with that part which relates to the electronic media.

That is what we are talking about.

Mr. MACDONALD. Mr. Harvey?

Mr. HARVEY. Mr. Chairman, when this bill was discussed in the Senate, Senator Percy raised the objection that the passage of the bill placing a limitation on the television media would simply force the candidate to take the money and spend it in other media.

To a certain extent that is what Mr. Brown has been talking about here. How do you answer that charge that you are discriminating against the TV media and your forcing the candidate to spend the money in other media, in billboards or newspapers?

Mr. BURCH. I don't know that I can or should answer the charge. I can comment more as an individual than anything else, that I would agree that it might have that effect.

If a person did have more funds, he might very well use the other media. That is why I think any spending limitations must be very reasonable but if they are to be limitations, I would tend to agree that there must be some overall limitations simply not a limitation in one area or another.

I must confess I have not discussed that answer with the Commission. That is my own personal observation.

Mr. MACDONALD. Mr. Brotzman.

Mr. BROTZMAN. I would like to ask the counsel a question while we have the Chairman here to see if I understand one provision of the Senate bill.

Looking at page 3, it says:

Provided further, That consistent with the other needs of the community broadcasting licenses or broadcast licensees shall make reasonable amount of time available for legally qualified candidates for Federal elective offices from the hours of 7:30 to 10:30 p.m.

Does that mean make time available on a free basis or does that mean to make that time period available for sale to candidates?

Mr. GUTHRIE. I don't think the Senate-passed bill is clear in that respect, Mr. Brotzman, nor is there indication from the Senate floor debate what they intended in this respect.

That seems to conflict with the second sentence of 315(a) which says that no obligation are hereby imposed upon any licensee to allow the use of its station to any such candidate.

It is referring to all candidates.

Mr. BROTZMAN. I was going to ask the Chairman how he might construe that, but I don't think I will because obviously it is an ambiguity in the bill. I just wonder if there was any Senate intent or anything in the record to demonstrate what they did in fact mean.

I have no further questions.

Mr. MACDONALD. Thank you again, Mr. Burch.

Just in closing, will you agree with me that it is very clear that we can't take care of all of the problems of broadcasting in this single bill but that there is a need to stop the present trend toward people being able to purchase seats in the House and Senate?

I would think in answer to Mr. Harvey, you might point out that it has been proven that this media is by far the most effective. Therefore I am not knocking the newspapers, but I don't think many people read political ads in the newspapers; but if they have the TV on and are looking at it, they can't help but see it.

I wonder if you agree with me in repeating that old tired cliché that it is better to light a single candle than to curse the darkness, therefore I hope that we have your support for a bill in this field which will try, while not attempting to solve all of the problems—will try to solve this particular overspreading problem?

Mr. BURCH. I would have to agree that this is one of the very vital areas of political campaign, use of electronic media, because that is what people use and it has a very definite bearing on spending and it obviously is not the only thing that people spend money for but it is the largest expenditure in any campaign.

Mr. MACDONALD. Thank you again, Mr. Chairman.

Mr. BROWN. Mr. Chairman, could I ask the Chairman how many candles can be lit in a 10 second spot?

Mr. MACDONALD. That depends on how big the candles are. Thank you again, Mr. Burch.

Mr. BURCH. Thank you, Mr. Chairman.

Mr. MACDONALD. The next witness this morning is Hon. Eugene H. Nickerson, county executive, Nassau County, N.Y.

STATEMENT OF EUGENE H. NICKERSON, COUNTY EXECUTIVE, NASSAU COUNTY, N.Y.

Mr. NICKERSON. Thank you, Mr. Chairman.

I might explain that Nassau County is just east of New York City. I am serving my third term as Nassau County executive which is a county just east of New York City on Long Island with a population of 1½ million people.

I was a candidate for the Governor of the State of New York and I decided not to continue my candidacy for democratic nomination because we could not raise sufficient funds to continue the effort.

However, with adequate funds, I believe that a strong, effective, and—being also optimistic—a winning campaign could have been waged. I had the endorsement of the New Democratic coalition and had been granted a place on the primary ballot as a result of the votes that I received at the meeting of the Democratic State Committee.

I am here today to testify in favor of the campaign broadcasting reform bill passed by the Senate on April 14 and now before this committee. As members of this committee are aware, my situation was hardly unique.

Many candidates throughout the country are dissuaded from running for office because of the astronomical costs of a campaign. Those again who are successful in raising funds from large contributors must constantly be concerned over the obligation which sufficient indebtedness may entail. The public interest is not served if some citizens have a larger claim than others on the attentions and responsiveness of an elected official.

The advent of political television has dramatically and qualitatively changed campaign financing. There is no other medium quite so effective.

Ten second spot announcements give a candidate high voter recognition much more efficiently than any other means of communication.

Sixty seconds spots can obtain a policy statement which will reach more people in even less time than any printed announcement.

A 30-minute discussion or debate can enlighten more voters about the candidat's views and personalities than any other kind of public forum. The medium can be used for educational purposes or has been pointed out, for selling a package politician.

A potential for serving and strengthening the political process is undeniable. Its use in a campaign is principally determined by the amount of money a candidate has at his disposal.

I believe that the rising production cost for broadcasting may disqualify all but the rich or those with rich contributors from waging any kind of meaningful campaign. Heavy television usage was even imperative in my campaign in order to reach voters throughout one of our largest States. The lack of money to conduct this kind of a television campaign and the necessity of doing so as a practical matter was one of the basic considerations which led to my withdrawal from the gubernatorial race. It is not sufficient to deplore the fact that campaign costs are appalling.

We have reached the point where the cost of running for office is practically out of control. Elections are one of the structural foundations of our democratic system. Campaign costs are eroding that foundation. The time for reform is long past. Further delay of constructive action will result only in further decay of the political process.

This committee has the opportunity of restoring a measure of sanity to our campaign process. Reduced television costs and equal use of television between candidates will substantially reduce every campaign budget in the country.

Candidates will be freed to a significant degree from the risk of obligation to a few special interests. Rich candidates will be deprived of some of the advantages they currently hold, advantages which are completely inconsistent with our political system.

As you pointed out, the bill will not solve all of the problems of campaign finance. It is not a panacea. The need for further imaginative and comprehensive reform is acute.

I think this bill is a major step forward dealing with the problem and such as this I strongly urge its adoption.

Mr. MACDONALD. Thank you very much, Mr. Nickerson.

I just have one question: We appreciate your testimony very much. I think perhaps and I may sound like I am reversing myself from my discussion with the previous witnesses, but in your case, it won't really matter if this bill had passed or not, would it?

Mr. NICKERSON. No, not as far as the 7 cents a vote, or \$20,000, because that would not apply to a gubernatorial candidate. It would in the other provisions as to the actual cost however.

But I hope you will take this first step and that then it will be expanded to others.

Mr. MACDONALD. I certainly agree with you. Thank you very much, Mr. Nickerson.

Mr. Brotzman?

Mr. BROTZMAN. I was going to raise the same point, Mr. Nickerson, that the chairman has already raised. I, too, thought this would not apply to your particular problem.

Mr. NICKERSON. Not the ceiling.

Mr. BROTZMAN. How many people were in that primary?

Mr. NICKERSON. After the State committee meeting there were four. There were others before that who came in and campaigned up to the State committee meeting.

I should perhaps explain that in New York there are two ways really you can get on the ballot. One is to get enough votes then in the State committee, at least 25 percent.

Mr. BROTZMAN. You get designated and that enables you to go ahead and run in the primary?

Mr. NICKERSON. Right. Or you can get petitions signed in a certain amount and so many of the counties and then you can get on the ballot. There were four who really were serious about it, of which I was one.

Mr. BROTZMAN. Do I understand your point to be that you feel because of lack of funds, that you could not present your candidacy to the voters sufficient to be a serious contender?

Mr. NICKERSON. Yes.

Mr. BROTZMAN. Did you withdraw early in the primary or what?

Mr. NICKERSON. I withdrew several weeks after the State committee meeting after I had gotten 25 percent which would put me on the ballot.

Mr. BROTZMAN. How were you placed at that point? Were you second?

Mr. NICKERSON. I was second. Mr. Goldberg was designated by the State committee. That really is one of the things that I think that is relevant to a discussion of it here.

Some one who has been a U.S. Supreme Court Justice, Secretary of Labor, and Ambassador to the UN, already starts out with a tremendous advantage and in order to make yourself known, in order to make an impact on the public in that kind of a situation and, of course, this bill does not apply to primaries, I hope that eventually that it will apply to primaries, you really need television.

You can't make an impact in any other way as a practical matter.

Mr. BROTZMAN. This is a point that has come up in my thinking this morning and I would like to hear your comment. If you have a well-known figure that you are contesting or who has a better name recognition such as Justice Goldberg or if he is the incumbent, perhaps then the person that is out is going to have to compensate for it in some way, is he not?

Mr. NICKERSON. Right.

Mr. BROTZMAN. So I am wondering really if you are helping the underdog by imposing the limitations? Do you follow my thinking?

Mr. NICKERSON. I do.

There is not any doubt whatsoever in my mind as a result of my elections in Nassau County, the last one which was in 1967 in which I was running against really someone who was totally unknown and had a lot of money and spent a lot of money on television and made a real impact, even though really television in Nassau County is not—you might not think—an efficient way of spending your funds because you are reaching however many people there are in the whole New York area and there are only a million and a half in Nassau County, so it is very expensive.

I think some of the 30-second spots that we bought were \$3,500. So it makes a fantastic difference and unless you even that up, you

get Governor Rockefeller, who spent \$20 million to get reelected—that is what we figured out that he had spent—and was on television from early spring in 1966 right through election, and you just give him a fantastic advantage and all one has to do is examine the polls that were taken with respect to his standing in the spring of 1966 and the eventual result and you can see that.

So I think you have to have some means of equalizing.

Mr. BROTZMAN. A perfect example of what I was talking about, I think, recently happened in the State of Ohio in the Democratic primary.

I doubt if there is one single individual out of political life or not on the stage or theater who probably has better name recognition than John Glenn because he has had a lot of publicity over a period of time.

Yet he lost to Mr. Metzenbaum because of his ability to spend money and do whatever he did to get well enough known to win that primary.

Mr. NICKERSON. I think one has to say though that John Glenn was not running for astronaut. I think you have to make that distinction.

Mr. BROTZMAN. I think he already won that race.

Mr. NICKERSON. Right. You raise, I think, a good question. Aren't you to some extent saying to very rich underdogs that they don't have a chance, they don't have as good a chance as they otherwise would have to turn out an incumbent?

Maybe so but it seems to me you have to look at the other side of the ledger and somehow equal this out because otherwise it really is polluting the political process in my judgment.

Mr. BROTZMAN. Thank you very much.

Mr. MACDONALD. Mr. Brown.

Mr. BROWN. Perhaps we would be better off if we limited the amount of money a person could spend, period, and force the candidate to spend his money effectively. Again I go back to the question of the Corrupt Practices Act.

Mr. NICKERSON. May I comment on that, Congressman?

Mr. BROWN. Sure.

Mr. NICKERSON. It does seem to me that you have to start some place and the difficulties of enforcing that overall limitation I think are clear and this seems to me a step in the right direction because of the fact that it is so much more significant than any other medium or any other way of reaching the public.

Mr. BROWN. Do you think it is desirable to start with the Federal offices?

Mr. NICKERSON. I won't say that you should start with Governor, but—

Mr. BROWN. How about county executives in Nassau County, because they serve a million and a half people?

That is equivalent to three Members of Congress.

Mr. NICKERSON. You are right, it is. I don't know what the priority is but obviously the U.S. Senate and the Congress are more significant in my judgment, with all due respect to State-held offices, and what is going to happen to us and what is going to happen to this world than any local office can be. So I think it is perfectly logical to start with Congressmen and Senators.

Mr. BROWN. I heard an observation the other evening from an attorney who handled the renewal applications of three rather sizable television stations; he stated that in a study done in all three of the stations, which are some distance apart and in three different States, the greatest single issue which the people interviewed felt the station should direct its attention to was the question of pot holes in the street.

Mr. NICKERSON. I suppose you have to make a judgment as to what is more important and I think my job is kind of important but I think the work of the Congress and the President is more important because you are going to determine—

Mr. BROWN. Don't miss the point that this was an interview about the renewal applications of three television stations. That is what we are talking about here, television service to the community. A broad range of people were interviewed and the answer was pot holes in the street. My question is, should we start at this legislation with the Nassau County executive who represents a million and a half people and I assume has something to do with the potholes in the street?

Mr. NICKERSON. My answer to it is no. I think you are starting in the right way if you pass this bill because after all the Congress decides—or the Congress with the President is going to decide—whether we exist as a country or perhaps as a world and is going to decide really whether Nassau County gets the resources to enable it to continue as a local government. Most local government is dying because it does not have the resources to be able to continue.

Mr. BROWN. It is comforting to know that we know better what the people ought to be interested in than they do.

Mr. NICKERSON. I don't think you do unfortunately.

Mr. MACDONALD. I would like to point out, Mr. Nickerson, that I think Congressman Brown has been making a very eloquent argument for CATV.

I don't know if they're doing it in Ohio yet but in my State and home city the cable systems broadcast the council meetings.

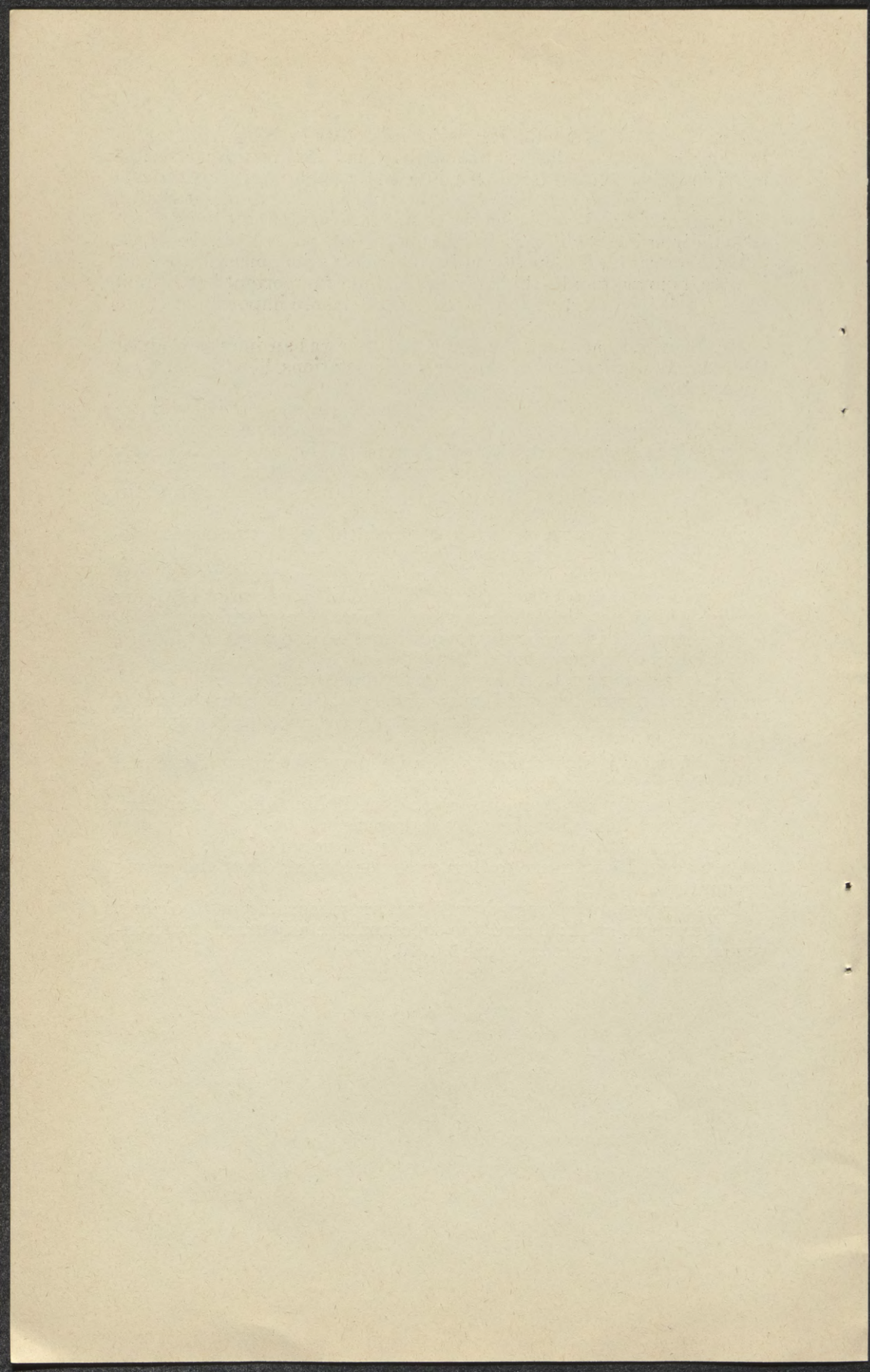
I don't know what their ratings are but I think they are as high and public spirited in my home city as they are in Ohio.

But I am glad to hear that Mr. Brown is in favor of CATV.

Once again I would like to thank you for coming down and giving us your time.

The hearings are adjourned until tomorrow morning at 10 o'clock.

(Whereupon, at 11:50 a.m., the subcommittee adjourned, to reconvene at 10 a.m., Wednesday, June 3, 1970.)



POLITICAL BROADCASTING—1970

WEDNESDAY, JUNE 3, 1970

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

The subcommittee met at 10 a.m., pursuant to notice, in room 2318, Rayburn House Office Building, Hon. Torbert H. Macdonald (chairman) presiding.

Mr. MACDONALD. The hearing will come to order.

Our first witness this morning is Mr. Russell D. Hemenway, national director of the National Committee for an Effective Congress.

We welcome you here this morning, Mr. Hemenway.

First, before you go into your statement, which I have not seen yet, but I am sure will be a good one, I would like to congratulate you on being the catalyst that got much of this going. There is an obvious excess in spending which perhaps will not result in an effective Congress, if the trend continues.

So I welcome you here this morning.

STATEMENT OF RUSSELL D. HEMENWAY, NATIONAL DIRECTOR, NATIONAL COMMITTEE FOR AN EFFECTIVE CONGRESS

Mr. HEMENWAY. Thank you, Mr. Chairman. We are delighted to have the opportunity to testify before your committee.

With your permission, I would like to make a very brief statement, and then submit for the record part of our testimony before the Subcommittee on Communications in the Senate. This covers in more detail some of the rising costs of campaigning in America and outlines some of the background of this bill. Then, if I may, I would like to address—

Mr. MACDONALD. Excuse me, Mr. Hemenway, I take it what you are asking me to do is insert in the record at this point following your statement the statement you gave before the Subcommittee on Communications on the Senate side.

Without objection, it is so ordered.

Mr. HEMENWAY. Thank you.

The National Committee for an Effective Congress is an independent political organization supported by a constituency of over 70,000 Americans. For 22 years the committee has supported candidates who meet our standards for responsible public service. This lengthy experience with congressional campaigns and fund raising has provided the committee with extensive knowledge of campaign costs.

American campaign spending has reached critical proportions. The price tag on a minimally competitive campaign has soared. We could reach the point at which all but the rich candidate, or those with rich backers, can be discounted from the beginning. Money will be the hallmark of political success in America. Recitation of figures in the hundreds of thousands of dollars obscures the fact that individual candidates face the ultimate responsibility for obtaining money for their campaigns and for retiring their campaign debts.

Rumors of scandal within the Halls of Congress are hardly new. However, campaign costs are so great that the threat of scandal literally begins with the decision to run for office. Ninety percent of all campaign funds are contributed by less than 1 percent of the American population.

Candidates are no exception to the standard American practice of buying on credit, but the candidate's credit often comes from a few rich contributors. The interest rate, if it were expressed in dollars and cents, is usurious.

The elected official is not in danger of having his wages garnished—he is in danger of becoming an indentured satrap, unable to serve the interests of his constituents because of his commitments and obligations to a few special interests.

The bill before this committee, the campaign broadcast reform bill, passed by the Senate on April 14—and I would like to say here, Mr. Chairman, that I will address my remarks to this bill, and not to the original bill which you introduced in the House—this bill offers unprecedented opportunity to deal forthrightly with one of the principal contributing factors to the awesome rise in campaign costs.

The dramatic rise in campaign spending coincides with the increased use of broadcasting as a campaign tool. Broadcasting is efficient. It is also expensive. The advent of radio had a similar effect on campaign costs. In 1928, Democratic candidate for the presidency, New York Governor, Alfred E. Smith, told his audiences, "Save your applause to the end of the speech. It doesn't cost anything then."

Broadcasters' charges to candidates increased 70 percent between 1964 and 1968, which reflects increased use as well as increased costs. The rate of increase is larger than the rise in total campaign spending. Spot rates on television are estimated to have jumped 50 percent during the same period.

The effectiveness of the phosphorescent tube for the politician, as for the commercial advertiser, is undeniable. There is ample evidence already in 1970 of the tremendous power a candidate can wield when he conducts a strong television campaign.

New York, Tennessee, Ohio, Texas, Connecticut, and California are only a few of the States where candidates with large, personal fortunes at their disposal are running for office this year. At present, they have the enviable advantage of being able to buy unlimited amounts of television time to advertise themselves.

The realities of politics in 1970, the enormous cost an effective campaign entails, is no less than a national scandal. The relative solvency of one political party at any particular moment in history is hardly relevant. The nonpartisan fact is that campaign costs are jeopardizing the democratic process. The campaign broadcast reform bill (S.

2637) is a major step toward ensuring that candidates compete on their merits, not with their pocketbooks.

Our political campaigns are highly sophisticated operations: media buyers, advertising consultants, filmmakers, pollsters, accountants, and a host of other professionals are actively sought by candidates. Planning is as pervasive in politics as it is in business. The bill before this committee recognizes these realities.

The limitations on broadcast spending in this bill may prove to be self-policing. The risk of violation will be far too high for a candidate for public office. The Federal Communications Commission has the professional competence, the experience with the broadcasting industry, and the technological tools to establish effective and reasonable administrative procedures for enforcement of this bill.

To suggest that a campaign manager, the FCC, and an alert press are incapable of effectively implementing, administering, and monitoring the limitations contained in this bill not only disparages their collective competence, but could be interpreted as an outright attempt to sabotage this reform legislation.

For nearly 2 years, the National Committee for an Effective Congress has studied the problems of campaign costs and political broadcasting. Our active campaign for reform has been partially based on the recognition that broadcasters' rates penalize the political candidate. The candidate needs nonpreemptible, prime time during a fairly short period. These requirements are incompatible with standard industry practice of negotiating complex individual arrangements involving discounts, bonuses, participation and other special deals. A broadcaster's rate card is only the starting point for negotiation with a commercial advertiser. It is a flatly stated fee for the political candidate. And the fees charged candidates have been the highest in the industry.

This committee strongly supports legislation requiring broadcasters to reduce the rates charged candidates for public office. Voluntarism has not worked.

There have been some instances in which stations voluntarily reduced their rates for candidates, but the vast majority have not, regardless of their rhetoric of serving the public interest.

The bill before this committee holds all broadcasters to that commendable standard. The campaign broadcast reform bill is the first legislative action in nearly 40 years which holds broadcasters responsible to a standard higher than that of economic gain.

The spontaneous reactions to the events of recent weeks are compelling evidence of pervasive disillusion with many aspects of our political process. The right, left, and center have all been heard. National polls indicate that more than half the people in this country believe that politicians are dishonest and do not genuinely attempt to serve in the public interest.

I believe that adoption of the bill under consideration would be a major step toward restoring the floundering trust in our political institutions and in our elected officials. A candidate must be enabled to run for office without mortgaging himself, the public must be accurately advised on the sums spent during a campaign, and modern technology must be harnessed to serve a positive function in the political process.

These are essential steps toward rebuilding the crumbling confidence currently threatening us all. The campaign broadcast reform bill reaches toward that imperative goal, I believe.

What I would like to submit in the record without reading, Mr. Chairman, is an amended summary of some of our testimony before the Senate subcommittee. It includes charts, facts, and figures on the rising costs of television, the rising costs of campaigns, and I think supporting material for this bill.

Thank you.

(The statement referred to follows:)

STATEMENT OF RUSSELL D. HEMENWAY, NATIONAL DIRECTOR, NATIONAL COMMITTEE FOR AN EFFECTIVE CONGRESS, BEFORE THE SUBCOMMITTEE ON COMMUNICATIONS, COMMITTEE ON COMMERCE, U.S. SENATE, OCTOBER 22, 1969

THE CAMPAIGN BROADCAST REFORM ACT OF 1969 (S. 2876)

The National Committee for an Effective Congress is an independent political action group supported by a national constituency of 70 thousand concerned citizens. In an effort to encourage the highest quality of public service and to free legislators from undue dependence on special interests, a principal function of our organization has been the endorsement and support of candidates of both parties seeking election to the Senate and House. Having been involved in the raising and distribution of campaign funds for 21 years, we are acutely aware of the high cost of political campaigning, the resultant problems, and the ultimate damage to the democratic process.

The crisis level has been reached in American campaign spending. This unsavory dilemma, understood but not often openly discussed by everyone in politics, is capsuled by author John Whale: "there is a danger that the cost of campaigning, chiefly swollen by the cost of television, will exclude the honest poor. A more serious danger for American politics is that it does not always exclude the dishonest poor."¹

The costs of running for public office have doubled in the last decade.² A recent survey³ shows that 70 percent of U.S. Senators spent over \$100 thousand on their last campaign and that 40 percent spent over \$200 thousand. In some states, it can cost nearly a million dollars just to lose a Senate primary.

Three out of every 10 Members of the House had to spend over \$60 thousand to be elected, and in hotly contested races the figure passed over the \$100 thousand mark easily and often. (See Appendix A.)

How are financial demands of this magnitude met? How many men of talent and interest, but not of means, are discouraged from seeking office? How many office holders have been forced to put the interests of their large contributors ahead of the interests of the public?

It is a shocking revelation to many to learn that 90 percent of all political funds are contributed by only one percent of the population. Viewed in this context, it is not surprising that 60 percent of those citizens interviewed in a national poll responded that they believed politicians take graft and that few have the public interest at heart. Perhaps the next question that should have been asked is how many of these highly critical citizens are among that small ten percent of the population who make any political contribution at all.

The level of campaign spending has risen considerably since Abraham Lincoln returned \$199.25 of the \$200 raised for him in his 1846 Congressional campaign. For more than a century, this increase is in direct correlation to corresponding increases in general prices and the size of the electorate. But the increase of 114 percent just since 1952 is directly attributable to another cause: the advent of television as a campaign tool, and, more specifically, its high cost. Before this time, costs remained relatively stable because new campaign methods

¹ John Whale: "The Half-Shut Eye." New York, Macmillan, 1969.

² Herbert Alexander of the Citizens Research Foundation, foremost expert on American political finance, set the total cash outlay for all campaigning in 1968 at \$300 million. This compares with \$140 million in 1952; \$155 million in 1956; \$175 million in 1960; and \$200 million in 1964.

³ Report of the Special Committee on Congressional Ethics (Chap. 4), The Association of the Bar of the City of New York, in press. (See appendix A for complete tables on amounts spent.)

and techniques tended to displace rather than augment the old. Television, however, has changed not only the form but the dynamics of campaigning as well.

One of the best indices here is the cost per Presidential vote cast. From 1912 to 1928, the amount per vote cast for the two major party candidates never exceeded 19 to 20 cents. There was some minor fluctuation in the intervening years, but the cost per vote remained about 19 cents in both Eisenhower elections. Then began a dramatic rise of over 300 percent in 12 years. The cost of a vote in 1960 was 32 cents; it rose to 41 cents in 1964; then 56 cents in 1968. The 1968 figure is increased to 67 cents per vote cast if spending on behalf of third party candidate George Wallace is included. Members of Congress have only to look at their own races and those of their colleagues to know that any race which uses television is caught up in this same spiral.

Perhaps the most direct and succinct summary of this problem was made by Senator John Pastore himself, Chairman of this Subcommittee, when he said: "Television is an indispensable means of political campaigning, but its cost is appalling. A candidate may have to spend \$2 million on television to win a Senate seat paying \$42,500 a year."⁴

Even excluding production costs, which average about one-fourth as much as the cost for air time, the spending for TV is enormous. And it continues to increase. The declared figure for all candidates in 1968 was \$27.4 million in the general election alone, nine times the 1952 figure of \$3 million. General election TV cost \$6.6 million in 1960 and \$10 million in 1964.

Dollar figures, even of this magnitude, hardly begin to tell the story because the FCC political broadcasting reports do not separate the races using little or no TV time from those which use it heavily. Our own studies have found that if a candidate uses the medium at all, he does so far in excess of any national average that can be derived from government figures. This is confirmed by a recent survey⁵ which indicates that 73 percent of U.S. Senators were "heavy" users of television during their most recent campaign, that is, they spent more than half their budget on TV time. Less than 10 percent of Senators were able to win without any use of the medium at all. This survey goes on to demonstrate that more than half of the members of the House utilized TV in their 1968 races, and that one out of four was a "heavy" user. (See Appendix B.)

Obviously, candidates have come to rely on television extensively to reach voters and this dependence is increasing. Just as obvious as the growing role of TV is the rising cost of the medium. Television advertising rates have increased faster than those of any other advertising medium, except billboards. The Advertising Cost Indexes of *Media/scope* magazine show TV spot rates have increased three times as fast as those of newspapers and nearly twice as fast as magazine advertising rates. (See Appendix C.)

Overwhelming as these cost statistics are, they do not provide the basis of argument for the proposed Campaign Broadcast Act. Justification for enactment of this legislation lies in the frequently forgotten fact that broadcasters are federally licensed to use the airwaves, and with the express stipulation that they operate in the "public interest, convenience, or necessity." Licenses to broadcast do not confer ownership of designated frequencies, only the temporary privilege of using them. The broadcaster is merely a proxy or fiduciary who is granted, without cost, a part of the publicly owned spectrum to use for his own profit. In the words of Herbert Hoover: "Radio communication is not to be considered merely a business carried on for private gain, for private advertising, or for entertainment to the curious. It is a public concern impressed with the public trust, to be considered primarily from the standpoint of the public interest."

Television has become the 20th century Athenian town square, the modern Roman forum, owned by the people and where they gather for the transaction of mercantile, judicial and political business. It is where the political contenders go to be heard, and where the citizens' decisions are formed. The airwaves belong to the public, as the Agora belonged to the Athenians. And as the Greeks allowed the merchants to sell their wares on the common, the people through Congress and the FCC, have granted broadcasters a franchise to operate in this forum. The

⁴ Statement before Senate Communications Subcommittee, Aug. 7, 1969, during hearings on S. 2004, as reported by *Broadcasting* magazine, Aug. 11, 1969.

⁵ Report of the Special Committee on Congressional Ethics (Chap. 4), The Association of the Bar of the City of New York, in press. (See appendix B for complete tables on TV usage.)

American people did not give the airwaves away, and the private concessionaire has a responsibility to roll his carts and merchandise off the square when it is needed for serious public business.

Yet American broadcasters tend increasingly to regard the political campaign as a money-making arena rather than a public service opportunity and there is no force compelling them to do otherwise. If blame is to be placed however, let it rest less on the broadcaster than on the inadequacy of the law which governs him, on its vagueness where it exists at all.

As television emerges as the predominant mode of communication, it is time that Congress act to clarify the question of "the public interest" and the broadcast licensee's corresponding responsibility. Particularly in this most sensitive area of political broadcasting, we believe station owners would ultimately find it a relief to have it spelled out, to know more precisely what was expected of them, and to be assured that uniform standards applied to all.

This country can no longer ignore the fact that the elective process, like everything else today, is under challenge. The health of the broadcast industry is not in jeopardy. It is doing exceedingly well, in fact, and this proposal in no way adds to its costs. But the political process, and our whole system of campaigning is in serious trouble. The time has come for a determined effort to relieve it of economic strangulation. This proposal inflicts no injury to any private interest, but it could go a long way to serve this public interest.

Modern technology has overwhelmed us and our politics have just become aware of the impact. Clearly he who controls the access to campaign media controls the political process, holds a veto over men's careers, their freedom of action and conscience, and their legislative vote. For this reason we favor the legislation before us as the most practical and attainable first step in defending an enlightened and responsive electoral process. This measure might rather be given the title "A Bill to Relieve and Protect the American Political System from the Pernicious Effects of Exorbitant Broadcasting Costs."

APPENDIX A

This table, as well as that in Appendix B, are from Chapter 4 of the Report of the Special Committee on Congressional Ethics of the Association of the Bar of the City of New York, which is in press.

AMOUNT SPENT ON LAST CAMPAIGN

[In percent]

	\$100,000 or less	\$100,001 to \$200,000	More than \$200,000
Senate:			
Democrats (16).....	31.3	31.3	37.5
Republicans (7).....	28.6	28.6	42.9
Senior ¹ (12).....	33.3	33.3	33.3
Junior (11).....	27.3	27.3	45.5
State population over 5 million (4).....	25.0	-----	75.0
Under 5 million (19).....	31.6	36.8	31.6
West (9).....	33.3	22.2	44.4
Midwest (5).....	-----	40.0	60.0
South (6).....	33.3	16.7	50.0
East (3).....	66.7	-----	33.3
Total (23).....	30.4	30.4	39.1

¹Senators whose present service commenced prior to April 1957 are classified as senior. Representatives elected to 5 or more terms (including the 90th Cong.) are classified as senior.

AMOUNT SPENT ON LAST CAMPAIGN

[In percent]

	\$30,000 or less	\$30,000- \$60,000	More than \$60,000
House:			
Democrats (50)	50.0	34.0	16.0
Republicans (41)	48.8	36.6	14.6
Senior ¹ (49)	69.4	22.4	8.2
Junior (42)	26.2	50.0	23.8
Urban (16)	50.0	25.0	25.0
Metropolitan (29)	44.8	41.4	13.8
Rural (46)	52.2	34.8	13.0
West (14)	35.7	42.9	21.4
Midwest (25)	64.0	32.0	4.0
South (24)	33.3	41.7	25.0
East (28)	57.1	28.6	14.3
Total (91)	49.4	35.2	15.4

¹ Senators whose present service commenced prior to April 1957 are classified as senior. Representatives elected to 5 or more terms (including the 90th Cong.) are classified as senior.

APPENDIX B—USE OF TV IN LAST CAMPAIGN

[In percent]

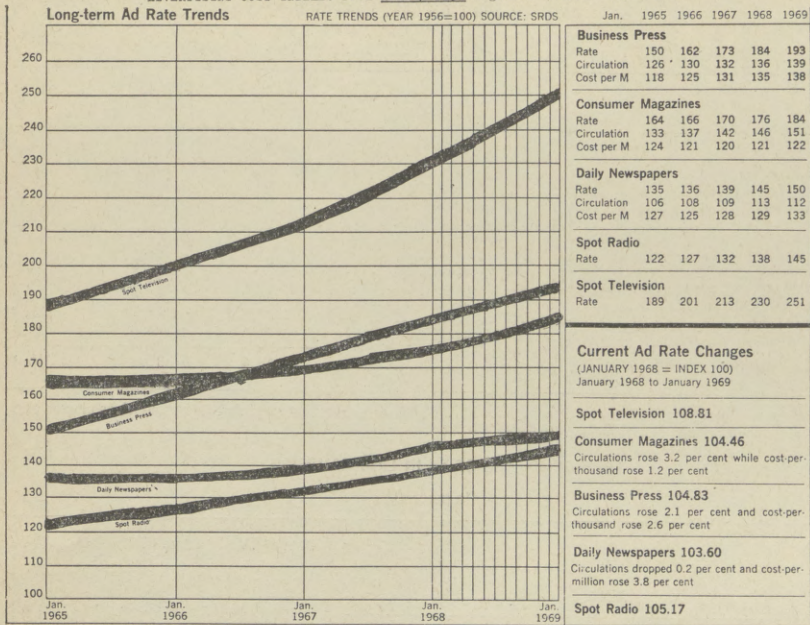
	Heavy ¹ TV	Some ¹ TV	No TV
SENATE			
Senior (11)	54.5	36.4	9.1
Junior (11)	90.9	-----	9.1
State population over 5,000,000 (3)	66.7	-----	33.3
Under 5,000,000 (19)	73.7	21.1	5.3
West (9)	88.9	11.1	-----
Midwest (5)	80.0	20.0	-----
South (5)	60.0	20.0	20.0
East (3)	33.3	33.3	33.3
\$0 to \$100,000 campaign (7)	28.6	42.8	28.6
\$100,001 to \$200,000 (7)	85.7	14.3	-----
\$200,001 or more (8)	100.0	-----	-----
Total (22)	72.7	18.2	9.1
HOUSE			
Senior (52)	19.2	30.8	50.0
Junior (42)	33.3	23.8	42.9
Large metropolitan area ² (17)	5.9	11.8	82.4
Other city (29)	27.6	24.1	48.2
Rural (48)	31.3	35.4	33.3
West (13)	38.5	15.4	46.2
Midwest (28)	25.0	32.1	42.9
South (24)	41.7	37.5	20.8
East (29)	6.9	20.7	72.4
\$0 to \$30,000 campaign (45)	13.3	24.4	62.2
\$30,001 to \$60,000 (32)	34.4	25.0	40.6
\$60,001 or more (13)	53.8	30.8	15.4
Total (94) ³	25.5	27.7	46.8

¹ There are relative terms based on interview responses. A member who indicated, for example, that he spent more than half his campaign funds on paid television time, was classified as a "heavy" user of TV.

² Defined as comprising more than 3 Congressional districts.

³ 4 respondents for whom campaign expense figures were unavailable are not included in the campaign cost section.

APPENDIX C
ADVERTISING COST INDEXES from Media/scope Magazine (March 1969 issue)



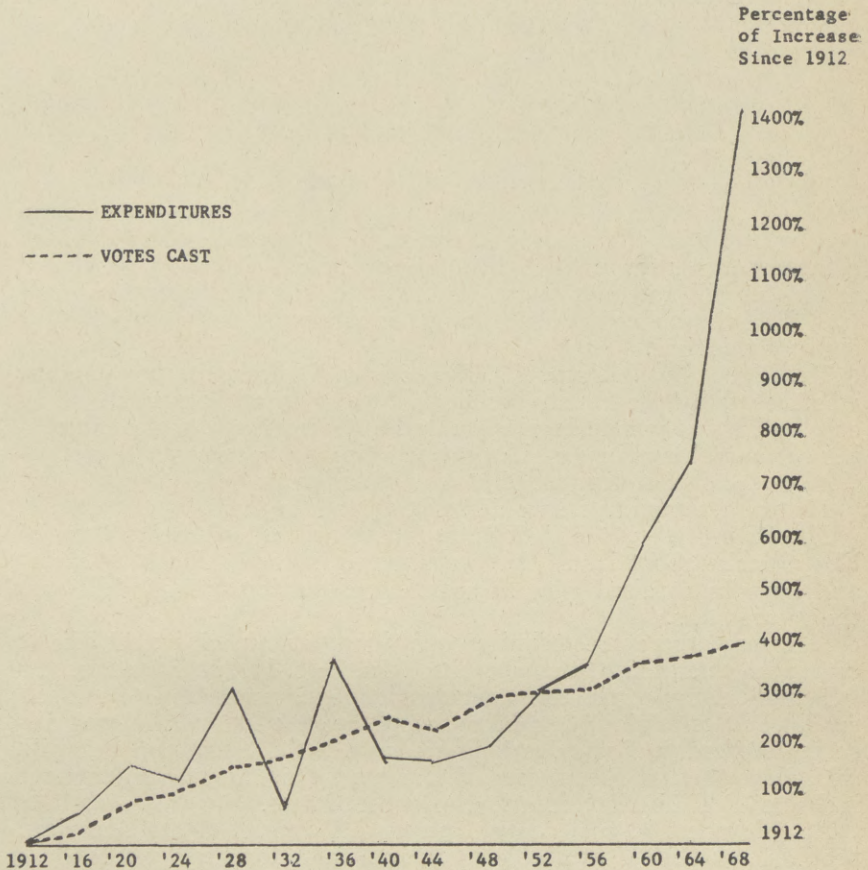
APPENDIX C

APPENDIX D—TABLE 16 FROM THE FCC SURVEY OF POLITICAL BROADCASTING FOR 1968

	U.S. Senator				Governor			
	2 candidates ¹		3 or more candidates ²		2 candidates ³		3 or more candidates ⁴	
	Number of stations	Percent of stations	Number of stations	Percent of stations	Number of stations	Percent of stations	Number of stations	Percent
No free time.....	183	66.3	66	55.5	78	65.5	54	51.9
Some free time (minutes): ⁵	93	33.7	53	44.5	41	34.5	50	48.1
1 to 5.....	10	3.6	5	4.2	10	8.4	6	5.8
6 to 10.....	8	2.9	5	4.2	6	5.0	8	7.7
11 to 15.....	16	5.8	12	10.1	5	4.2	9	8.7
16 to 20.....	3	1.1	7	5.9				
21 to 25.....	2	.7			1	.8	1	1.0
26 to 30.....	38	13.8	14	11.8	13	10.9	21	20.2
Over 30.....	16	5.8	10	8.4	6	5.0	5	4.8
Total.....	276	100.0	119	100.0	119	100.0	104	100.0
Average number of minutes for stations reporting some free time.....	28		27		22		25	
Average number of minutes for all stations.....	10		12		7		12	

¹ States in which there were only 2 candidates numbered 25.² States in which there were 3 or more candidates numbered 7; 1 of the 7 involved 4 candidates and 1 involved 7 candidates.³ States in which there were 2 candidates numbered 12.⁴ States in which there were 3 or more candidates numbered 9; 2 of the 9 involved 4 candidates.⁵ The amount of time for each station is the highest figure reported for any of the candidates; stations are required to offer equal time to all party candidates for the same office.

RATIO OF DIRECT CAMPAIGN EXPENDITURES BY NATIONAL-LEVEL
COMMITTEES TO NUMBER OF VOTES CAST FOR MAJOR PARTY
PRESIDENTIAL CANDIDATES, 1912 - 1968



Mr. MACDONALD. Thank you very much, Mr. Hemenway, for your statement.

You know, I quite agree with you about candidates for Congress participating in the mortgage business. I know many who have, but mostly, they do not mortgage themselves; they mortgage their houses. Therefore, I agree with you that this is a sad state of affairs when somebody who wants to serve the public, who wants to hold public office, has to go to these extremes to accomplish his purpose.

I think you are a little harsh in your belief of how the public feels about politicians. I would be very surprised if more than half the people in the United States thought that politicians were dishonest.

Mr. HEMENWAY. Those are not our figures, Mr. Chairman. The public polls indicate that there is an extreme disillusion.

Mr. MACDONALD. What kind of public polls? Where did you get those figures?

Mr. HEMENWAY. I think all of the major national survey companies have done this kind of survey, asked the American public what they thought of politicians. This is an extremely harsh figure that jumps out of those surveys, whether they are accurate or not, I cannot say, but certainly it is indicative.

Mr. MACDONALD. Well, it is a small point. I will not pursue it. I would be terribly surprised if it were true, the fact that a poll would show that. I would hope the people in my district did not participate, or if they did—

Mr. HEMENWAY. This, I think, is the sad fact, Mr. Chairman, that obviously, most public servants on all levels of government are honest people trying to do a good job. But those few people who have been dishonest affect the public's thinking about politicians in general. I think this bill and reducing costs of campaigns will begin to correct this. I think public confidence in our system is absolutely vital, especially at this time.

Mr. MACDONALD. Right. Mr. Hemenway, I know that you support wholeheartedly the Senate version. I also saw you here in the audience and I was wondering if you had any remarks to make concerning the new things in the bill, or concerning proposals to add production costs and extending the bill to cover primaries.

If you have any ideas, I would be happy to hear them.

Mr. HEMENWAY. Yes, if I may, I have several comments I would like to make about issues that were raised in the hearings yesterday and have been raised generally during discussions of this bill over the past months.

If I may, there are technical questions to which I would like to direct the attention of the committee. In the bill as now written, you will find the use of the term "electronic media" in section (c). While "radio and television" has been the phrase used elsewhere and discussed yesterday, from our long work with the Senate on this bill, we believe that the Senate intention was not that this varied language includes CATV in the limitations on expenditures.

At this point in time, only 5 percent, I believe, of the American people have CATV available in their homes. It is not yet really a meaningful political medium in the same sense that conventional broadcasting is. I think it would add undue complication to this section of this bill, as was brought up yesterday.

As a matter of fact, questions were raised on this yesterday, and I wanted to direct your attention to that change of language which you might want to correct.

Of course, I think in the future, as CATV grows in America, we should be able to meet the problem when more and more people have that available to them.

Another technical point is that there was a question yesterday about what the Senate meant in stipulating in section 3 that—

Consistent with other needs of the community, licensees shall make a reasonable amount of time available to candidates during prime time.

I think we can explain this language again from our work with the Commerce Committee in the Senate. It was inserted when fears

were raised by several members of the Commerce Committee that if the candidates were paying somewhat lower rates under the terms of this bill, if they were also bound by a strict limitation on expenditures, that a broadcaster might no longer be willing to sell—that is, if they were no longer receiving the premium rates, they could attempt to push all the time into the low-audience viewing hours. I think that was the reason that language was inserted.

It reflects the interest of the Senate that the broadcasters public responsibility be consistent with general past practices and the intent of this bill, namely, that the time for major candidates is a public interest matter and should be assured some prime time visibility. It could be dropped from the bill, I think, without injuring the actual impact. We think it does conflict, as noted, with other language in section 315.

Another technical point you might like to note is with regard to section (B) of the bill, the language that information and records as to rates for candidates should be considered confidential. That might also be dropped, I think. What the Senate meant here was that this bill did not expect the broadcasters to divulge all the terms of these commercial contracts, to whom and how much time is sold. Of course, existing law requires public access to the records for political time, as Chairman Burch said yesterday.

Only in the case of serious disputes as to discriminatory treatment of a candidate vis-a-vis either his opponent or the commercial advertiser would the FCC have to get into the question.

It is our strong feeling that the real policing of this limitation and lowest unit charge will come less with the FCC overview than with the opposing candidates and the press. This is a pretty glaring spotlight in which candidates are going to operate. And we think it is going to be an important element in the policing of it.

There are two important printing errors in the bill that came from the Senate. They used the language "President or Vice President," rather than "President and Vice President" in the language limiting expenditures by candidates. Obviously, the two candidates, the President and Vice President run on the same ticket and advertise as such.

I think the language should reflect President and Vice President.

When the limit on spending was changed from 5 cents, which was the original figure discussed, to 7 cents per vote, in reprinting the amendment, the second mention of 5 cents a vote was not changed. That is strictly an error in the text.

Now, with regard to your questions, Mr. Chairman, several points came up yesterday. Congressman Brotzman and Congressman Brown raised several questions that I would like to comment on, if I may.

We think as you do that the primary election in America is not only an integral part, but a very important part of our political process. Sometimes the primary election is even more important than the general election. There are parts of the country still where, if you are elected in the primary, you are practically guaranteed election in the general.

And in the development of this bill, obviously, it was considered that the bill should be extended to cover primary elections. And like many other aspects of the bill—

Mr. MACDONALD. If I could interrupt, Mr. Hemenway, you say it was considered. Do you mean it was considered in the Senate? Because I did not read anything about that.

Mr. HEMENWAY. It was discussed among the 38 Senate sponsors as to whether the primary should be included. Like many other aspects of the bill, that part was dropped during the exchange in the development of that bill.

I think that this legislation is so important and the area it covers is so important that perhaps in the future, primary elections should be covered. As you know, by the time this legislation is signed into law, most of the primaries of 1970 will have been concluded. And with the experience which we have in the 1970 elections with this bill, with the limitations and the reduction of costs, we will gain some valuable practical knowledge. Then in 1971, if necessary, primaries can always be added.

Some people suggest that with reform legislation of this kind, perhaps you start slowly and see how much it should be expanded. So we respectfully suggest that that might be one possibility, to see how this works in the general election of 1970 and consider adding primaries in 1971.

Mr. MACDONALD. This is not a rebuttal, but it is not as practical as you suggest, telling me 38 Senators who want to do it. I see this a problem when and if the bill comes out of hearing. We have to clear it here in the House first. If you look at the elections of yesterday when the returns come in, you see the problems, you can see people who are elected just as of yesterday, having nothing to do with the general election. So I think—and I believe strongly that this bill is in the public interest—that it should not just be in the public interest in places where they have both contested primary and contested general elections, but should be in the public interest of everywhere in the 50 States. I cannot really conceive of a fair bill going through the House that does not have the wholehearted support and interest of many people. And I would think that some of the Congressmen who do not face challenges in the general election, and coming from not just any region—because in the House, it can be within a Democratic State, but a seat is a Republican seat and gerrymandered, in many cases, just for that reason. But are not those people entitled to not let somebody buy a seat?

Mr. HEMENWAY. In a primary?

Mr. MACDONALD. Yes.

Mr. HEMENWAY. Absolutely.

Mr. MACDONALD. Why do you think we should wait? We have waited for a long time for a bill like this. I would think if we get, and I believe we will, get it through this year, this is not a perennial bill like an appropriation bill. We cannot keep coming back to the Congress every 2 years and say, well, this worked and that didn't, so let's change the law. I would think if we are going to do something in the public interest, the time should be now.

Except for those 38 people you mentioned, I do not see any reason why we should not go ahead with it now.

Mr. HEMENWAY. I did not mean really—

Mr. MACDONALD. It does not matter in a practical sense whether this bill will die in the Senate, which many people think it might

if we bring it back. It does not make any difference whether it dies over there as a different bill or whether it dies here as the bill that the Senate sent over. Because, personally, I do not think the bill the Senate sent over is a good bill. It is not clear enough. It needs changing. We cannot just send it over there and say, well, any kind of bill is better than no bill at all.

I, for one, think that is a bad way to legislate. I think anything we are going to tackle, we should tackle head on, and let the chips fall where they may. Let the critics, who are also acting in the public interest, get up and say, "No, this bill does not suit me, because * * *."

I think the people here on the committee who are for the bill can count themselves either in the public interest or not in the public interest. As I tried to say yesterday, this bill is not a Republican bill or a Democratic bill; it is a bill in the public interest.

Mr. HEMENWAY. Absolutely.

Mr. MACDONALD. Therefore, I think, to get honest about it, worrying about the prospects in the other body is a grave error.

Mr. HEMENWAY. I did not mean to suggest that 38 people were opposed to including the primaries. It was a give and take, not only in the Senate, but in the House of Representatives. The original proposal to cover primaries was dropped somewhere along the line.

Mr. MACDONALD. If you would not be disclosing a confidence and do not mind giving their opinions, what was their objection?

Mr. HEMENWAY. There was no objection. I do not mean to suggest that there was objection. The idea was that the bill should be as simple as possible and start with general elections and add primaries at a later date.

Mr. MACDONALD. Is it not just as simple to put in, in the place of the word "general" elections—just add a couple of words "and primary" elections? Did they advance any other reasons?

Mr. HEMENWAY. No. I do not think there were any other objections, that I know of.

Mr. MACDONALD. Do you have any intention of going into your thoughts about production costs?

Mr. HEMENWAY. We examined this very definitely. We came to the decision very quickly that production costs were extremely difficult to monitor and any limitations set on production for television would be almost impossible to police, for this reason. Also, it was suggested to us by many people that this area was perhaps not the responsibility of the Commerce Committee, but perhaps some other congressional committee. The Corrupt Practices Act, as you know, Mr. Chairman, is a bad piece of legislation. It has never worked. It is a highly ambiguous law. As a matter of fact, this committee is going to be making recommendations for the changing of the Corrupt Practices Act.

The case for covering production costs in any limitations on spending, I think, should be reviewed fully when the Corrupt Practices Act is overhauled. But the ways of skirting any limitation on production costs are so simple that I do not think it would be meaningful to try to limit those costs.

For example, if you wanted to pay a film producer \$100,000 to produce a documentary film to use on television, political television, you could pay him a fraction of that amount to remain within the limitations of this bill, and arrange for the rest of his fee to be paid other-

wise. I know of cases myself where companies have retained a producer to make spot announcements for the company, and the producer has also done work for a candidate. The producer's political fee was really paid by the company, perfectly legally. There was absolutely no question of illegality and the candidate paid a very small fee.

It also might force the production people to go into the advertising business, so they could get their fee from the 15-percent advertising fee rather than direct payment under such a limitation.

So I think that—

Mr. MACDONALD. Well, Mr. Hemenway, I would like—perhaps I understand now why there was an undercurrent of reference in your statement about politicians and your belief that 51 percent of the people in the country thought they were dishonest. I happen to believe that most people running for office, if they were given the ground rules and told that is the law, the people I know in Congress, I think, would try very hard to abide by the law, not to disregard it. I quite agree that there are cases that you can point to where the law is evaded. But I do not think that would be the average.

Do you not agree that it is very unfair for somebody who has the money to be able to pay \$100,000 for production spots, never exposes himself to the public, just using spots in which his voice does not even appear? Somebody describing him and what he has done in life, and so forth, has no relevance really to the candidate or the office or correlation between the two, and can snow some guy of modest means under by it.

Mr. HEMENWAY. We do not believe that has any relation to limitation of production costs. You can do that for \$10,000 or for \$100,000. What is critical is the number of times the film is aired.

Mr. MACDONALD. I would think when you do it for \$100,000, you get a little better product. It is like buying a Volkswagen or a Cadillac. I would think that the Cadillac buyer gets a little better service than does a Volkswagen buyer.

Mr. HEMENWAY. The price of production is not necessarily related to the quality of what is produced. But I think that trying to find the language to include production costs would be extremely difficult.

Mr. MACDONALD. I agree.

Mr. HEMENWAY. Perhaps you can do this. But policing that, we think in our examination of it, would be almost impossible.

Mr. MACDONALD. I agree that the policing would be very difficult. If every candidate for every Federal office in the United States wanted to evade the law, it could be done, even on production costs. There would be absolutely no way that enough people could police it. But I think that once you set out what the law is, the average candidate for office will abide by the law. If he does not, he should not be seated here in the Congress.

Mr. HEMENWAY. With all due respect, Mr. Chairman, it is not a question of candidates violating the law. We are not talking about that. I think you are correct on that. But they can circumvent the law legally. They can very easily circumvent any language you write in this law.

Mr. MACDONALD. I do not think every candidate would have somebody high up in a corporation or a company that would circumvent the

laws. That would be possible, certainly, but I do not think the average Congressman would have some corporation that could afford to waste that amount of money. It is a possibility, sure, but I do not think it is a probability.

Mr. HEMENWAY. It is a brand-new bill, if you are talking about that, and you cannot ask the FCC to police that.

Mr. MACDONALD. You and I agree that it would be very difficult to police. But the idea is that it would be on the books and might be spot-checked. Do you not think that would be a deterrent?

Mr. HEMENWAY. Just being on the books for most people would be a deterrent, I think you are right about that. Because I do not think most people want to violate the law.

Mr. MACDONALD. And you will agree that it is a very good thing to have? I am not going to press you.

Mr. HEMENWAY. I just do not know. I want to answer you as honestly as possible. We just do not know the answer. We have certainly examined this very carefully and come to the conclusions which I have expressed.

The full intent of the Senate, when the bill was considered and passed there, is that the authorized campaign agent would be responsible for all purchases of time. This question came up yesterday. We think it is probably a fairly simple solution to enforcement. If every candidate were to appoint one individual who was responsible for authorizing all of his broadcasting time, the station would know that that individual was the person to see, to check on whether time that was ordered for the candidate was authorized or not.

Mr. MACDONALD. Frankly, Mr. Hemenway, I would think that we would go a step further and just have the candidate sign for the time.

Mr. HEMENWAY. The candidate?

Mr. MACDONALD. Yes.

Mr. HEMENWAY. Or an authorized agent.

Mr. MACDONALD. Maybe a presidential candidate gets too busy, but no Congressman or no Senator gets that busy that he cannot sign an authorization.

Mr. HEMENWAY. We did not think it was necessary to legislate whether it should be a candidate or how this agent should be designated. Certainly, the idea was developed in the legislative history of this bill. Each campaign is different, and is organized differently. Everybody seems to have come to the same conclusion as to how this could be done. I think it would be fairly simple.

Mr. Brown yesterday questioned about an advertisement that does not mention a specific candidate or a candidate's name or campaign. This question has been raised before, and everyone seems to agree that this problem is very clearly covered by the fairness doctrine.

Mr. MACDONALD. Now, I think Mr. Brown's point, which I think Mr. Burch missed, too, was that just the day before the election, if some group appeals to some unfair prejudice in the voters' minds, without naming any candidate, but which obviously would affect the election—I think it is perfectly clear that that is a risk, because, as I have said several times yesterday, the day after election, it does not do any good to protest.

Mr. HEMENWAY. That is right.

Mr. MACDONALD. But I would think, and I would like your opinion about this—does this not come back to the responsibility of the station management who lives in the community and knows this is an appeal to prejudice; and the station itself knows this is not a fair practice, and says to itself, we are going to get in trouble with the FCC; therefore, we cannot take this ad?

Mr. HEMENWAY. Absolutely correct. That is what I was just about to say. Most stations would not accept that kind of ad, anyway. We think this would certainly be true in the future. They would take enormous risks by doing this. It is certainly not in the public interest to make that kind of broadcast.

But I think that under the practice of this bill, after some experience, you would find that no station would sell political time except that which was authorized by the candidate.

Someone else mentioned yesterday slates and how that might be covered by the limitation. That question came up in the past. It was suggested that if slates were advertised, the cost would be apportioned among those Federal candidates that were mentioned on the slate. If there were four candidates mentioned, it would be divided one-fourth each and applied to their total under the limitation. It seems to me to be a logical approach to that.

The question was raised also as to why we begin this with the congressional and presidential candidates when the hottest races might be local races. You discussed that very intelligently yesterday. And you have to start some place, as you said. It is not within the purview of Congress, really, to regulate State and local elections. I think, as has been suggested during the legislative history on the other side of the Congress, and here in discussions with you, that States should also take the responsibility for considering this question and passing similar legislation governing State-wide races.

There has been an awful lot of hue and cry about section 315. I know that Mr. Stanton, who comes down here tomorrow, has devoted much of his life to trying to get 315 suspended. We know that in the Congress, there is no constituency. I know of no member of the House or Senate who thinks that section 315 should be suspended for congressional candidates. They passed that law, because there have been tremendous abuses by individual broadcasters, as a protection to themselves. They need that protection. I know that the networks are delighted that this bill does call for a suspension of 315.

Mr. MACDONALD. We had better get back on the track, because it does not call for suspension. It calls for a cutting out of 315.

Mr. HEMENWAY. That is right, revocation.

Mr. MACDONALD. That is one of the questions I have in my mind. I think the bill might be improved by suspending it rather than repealing it. I was going to ask you later what you thought about suspension as against repealing it outright for President or Vice President.

Mr. HEMENWAY. We think the public has the right to see presidential campaigns covered a lot more extensively than they have been in recent years. We think that the debates of 1960 added more to the political process than any other single element of this campaign. I think it is extremely important that we try to get debate formats, although this bill does not require debate format.

The stations and the networks are certainly on record that they are going to treat fairly and equitably, if not equally, with all candidates.

Mr. MACDONALD. When you get right down to the nitty-gritty of trying to get this bill through, as I saw in the paper this morning, Governor Wallace won reelection. I do not know what that really means, but there is obviously the probability that he might run again for President. I read in the press that he is thinking of running again. How do you think that he would feel if the network said. This is, as Roosevelt would say, a very iffy thing. But if he runs and if 315 is repealed, how do you feel that Mr. Wallace and his supporters would react if under the repeal of 315, he was denied network time?

Mr. HEMENWAY. Well, if Governor Wallace runs in 1972 with the same base of support as he had in 1968, he is obviously a major candidate for the Presidency and would have to be treated as a major candidate.

Mr. MACDONALD. But then you get down to the thing that I objected to yesterday, when Mr. Burch said that the station is the judge of what is the most important race in its area, which gives them tremendous clout, as they say in the cloakroom. Who is going to decide who is a major candidate?

Mr. HEMENWAY. This is why 315 was written. I certainly agree with you.

Mr. MACDONALD. But you seem to be advocating the repeal of it and that is what I said earlier I have grave doubt in my mind about, whether it is very wise. To suspend it yes, maybe, and perhaps rightly so, suspend it. But repeal it—you would never get it back again.

Mr. HEMENWAY. Let us see if we understand each other, Mr. Chairman. The Presidential race cannot be equated with any other contest.

Mr. MACDONALD. I agree. That is what I am talking about.

Mr. HEMENWAY. Two, we are talking only about networks here, because that is what is under consideration, not individual stations. If you are talking about reasonable, responsible broadcasters, they are clearly on record that they are going to treat equitably with candidates. If they do not have to treat with all the splinter candidates, I think they can give more time.

Mr. MACDONALD. But my question goes back to who is going to decide who is a major candidate? All three networks could get together and say, we do not think Wallace is a national candidate, he is a sectional candidate. Would you abdicate that judgment to the networks?

Mr. HEMENWAY. I think there is no question that they would take such a risk. If in 1968, CBS had said Wallace was not a major candidate, there would have been such a hue and cry that they would have to go back on that judgment. That would be impossible. I do not think abuses on the presidential level, Mr. Chairman, are a great risk that we are taking.

Mr. MACDONALD. Then you disagree with Agnew completely?

Mr. HEMENWAY. I do disagree with Vice President Agnew completely, yes, on this subject and most others.

But I do not think that there is a serious risk on the presidential level. If you are talking about suspending 315 on any other level, we certainly would not advocate it under any circumstances. But allowing a decision by the networks on who is a major candidate and who

is a minor candidate, I think their decision will coincide pretty much with the public's.

Mr. Burch yesterday suggested that newspapers or another medium might get the benefit of reduced television and radio time, because people would advertise, if they were going to take time on television, they might buy ads in newspapers and magazines to advertise the fact that they are going to be on television. We think this would be a very healthy thing. Certainly, no candidate in his right mind is going to allocate any resources to advertise a spot. But in our proposal, as you remember, we developed this with you and discussed this with you, we are trying to encourage the buying of program length of time. If he did want to advertise that he is going to be on the air, we think this would be a very healthy development in the campaign process and would not think that was a step backward at all.

So questions have been raised about the FCC's ability to administer this bill. Mr. Brozman raised this, among other things, yesterday. It seems quite extraordinary to us that these questions would be raised, unless somebody is just looking for ways to damage the bill. This is a computer age. We have systems of data processing available to us. The Government has systems available to it that far exceed anything that was available a decade ago.

FCC is certainly capable of handling this. From the discussions we have had with people on the technical problems of administering this, no one envisages any serious difficulty. It might require an expansion of FCC activities, additional funds, additional staff. But in an area as important as this—after all, nothing is more important than our electoral process and making it work properly. We think that if this were necessary, it would certainly be well worth it.

Those were major points I wanted to make, Mr. Chairman.

Mr. MACDONALD. Thank you, Mr. Hemenway. I have just one last question. I am somewhat unclear about your views as to why CATV should not come under regulation. Was it because you felt that the percentage of homes it reached was not significant enough in numbers to bother with?

Mr. HEMENWAY. At this time, CATV does not go into enough American homes. I think that eventually, CATV should be included.

Mr. MACDONALD. But, on the other hand, is it not true that CATV in many districts—to use my own as a concrete example—we have systems in operation or planned throughout most of my congressional district. I can go on CATV and saturate it, whereas if I go into Boston, I might get the whole State, which obviously I do not need, which Mr. Nickerson illustrated with Nassau County and New York City. You are talking about reaching the 10 percent of people who can vote for you. Therefore, I think CATV when and if developed more and more, would pose a real problem in this area, because they go directly into one district.

Mr. HEMENWAY. Well, CATV—

Mr. MACDONALD. If we are passing a bill, why not put them in just in case?

Mr. HEMENWAY. There is no question that they have a very important political contribution to make, because they literally can make broadcasting coincide directly with the political subdivision. The

problem with developing legislation of this kind, as you know having worked so hard in its development, is the fact that political constituencies do not coincide with broadcasting constituencies. It makes this a very complicated area. So I think in the future, CATV will have very important political impact. Right now, very few people, with the exception of some of the very small regions in the country, are covered by CATV, about 5 percent of American homes. Eventually, I think they should be included.

Mr. MACDONALD. But you do not think they should be included now?

Mr. HEMENWAY. Well, that has been my attitude, Mr. Chairman. Obviously, we have had some disagreement on this. We have tried to develop a bill which was going to be a first step. When you have been unable to move any reform legislation in so long a time and the problem has just magnified with every single election, grown and been compounded, we feel very strongly that if you have a bill that meets a consensus and you can make the first step in this area, it is a terribly important thing to pass it. So some of these things like CATV and other areas have been left out of the bill when they become complicated. I think that is the truth.

Mr. MACDONALD. Thank you very much, Mr. Hemenway. I want to compliment you again on being a catalyst in many ways for this. Many people have been bothered by the problem, but you did something about it.

Mr. HEMENWAY. We have certainly enjoyed working with you over this time. If it had not been for your support, it would not have happened, either.

Mr. MACDONALD. Thank you very kindly.

The next witness is Mr. Clive DuVal, of McLean, Va.

STATEMENT OF CLIVE L. DUVAL II, MEMBER, HOUSE OF DELEGATES, STATE OF VIRGINIA

Mr. DUVAL. Mr. Chairman, my name is Clive DuVal. I am a member of the Virginia House of Delegates from Fairfax County, Falls Church, and Fairfax city; and at the present time I am a candidate for the United States Senate Democratic nomination.

I am very pleased to have the opportunity to appear before this committee to testify in support of legislation, S. 3637, to amend section 315 of the Communications Act of 1934 with respect to charges.

The legislation you are now studying has been of interest to me for several years now. In 1966, when I ran for U.S. Congress in the 10th Congressional District, I supported Federal legislation which would have provided free or low-cost access to broadcast time for political candidates. And before and since 1966, I have stated publicly that we need to reduce campaign costs, and lowering media costs would be one avenue to accomplish that objective.

Based on my own experience in running for elective office in Virginia, the rise in campaign financing costs has been due to such factors as inflation, population growth, a rise in voter interest with respect to issues, new electronic campaign techniques, and the competitiveness between political parties.

The size of our population and the complexity of the issues we are now confronted with require the use of television to a much greater extent than in the past. It should, however, be made available on a much more reasonable cost basis.

In Virginia, where traditionally campaign costs were quite low in comparison to other States, and are still below many, the cost of running for office is now prohibitively high. One example is: Last year in Virginia a Democratic gubernatorial candidate in the primary spent approximately \$250,000 for television time in an unsuccessful bid for the primary nomination.

I might say that in our primary for Governor last summer, which is our closest statewide race you can look at in terms of immediate cost, over \$1 million was spent all told by three gubernatorial Democratic candidates for all campaign costs. Of course, a large proportion of that was for media expenses.

The Senate's recent passage of the legislation to repeal and amend section 315 of the Communications Act of 1934 was a very positive step forward in reducing the costs of television broadcast time for a political candidate.

I urge this committee to consider favorably the legislation passed by the Senate.

Secondly, I urge the committee to consider including language in S. 3637 with respect to primary candidates. As I read and understand the Senate version, it does not specify that legally qualified primary candidates will have the same rights and privileges as other candidates. I believe primary candidates should be included in the law.

Our experience has been that, in many cases, our primary races are more costly than the general. I certainly agree with the chairman in believing that the primary elections should be covered by this legislation.

Thirdly, I ask the members of this committee to consider legislation which would require FCC licensees to grant free broadcast time to legally qualified political candidates both in the primary and general election.

In the final analysis, it is the public interest which will be served by passage of this legislation. Passage means millions of Americans will be able to understand better who the candidates for elective office are and what their views and opinions are on important issues. Many voters will be reached who would not have had an opportunity to see or hear the candidates before election day.

Successful passage of the legislation now before this committee will improve the opportunities for political candidates to communicate effectively with the people. The critical issues now facing the Nation warrant that we seek new and better ways for the American people to participate in the political process.

Passage of a bill to lower media costs and encourage greater use of broadcast time will be a progressive step in this direction.

Mr. MACDONALD. Thank you very much, Mr. DuVal.

Mr. DUVAL. I appreciate it, sir.

Mr. MACDONALD. The next witness is Mr. Richard Kay, American Independent Party.

**STATEMENT OF RICHARD KAY, AMERICAN INDEPENDENT
PARTY, CLEVELAND, OHIO**

Mr. KAY. I want to thank the committee for this opportunity to appear here this morning. I would like to make a couple of comments before I go into my prepared statement.

I was very impressed by Mr. Hemenway's discussion here relative to costs. I also would like to draw to the committee's attention that I certainly would speak very much in favor of having this bill include primary contests. I think we had a perfect example in the State of Ohio in the recent primary election, whereby in the Democratic primary, according to all reports in the newspapers, the Democratic nominee for the U.S. Senate spent well over half a million dollars on radio and TV time, and defeated one of our Nation's heroes, John Glenn, in the primary.

In the Republican primary, Robert Taft, who is a multimillionaire, spent close to \$200,000 in radio and TV, and edged out the Governor, who had all of the Republican organizations' support in the State.

But again, it was in a primary election where the two nominees who were nominated, both were nominated as a result of spending fantastic amounts of money on radio and TV time, so that now we have a contest in Ohio between two multimillionaires and myself. I certainly feel that this should include primary elections, because even in the State of Ohio, it has gone between the Democratic and Republican Parties and we hope now the American Independent Party, the election is decided in the primary perhaps and not in the election. I hope this bill will be passed so it will be effective in this fall's election.

I appear before you to ask for certain changes and additions in the Senate bill 3637, as it was sent to you for consideration. There are many provisions that I feel have merit, such as the sections limiting the amount that can be spent by candidates for President, Vice President, Senator, and U.S. Representative, for radio and TV time.

As a candidate running under the label of a third party, the American Independent Party, for U.S. Senate, I have found that there are certain aspects of this bill and the situation as it is affecting third party candidates that deserves your attention.

During the recent primary election in Ohio that was held May 5, I found the following conduct on the part of radio and TV stations in Ohio:

One, they uniformly violated their obligation to the public in that they did (a) jointly appeared to conspire by showing unreasonable preference and advantage to the candidates running in the Republican and Democratic primaries for Governor and U.S. Senator.

One, they did this in their regular newscasts, news interviews, and in on-the-spot coverage of State news events.

(b) They jointly appeared to conspire by showing unreasonable prejudice to candidates for Governor and U.S. Senator running on the American Independent ticket.

During the primary campaign on newscasts, and so forth, the candidates running for Senator and Governor on the American Independent ticket were ignored and rarely ever mentioned. One of the

candidates running for Governor on the American Independent ticket issued regular press releases and found almost none being used by radio and TV stations. It was almost like—if we ignore them, they will go away.

I personally did not issue too many press releases, but the results were as unanimous. The American Independent Party, as an organization, received little coverage from the radio and TV stations when they did issue a press release.

Specifically, one, I announced my candidacy and filed my petitions as a candidate for U.S. Senator on February 4. It was covered by one radio station, as I recall. And no radio-TV station gave any advance announcements on the regular newscasts.

Two, I had my kickoff dinner for my primary campaign with over 100 people attending. I sent out an advance news release—followed it up with a second one—the fact of my kickoff dinner—to my knowledge—was not mentioned on any TV station before or after it took place. And it was not covered by any TV or radio station. It was after this second snub that I filed my first complaint with the FCC.

During the campaign I visited several large cities out of Cleveland and on these occasions I did receive fair coverage from local TV and radio stations in Toledo, Cincinnati, and Dayton. In Columbus, the State capital, on two visits the coverage was very poor.

During the campaign I believe I issued only a total of about three additional press releases that received no coverage on radio or TV. The American Independent Party is one of the three legally recognized political parties in Ohio, and as an official political party in Ohio, has also been ignored by radio and TV. We had a contest for Governor in the primary and the State executive committee met and endorsed one candidate and issued a press release, and this was not covered by any radio or TV station to our knowledge in Ohio. And the second release when the entire State central committee endorsed him was also ignored. On May 19th, the new State central committee that was elected on May 5th elected State officers—a chairman, and so forth, and this was released to the mass news media and again radio and TV stations ignored it.

The biggest violation of the TV and radio stations duty to the public took place on election night. On local radio stations in Cleveland, we did not hear any results for the American Independent Party. WKYC-TV Cleveland is affiliated with NBC and was election central for NBC election night. They broadcast many hours and to my knowledge not once did they mention the American Independent Party or the results in any of our races.

WJW-TV in Cleveland broadcast most of the evening and except for one time when they permitted our nominee for Governor to make a short statement in Columbus after his race was decided, we did not hear the American Independent Party mentioned nor were the results given as in the other races. My race or my name as a candidate was never mentioned. Then to add insult to injury, I had been invited down to make a statement early in the week by the program director, and yet when I showed up about 11 p.m., I was informed they did not have time for me.

After the primary was over within all regular newscasts and special programs when talking about the Governor race in the fall and the

race for U.S. Senator, they were very consistent in that the Republican and Democratic nominees were mentioned but never the nominees of the American Independent Party.

My second great complaint that I made with the FCC was based on the fact that the two Republican candidates for Senator received widespread free use of TV and radio facilities and the FCC has upheld their right to refuse. They have ruled that the words in section 315 "public office" in a primary election refers to the nominee and therefore free time can be offered to only the Republicans and not to Democratic or American Independents who are in fact candidates for the same public office. If you carry this ruling to a logical conclusion, the TV stations and radio stations in Ohio could give widespread free time to, say, all Republican candidates for all offices during a primary; during the general election they could give no free time to any candidate from any party, I feel that the exposure that the Republican candidates received in the primary election would, to a large extent, carry over to the general election the damage of the Democratic and American Independent candidates.

Some court cases have held that if the FCC makes a ruling and Congress does not object, then it means that Congress concurs in that ruling. I feel that in this case you should do something about it, and make sure this ruling is overturned. I therefore recommend that you do the following to S. 3637:

One, that the exceptions set forth under subsection (a) of section 315 either be removed or that further explanation be made so that radio and TV stations on regular newscasts, news interviews, and so forth, do not show obvious prejudice by not giving fair and equal coverage to certain candidates or political parties as they see fit. I feel that by setting up these exceptions, you have given a license by inference, if not in fact, to TV and radio stations with regard to political parties and candidates, to give such coverage as they want.

Two, I feel that further explanation should be given as to what Congress means by the words public office so that the FCC cannot continue to follow a policy that makes possible what happened in Ohio in the recent primary election. I have read many definitions on public office, and the FCC has found a definition that has no basis in law, but since Congress has not taken issue with it, they continue to use it as a guide.

I have two more comments to make, if you will bear with me. I feel that 315 as it is set up now gives a candidate no adequate relief. For example, when I was turned down for equal time when the Taft-Rhodes debate received perhaps—and I am only guessing, through actual use in the media in Ohio, maybe \$100,000, plus front-page coverage of their debate, which perhaps you could not purchase for another \$100,000—when I was turned down by the TV station, I filed an action in the Federal district court of Cincinnati, of which I have excerpts here. They said you must exhaust your administrative procedures before you come into court. I showed them where the FCC had already ruled that I was not entitled to that in previous cases. They said it did not make any difference, even though I would be doing a vain thing.

Now, under the FCC rulings, they get 90 days to come out with a decision. It is quite obvious that if you wait 90 days, you are through.

Even though I still have these complaints against FCC and if they still rule against me, I will take it to the court of appeals.

But I do feel you could set something up in this bill which would make rulings on such an obvious violation of the intent of the act get almost immediate attention and not have to wait until 90 days or more until the FCC, going through their cumbersome process, can rule on it.

I also think this thing you have brought up needs definite attention. That is that when I asked to appear before this committee, I was a real minority party candidate, and I think after yesterday, our stock in the State of Ohio might have gone up just a little bit. But I think it would be pretty silly for a man to put his hand up and say, "I am going to run for President," and be afforded time. But I do think it is the duty of Congress to set some kind of criteria up to determine who is a major candidate or not.

I think when a person has one vote, he is not a major candidate.

Mr. Hemenway said he felt when somebody got as many votes as Mr. Wallace got last time, he would be considered a major candidate.

But who is going to make these determinations? Is it going to be the TV or radio stations, or should something be put in this bill?

I think this deserves very definite consideration by this committee.

May I say, gentlemen, that as you look at me and hear me, that except for the fact that I am a member of a third party—you could very well say—there go I except for the will of God—because you could find yourself in a situation where the radio and TV stations could do the same thing to you and your party as they did to me, our candidate for Governor and the American Independent Party in the State of Ohio.

Mr. MACDONALD. Thank you very much, Mr. Kay. I was interested very much in your remarks about Congressman Taft running against Governor Rhodes. You indicated that Congressman Taft spent \$200,000 in the election.

Mr. KAY. I think I said at least \$100,000 to \$200,000 in radio and TV time.

Mr. MACDONALD. How much did Mr. Rhodes spend?

Mr. KAY. He depended mostly on organization support in Ohio, under which he got a lot of literature out, mailings, and so forth. He got an endorsement. They always carried Mr. Rhodes the top vote-getting in the State of Ohio, and he showed this over a period of years. I doubt very much and I am guessing, but I am pretty well tuned in on this, I doubt that he spent very much more than \$5,000 in TV and radio time.

But in the Democratic election, the other, a fantastic amount of money was spent. As I say, the estimates in the newspapers have been that it was close to a half million dollars.

As I say, I am faced with this in the fall. It is only going to be that the people in Ohio are going to have a U.S. Senator who has money.

Mr. MACDONALD. Were you opposed?

Mr. KAY. Yes, by a write-in candidate. It was negligent, but I was. We had a very hot contest on it. I was middle of the road, and there was a very hot contest.

Mr. MACDONALD. How many votes did your opposition get?

Mr. KAY. You mean against me? It was a write-in candidate. He got 26 votes. But he was a legal candidate in the State of Ohio. I think they have a section in the State law of Ohio that they are going to amend—I don't know why they passed it in the first place—that under our State law, if a person files a statement with the State of Ohio 20 days before the election and says, "I am a bona fide candidate," under State law, he is a bona fide candidate, which I think is going to get a lot of complications under this equal time provision, if people want to go hog wild on it.

Mr. MACDONALD. How many votes did you get?

Mr. KAY. A little under 5,000.

Mr. MACDONALD. Out of a total of how many votes cast?

Mr. KAY. I think there were a million votes cast.

Mr. MACDONALD. Do you really blame the TV, radio, and so on, for difficulties concerning your contest?

Mr. KAY. Yes, I think they were responsible for it. Governor Wallace in 1968 got 467,000 votes in the State of Ohio. I think the results of a complete blackout basically by the news media in the State of Ohio is what resulted. You see a person in the State of Ohio in a primary election, people for years have gone into the booth and said, "Give me a Republican ballot"; "Give me a Democratic ballot." In order to vote for our party, they had to ask for a ballot for the American Independent Party. Ninety-nine percent of the people in the State did not know they could do this because of the news blackout in our State. Instead of telling people, "You can go in and pick up this ballot, and so forth," except for some very small things that appeared in some of the newspapers, there was a complete blackout, and this is responsible for it.

Mr. MACDONALD. I think one of the more serious things that you raised, and I would like to go into it with you a little bit, is your report of the decision that the FCC made which I did not really follow. You say that the FCC ruled that the words in section 315, "public office," in a primary election refers to the nominee and that therefore free time can be offered to only the Republicans.

Mr. KAY. That is correct, your honor.

Mr. MACDONALD. I would think that Democratic nominees are nominees.

Mr. KAY. Well, I have in front of me here, Your Honor, the Federal Register, volume 316, Federal Communications Commission, on which they have a question and answer thing. On page 6669, the question is asked, "If the station makes time available to candidates seeking the nomination of one party for a particular office, does section 315 require that it make equal time available to the candidates seeking the nomination of other parties for the same offices?"

"No, the Commission has held that while both primary elections or nominating conventions and general elections are comprehended within the terms of section 315, the primary elections or conventions held by one party are to be considered separately from the primary elections or conventions of other parties and, therefore, insofar as section 315 is concerned, 'equal opportunities' need only be afforded legally qualified candidates for nomination for the same office at the same party's primary or nominating convention. The station's actions in this regard, however, would be governed by the public interest standards encompassed within the 'fairness doctrine.'"

Mr. MACDONALD. Well, are you telling us that the FCC ruled that only the Republican Party could be given free time?

Mr. KAY. That is correct, your honor.

Mr. MACDONALD. I am not "your honor."

Mr. KAY. Excuse me.

Mr. MACDONALD. And the Democratic Party could not get free time?

Mr. KAY. That is correct. In a primary election.

Mr. MACDONALD. Do they put this in writing any place?

Mr. KAY. Yes, there are four or five decisions here that I have, as a matter of fact, a member of the State—

Mr. MACDONALD. Do they have anything in writing that states just what you have told us?

Mr. KAY. Let's see. I think I have one in which a member of your committee was involved. There was one in which Congressman Devine was involved and I picked it up here. It was a decision that a candidate for the Democratic nomination for Congress is not entitled under section 315 of the act to equal opportunities with the candidate for the Republican nomination. The fact that the latter candidate is unopposed for renomination does not change this rule.

Mr. MACDONALD. What is that last sentence again?

Mr. KAY. The fact that the latter candidate is unopposed for the renomination does not change this rule.

Mr. MACDONALD. Was the situation that Congressman Devine had a primary contest and the Democratic nominee had nobody opposing him? Is that the factual situation?

Mr. KAY. If I recall correctly, Congressman Devine had no—let's see, to make sure here.

Mr. MACDONALD. That is a fairly serious accusation.

Mr. KAY. I think it is very definitely. It is not a serious accusation; it is their ruling. That is that:

Candidates for nomination for an office of any given party are entitled to use broadcast facilities within the cited section of the act equal to those which have been afforded to other candidates for the same office in the same party's primary. They are not entitled to such use with respect to candidates seeking nomination for the same office in the primary election of other parties.

Mr. MACDONALD. Could I ask you to do this: Would you offer that to be printed in the record at this point?

Mr. KAY. Yes.

Mr. MACDONALD. Without objection, it is so ordered, if you do not mind it's going into the record. I will just take a look at it.

Mr. KAY. I will be glad to.

(The material referred to follows:)

ROBERT J. DIEHL, COLUMBUS, OHIO

Public Notice 87560

[§ 10:315] *Requirement of equal opportunities.*

"A Candidate for the Democratic nomination for Congress is not entitled, under Section 315 of the Act, to equal opportunities with a candidate for the Republican nomination. The fact that the latter candidate is unopposed for renomination does not change this ruling."

The Commission en banc, by Chairman Ford and Commissioners Hyde, Bartley, Lee, Craven and Cross, on April 20, 1960 addressed the following letter to Robert J. Diel, a candidate for the Democratic nomination for Congress:

"This is with reference to your complaint filed with the Commission on March 30, 1960, relating to the refusal of Stations WBNS and WBNS-TV, Columbus, Ohio, to grant your request for 'equal time' under Section 315 of the Communications Act of 1934, as amended.

"In substance, you allege that on March 13, 1960, the above stations presented a program entitled 'Columbus Town Meeting of the Air' on which there was discussed the subject of Federal Aid to Education; that Congressman Samuel J. Devine, a candidate for reelection to Congress, and the 'unopposed candidate' in the Republican primary election to be held May 3, 1960, appeared as a member of the panel; that the other members of the panel were Dr. John Miles, Education Department, U.S. Chamber of Commerce, Washington, D.C.; Mr. Thomas O'Keefe, Ohio Education Association, Columbus, Ohio; and Dr. H. Gordon Hullfish, Department of Education, Ohio State University. You further allege that you are a legally qualified candidate for nomination for Congress in the Democratic primary with two candidates competing with you for the nomination for Congress in the Democratic primary; that the appearance of Congressman Devine was not incidental to the presentation of the news interview (panel discussion), but rather for the purpose of advancing his candidacy; and that the program was not a bona fide news interview as outlined in Section 315(a) of the Act. You contend, in effect, that Section 315 is applicable in the instant situation because Congressman Devine is unopposed in the primary and, therefore, is not seeking the nomination.

"The Commission is of the view that since you are a candidate for the nomination for Congress in the Democratic primary and Congressman Devine is a candidate for the nomination for Congress in the Republican primary, it does not have before it a situation involving 'opposing candidates' for the same office in the same party's primary. In this connection, it should be noted that while primary and general elections are comprehended within the terms of Section 315 of the Act, the Commission has consistently held that the primary elections held by one political party must be considered separately from the primary elections held by other political parties. Thus, candidates for nomination for an office of any given party are entitled to use broadcast facilities within the cited section of the Act equal to those which have been afforded to other candidates for the same office in the same party's primary. They are not entitled to such use with respect to candidates seeking nomination for the same office in the primary elections of other parties. In the opinion of the Commission, there is nothing in the recent amendment to Section 315(a) of the Act which changed the Commission's interpretation of Section 315 in the instant situation.

"In view of the foregoing, the Commission concludes that further action on your complaint is not warranted."

Mr. KAY. As I say, I have been down here to the FCC and talked to them. They look upon the nomination, for example, in the Republican primary for U.S. Senator, they look upon the nomination as the public office referred to in 315. And if they give any time to the candidate for the U.S. Senate in the Republican primary, they must give it to all Republican candidates in the Republican primary. But they need not give it to a Democratic candidate nor need they give it to an American Independent candidate in the primary.

As I said in my prepared statement, if you can project this, the radio and TV stations in the State of Ohio could give free time to every Republican running for every office in the State of Ohio during primary elections, could give them a million dollars' worth of free time. After the primary is over, they could cut off and not give anybody any free time. The American Independent candidate and Democratic candidates would then have to buy all their time. And it is quite obvious that the Republican nominees would have had so much public exposure during the primaries, this carries over to the national election.

There are cases that have held that any ruling that the FCC makes relative to interpreting the law is taken as valid unless Congress speaks out. I think this is serious, too. I think it is very serious.

Mr. MACDONALD. Do you have any other material with you that would bear on this subject? If you have, I wish you would offer it for the record at this point. I would like to take a look at it.

Mr. KAY. Here's another one that I can offer. It has to do with another commission ruling in the Carbondale Broadcasting Co. in Carbondale, Pa., in which they also stated that primary elections held by one party must be considered separately from primary elections held by other parties for purposes of section 315 of the act.

Mr. MACDONALD. Without objection, that will be included in the record at this point.

Mr. KAY. Thank you.

(The material referred to follows:)

CARBONDALE B/CASTING CO. (WCDL), CARBONDALE, PA.

"[§ 10:315] *Requirement of equal facilities for political candidates.*

"Whether a station is required to make free time available to the "opposition" to the present city administration for the purpose of opposing the mayor of the city for reelection on the ground that the station had aired a weekly program entitled "The Mayor Reports to the People" depends on whether the mayor was a legally qualified candidate during any portion of the time he used the station's facilities. Primary elections held by one party must be considered separately from primary elections held by other parties for purposes of Section 315 of the Act."

The Commission on April 3, 1953 addressed the following letter to Carbondale Broadcasting Co., Carbondale, Pa.

GENTLEMEN: This will acknowledge receipt of your letter of March 14, 1953, asking whether you are obliged to make free time available to the "opposition" to the present city administration for the purpose of opposing the Mayor of your city for re-election on the ground that the station aired a weekly program entitled "The Mayor Reports to the People".

The problem described in your letter concerns the applicability of Section 315 of the Communications Act of 1934, as amended, and §3.190(a) of the Rules relating to broadcasts by candidates for public office. Section 315 of the Act provides that:

"If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station, and the Commission shall make rules and regulations to carry this provision into effect: provided, that such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is hereby imposed upon any licensee to allow the use of its station by any such candidate."

Section 3.190(a) of the Commission's Rules defines the term "legally qualified candidate" as follows:

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

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

(2) Is eligible under the applicable law to be voted for by sticker, by writing in his name on the ballot, or other method, and (i) has been duly nominated by a political party which is commonly known and regarded as such, or (ii) makes a substantial showing that he is a bona fide candidate for nomination or office, as the case may be."

In our recent Hanford, California ruling, the Commission held that broadcasts in the form of Washington reports by a candidate for public office constitute a use of broadcast facility after a speaker had become a "legally qualified candidate."

The key to the problem described in your letter is whether the Mayor was a "legally qualified candidate" for public office within the meaning of Section 315 of the Act and the definition contained in § 3.190(a) of the Rules during any portion of the time the Mayor used the facilities of Station WCDL. In this connection, it appears advisable that you examine the election laws of Pennsylvania, in order to determine whether the Mayor is a "legally qualified candidate" for public office, and if so, at what time he became such a candidate for office.

Additionally, it is important to note that while the primary elections and the general elections are comprehended within the terms of Section 315 of the Act and § 3.190(a) of the Rules, the Commission has held that the primary elections held by one party must be considered separately from the primary elections held by other parties. Thus, candidates for nomination for an office in the primary of any given party are entitled to use broadcast facilities within the meaning of Section 315 of the Act and § 3.190(a) of the Rules equal to those which have been afforded to other candidates for nomination for the same office at the same party's primary. They are not entitled under the cited sections of the Act and Rules to be treated equally with candidates for the nomination for the same office in the primary elections of other parties.

I am enclosing herewith copies of our recent California ruling, and our recent letter to Station WMCA which may be helpful to you in resolving the problem described in your letter.

Very truly yours,

T. J. SLOWIE,
Secretary.

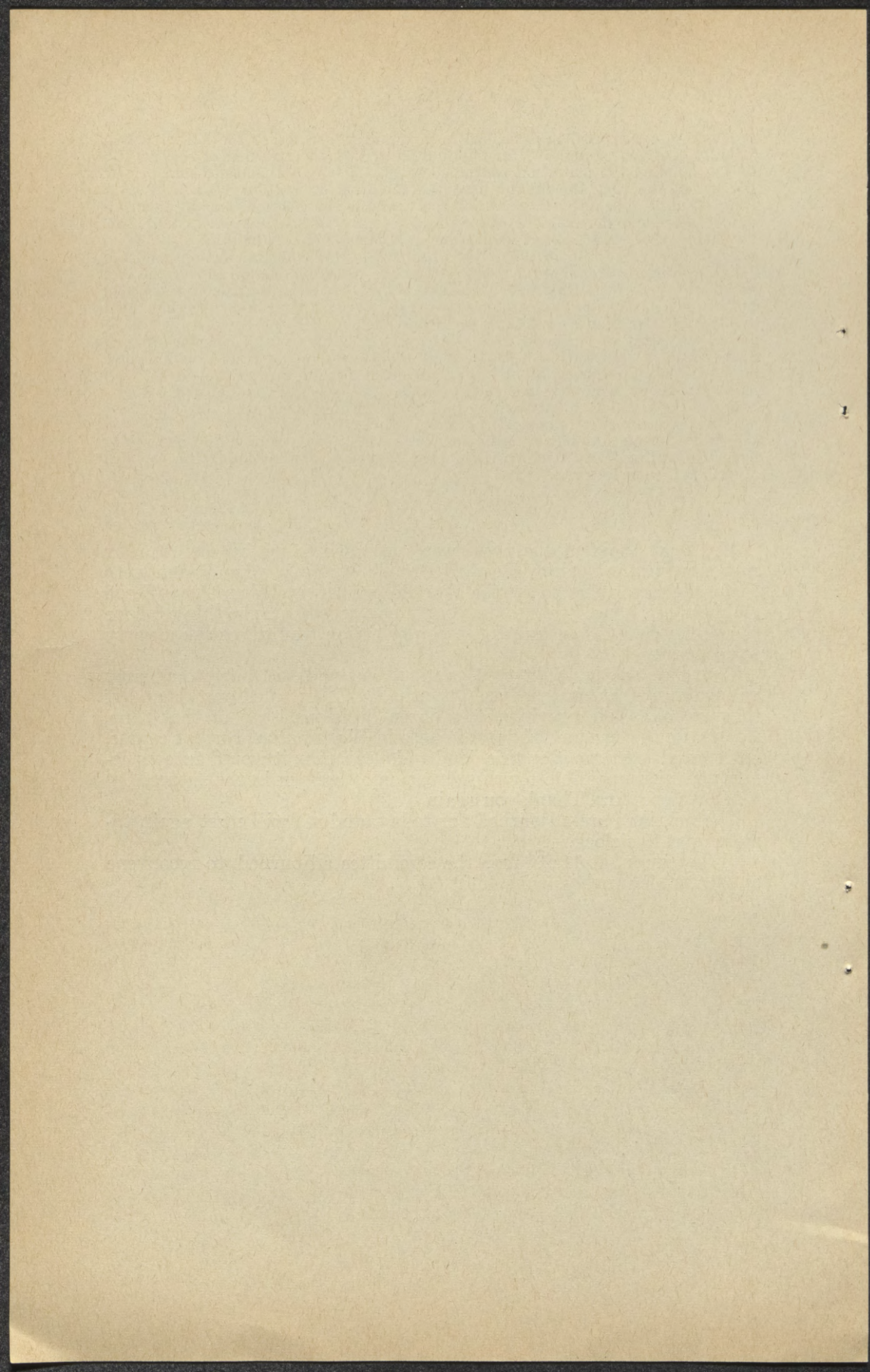
Mr. KAY. Incidentally, these were provided to me by the attorney representing the Scripps-Howard Broadcasting Co. when I went into Federal court trying to get the court to order this. When they offered me these decisions, I said to the court, look, it is a strange thing for me to ask for an FCC ruling. In an equity action, you never ask a party to do a vain act.

Well, he said, it might be a vain act, but you still have to exhaust your administrative remedies. Once the FCC has ruled on this and if they uphold their previous half dozen decisions, then at that time, I can go into the court of appeals here in Washington. But, of course, if Congress speaks out on this, loud and clear, then it would automatically make it impossible for this situation to happen in the future.

Mr. MACDONALD. Thank you again.

The hearings are adjourned for today, and we will meet again tomorrow at 10 o'clock.

(Whereupon, at 11:25 a.m., the committee adjourned, to reconvene at 10 a.m., Thursday, June 4, 1970.)



POLITICAL BROADCASTING—1970

THURSDAY, JUNE 4, 1970

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

The subcommittee met, pursuant to notice, at 10 a.m., in room 2318, Rayburn House Office Building, Hon. Torbert H. Macdonald (chairman) presiding.

Mr. MACDONALD. The hearing will be in order.

Our first witness this morning is Mr. Richard W. Jencks, president of the CBS Broadcast Group of the Columbia Broadcasting System, Inc.

It is nice having you here this morning, Mr. Jencks.

STATEMENT OF RICHARD W. JENCKS, PRESIDENT, COLUMBIA BROADCASTING SYSTEM/BROADCAST GROUP

Mr. JENCKS. It is good to be here, Mr. Chairman.

I am grateful for this opportunity to be heard on the proposed legislation now before the committee. It would eliminate the equal-time provision of section 315(a) of the Communications Act with respect to presidential and vice-presidential candidates. It also looks toward reducing expenditures for political campaign broadcasting.

It is our understanding that the original proponent of H.R. 13721, the National Committee for an Effective Congress, is no longer pressing for enactment of that bill, which we oppose. Therefore, with your permission I would like to focus on S. 3637 as passed by the Senate.

Much concern has been expressed of late about the spiraling costs of political campaigning, particularly with reference to broadcasting. We share this concern wholeheartedly. CBS has long urged greater use of radio and television in the political process. But this goal has been obstructed by the negative and repressive equal-time provision of section 315(a).

We think the key to providing candidates with greater access to the electronic media, and providing the electorate with better access to enlightening presentations by candidates, lies in repeal of the equal-time provision of the Communications Act. Its temporary suspension in 1960 enabled CBS to devote 32¼ hours to personal appearances of the Democratic and Republican presidential and vice-presidential candidates and their supporters, with no charge to them. This time had a value of exceeding \$2 million. Additional free time offered, but not accepted, exceeded \$700,000. This, of course, takes no account of

our regularly scheduled news broadcasts and convention coverage. NBC and ABC likewise donated generous amounts of time.

Because S. 3637 has passed the Senate and it thus appears that at least partial elimination of the equal-time provision is capable of attainment, CBS supports this part of the bill. We do so even though we believe that complete elimination of section 315(a) would better serve the public interest.

The second part of the bill proposes a limitation on charges for the use of broadcasting stations by candidates. We do not oppose this concept. We believe that the public interest in an informed and involved electorate is served by affording political candidates ease of access to our facilities. To that end CBS now goes beyond the present requirements of section 315(b) of the Communications Act that political candidates shall not be charged more than the charges for comparable uses by commercial advertisers.

The CBS-owned television and radio stations regularly grant political candidates more favorable treatment than is afforded commercial advertisers. This means in practice that a political candidate buying only one spot announcement will pay no more than would the most favorably situated advertiser for a comparable use—but there are additional important benefits to political candidates. For example, political spot announcements are treated as nonpreemptable, without being charged the higher rate that commercial advertisers must pay for “fixed positions” or nonpreemptable treatment. Political candidates frequently must place their orders on short notice. Favorable positioning of time may be crucial for their campaign strategy. They are, therefore, granted opportunities to preempt already-sold commercial announcements and thus obtain favorable time positions. These either would not be available to late coming commercial advertisers on any terms or would command a premium charge that is not imposed upon political candidates. I know of no way to place a dollar value on the importance to political candidates of this preferential treatment, but I am confident that these policies represent a very considerable benefit.

Another example of the preferential treatment afforded candidates is the creation by the CBS Television Network during the 1968 presidential campaign of a special series of 5-minute periods reserved exclusively for the use of candidates. These units were not available to commercial advertisers on any terms. They were created by editing regularly scheduled programs and were made available to the candidates at a price lower than the network’s price for 1 commercial minute in the adjacent regularly scheduled program.

During the 1968 campaign the candidates found these 5-minute units so useful in meeting their needs that they purchased a total of 65 units, representing, in aggregate, 325 minutes. This was more than one-third of the total time devoted to paid political broadcasts on the network. In addition to these sixty-five 5-minute units, the candidates elected to purchase forty-two 1-minute announcements, as well as 17 half-hour periods and one 60-minute period. All these were sold at the minimum applicable commercial rates. We are now in the process of developing a similar plan for the 1972 presidential campaign.

Thus, as a matter of policy, preferential treatment is extended to candidates in the sale of broadcast time by the CBS television and radio networks and by the CBS-owned stations. This preferential

treatment has taken the form of reduced rates, favorable positioning of time, availability of special time segments, and the opportunity to preempt commercial announcements. We believe that such preferential treatment at the very least accords with the intention underlying this bill's concept of the lowest unit charge for candidates. We submit that in many respects our practice is more favorable to candidates than are the provisions of the pending bill.

Finally, I turn to the proposal of a limitation on campaign expenditures by candidates, which would be based on the number of votes cast in the last preceding election. Here I must pause to observe that this provision may well have the effect not of limiting the escalating costs of campaigns, but only of limiting campaign spending on broadcasting, since no limitation is imposed on spending in other media.

I would note, too, that this provision as presently formulated would cast an impossible burden on broadcasters. There is no way in which some 6,400 AM and FM radio stations and 690 commercial television stations could coordinate among themselves information as to campaign expenditures on behalf of a presidential candidate. But it seems to me that it would be logical and appropriate to assign this function to the Federal Communications Commission. A possible alternative would be to authorize broadcasters to accept political advertising in reliance upon the certification of an authorized representative of a candidate to the effect that the statutory limit on expenditures was not being overstepped.

In conclusion, Mr. Chairman, we support this bill, with the qualifications I have just noted, because it will improve access to the medium by candidates and because it is a good faith effort to meet the problem of campaign costs.

Mr. MACDONALD. Thank you very much, Mr. Jencks.

My question really is a very broad one, but I think it is a pertinent one. Throughout your statement you refer to "political candidates," but all your illustrations go to the President and the Vice President; to their candidacies. If you took a look at this bill, as to how it affects senatorial candidates and congressional candidates, would you have anything to add to your statement?

What is your definition, in any event, of "political candidate" as referred to in your statement?

Mr. JENCKS. Well, of course, in the statement when we refer to candidates we mean all of the candidates who would be affected by the bill.

Now, of course, only the presidential and vice presidential candidates would be affected or assisted by suspension of 315.

But every candidate, including senatorial and congressional candidates, will be helped by the "lowest unit charge" provision, will be helped by the provision in the bill calling for a reasonable amount of time to be made available and, of course, will be benefited by the limitation in campaign expenditures to the extent that it protects all candidates from an inordinate expenditure by some.

Mr. MACDONALD. What I had reference to is on pages 3 and 4. You keep talking about "preferential treatment" that is afforded candidates. To be perfectly frank, if you are referring to political candidates for the Senate or for the House, that just is not true. It

never has happened. We get no preferential treatment. As a matter of fact, we get charged higher rates than most people. We cannot get the time that we think we should get in many cases. And when we do, we pay through the nose.

So, I do not understand what you mean when you say "preferential."

Mr. JENCKS. Mr. Chairman, let me make this observation: If it is true that you or any other Congressman or candidate is being charged more than other advertisers, then I would view that as a violation of existing law.

Mr. MACDONALD. It has been so reported to the FCC on a number of occasions.

Mr. JENCKS. Let me say, so far as I am aware, we have never been charged with any such practice, and we do stand by the statement as to our treatment of both congressional and senatorial candidates—

Mr. MACDONALD. When you say on page 3 that you will give preferential, and have given preferential, treatment to senatorial and congressional candidates—

Mr. JENCKS. We mean just that, yes, sir.

Mr. MACDONALD. Could you give me an example of individuals who have had this sort of treatment?

Because it certainly has not been true in New England. I can guarantee you that.

Mr. JENCKS. Well, I would be glad to. We have, as you know, a radio station in Boston, and I would be more than glad, certainly, to—

Mr. MACDONALD. A very good one, too.

Mr. JENCKS. Thank you, sir.

I would be certainly more than glad to look into their practices. But no charge has ever been brought to my attention that our station in Boston has failed to follow the practice that we are describing in this testimony.

Now, this is not to say that even at the lowest possible rates that the use of broadcast time is cheap. It is not. However, it is very effective in reaching large numbers of people. I do not have the precise figures here, but there have been many, many instances where, on behalf of a political candidate, we have preempted existing advertisers, thrown them off the air, in order to give the political candidate a favorable position.

Mr. MACDONALD. I was not talking about the radio station, but, as I say WEEI is a very good one, a very good friend of mine is on the staff. I was thinking more completely of your affiliate, the CBS affiliate, in Boston.

Mr. JENCKS. That is WHDH, and, as you know, so far as an affiliate's own relationship with political candidates and other buyers of time is concerned we, CBS, have no control over that, and I do not speak to that.

Mr. MACDONALD. But you deal with them day in and day out, do you not—I mean you, personally?

Mr. JENCKS. Yes, indeed. We deal with them, but we have no control. And, indeed, under the rules and regulations of the Commission, we are prohibited from having any kind of control over their business activities.

Mr. MACDONALD. I just might suggest that when you say that candidates have been given preferential treatment, you might check up with that station as to whom they gave preferential treatment, because I think you would be surprised.

Mr. JENCKS. Perhaps so. When I talk about the treatment we have given, I speak only of CBS Television Network, the CBS Radio Network, and the television and radio stations we own.

Mr. MACDONALD. The first part of your testimony went to the President and Vice President, and that, of course, is one part of this bill, but it is not the complete part. In some measure it is one of the lesser parts, because we all agree that 315 should not perhaps be applied that strictly or be repealed or suspended. I think that would be unanimous here. I do not know whether suspension or repeal is the real answer, but what I am saying is that our problem goes to what is in effect the problem of buying seats, which is a practice that is becoming more apparent all of the time. And I assure you we are very aware of it in the Senate and in the House. We used to have an equal division of power, and we would like to keep it that way in the public interest. We think this is a pretty good bill to do that.

Mr. JENCKS. I agree with you, and we are here to support the bill. And I want to make it very plain that when I describe our practices, I am referring not only to the radio network and television network but also to the five television stations we own and the seven AM and FM radio stations we own.

Mr. MACDONALD. We have many other witnesses; so, I want to think you again.

Do you have any comments to make concerning thoughts that have been raised on the House side here on this bill—you addressed your remarks mainly to the Senate bill—concerning production-cost limitation as well as just the purchasing of air time?

Mr. JENCKS. Well, there is just no doubt that production costs, the cost of making a political candidate's presentation—is an important element of campaign costs. I take it there is likewise no doubt under the pending bill that this is an element of campaign costs that would not be covered by the limitation.

To that degree, I suppose you can say the bill does not altogether meet the problem of reducing escalating campaign costs, and, of course, it imposes no restriction on the costs of billboards, car cards, direct mail, or anything of the like.

Whether or not the bill would be improved if its limitation on expenditures were also to cover production costs is a matter, of course, for the House. It is often said that "the perfect is the enemy of the good." Maybe we have here the best bill we can produce under the circumstances, I am not sure. But I certainly agree with the observation that has been made, that this is a loophole, in a sense.

Mr. MACDONALD. Would you care to comment about the thoughts that have been expressed by myself and others concerning the fact that many districts are one-party oriented in some States, and if we are to try to protect the public from this purchasing of seats here in the House and in the Senate, what is your opinion about whether or not primaries should be included in this bill?

Mr. JENCKS. As I understand this bill, the "lowest unit charge" provision would apply to primaries as well as to general elections.

Mr. MACDONALD. No, sir; you are wrong. It does not affect primaries at all.

It specifically says "general election" in the bill. I may be corrected—maybe I am about to be corrected. I am told by the counsel we are both right. The limitation only goes to the—

Mr. JENCKS. That is right. The spending limitation would not apply to primaries. I frankly do not know what a reasonable spending limitation would be with respect to primaries, because, that not being in the bill, I have not given it consideration. Certainly, the principle of the bill, of trying to keep costs down and preventing seats from being purchased would seem to apply to primaries as well as to other elections. So, maybe there is an area in which the bill could be extended.

Mr. MACDONALD. If I can interrupt your remarks? You are saying "Yes, perhaps it should be extended?"

Mr. JENCKS. That is right. I see no objection, in principle, to covering primaries with the same sort of cost limitation, but I think it would take some careful study of what that limitation should be.

Mr. MACDONALD. Thank you very much.

Mr. Broyhill?

Mr. BROYHILL. Thank you, Mr. Chairman.

Actually, the House bill, as I understand it, has a provision in it that allocates the number of spot announcements to candidates for public office.

Mr. JENCKS. That is right.

Mr. BROYHILL. Do you support this portion of the bill?

Mr. JENCKS. Well, the House bill you refer to, I take it, is H.R. 13721 which was originally sponsored or favored by the Committee for a More Effective Congress, and we did not favor that bill. We opposed it for a number of reasons, among which were that we did not think it was either fair to the broadcaster or feasible from the standpoint of the political candidate.

Indeed, it was unfair to many candidates.

Mr. BROYHILL. So, you are favoring the Senate bill, rather than the House bill?

Mr. JENCKS. That is correct.

Mr. BROYHILL. Thank you, Mr. Chairman.

Mr. MACDONALD. My last question: You say it was unfair to candidates?

I can see where an argument could be made that given reduced rates in the public interest—perhaps you could argue that stations were being forced by law to give away something that they could sell. So, I can see that argument. But how could it possibly be unfair to the candidate?

Mr. JENCKS. For this reason: The House bill, by introducing discounts of between 70 and 80 percent of the station's normal rates would hold out very attractive inducements, to the use of many television stations, which are not feasible now for many candidates because they cover a much larger constituency than the candidate needs to reach.

That being the case, if the candidates under that bill who were entitled to avail themselves of that opportunity used it, many types of candidates, State senatorial, State legislative—

Mr. MACDONALD. Well, no, it did not go that far.

Mr. JENCKS (continuing). Gubernatorial—

Mr. MACDONALD. It was limited to the Senate and the House.

Mr. JENCKS. Yes, sir, that is the point I am making.

Since this bill would confer these tremendous advantages on senatorial and congressional candidates but would not confer these advantages on State candidates, gubernatorial candidates, or, for that matter, presidential and vice presidential candidates, all of these candidates unaffected—not benefited—by the bill would be disadvantaged in their efforts to find broadcast time. This is so because the House bill that Congressman Broyhill is referring to, if fully availed of on a station like, for example, our station in New York City, WCBS-TV, would be occupied every night for the 35 nights prior to a general election with between 2 and 3 hours of political candidate time every night. Thus, the candidates who would be entitled to time under the bill, if they all availed themselves of it, it would either effectively freeze out gubernatorial and other candidates who normally used the station or would have a tendency to reduce audiences, so that the medium would not be very effective for anyone.

Mr. MACDONALD. A good argument.

Thank you very much, Mr. Jencks.

Our next witness is Mr. Everett H. Erlick, group vice president and general counsel, American Broadcasting Co.

**STATEMENT OF EVERETT H. ERLICK, GROUP VICE PRESIDENT
AND GENERAL COUNSEL, AMERICAN BROADCASTING COS., INC.**

Mr. ERLICK. Mr. Chairman and distinguished members of the Subcommittee on Communications and Power. My name is Everett H. Erlick. I am group vice president and general counsel of American Broadcasting Companies, Inc. I am pleased to be here today to present ABC's views on the pending measures dealing with political broadcasting which are the subject of this hearing.

The House bills, as distinguished from S. 3637, would require stations to sell time to candidates for congressional offices at a small fraction of the normal cost. Although we at ABC agree that mounting costs in congressional and other elections are serious problems for which reasonable solutions must be found, we object to the House proposals for both philosophical and practical reasons.

Last October, Mr. Leonard H. Goldenson, president of American Broadcasting Companies, Inc., appeared before the Senate Subcommittee on Communications and presented ABC's views on S. 2876, which paralleled the six House bills before you for consideration. The text of his remarks on that occasion are included in the printed Senate subcommittee hearings, and are, therefore, available to the members of this subcommittee. In brief summary, the basic elements of ABC's position in relation to the six House bills are as follows:

1. Their approach is discriminatory in that they would impose on television stations the entire burden for resolving a national problem

involving national objectives. We can see no reasonable justification for requiring television stations to assume a substantial financial responsibility which is properly that of the electorate or, for that matter, differentiating television from other mass media.

2. The difficulties of apportioning the segments of time equally among the candidates and the stations in a given market pose problems in the major television markets that are staggering in their complexity. Literally scores of candidates in urban centers such as New York, Los Angeles, and Chicago would be competing for the choicest time periods. They would also be competing for television stations that differ in coverage, facilities, and ratings. Under these circumstances, the wisdom of Solomon would be insufficient for the task of determining what constitutes "equality" or of convincing all candidates that they have been treated fairly as to station, time, and date of broadcast. The Federal Communications Commission which would be responsible for promulgating rules governing the apportionment of time on television stations among the candidates, lacks the time and resources for this task.

3. A number of individuals might decide for their own selfish reasons that the publicity would benefit them personally and might thereby be encouraged to become candidates so as to gain television exposure at these severely reduced rates.

4. Since the candidates would be free to use their program time in segments smaller than a half-hour, it would be exceedingly difficult for television stations to accommodate these smaller segments within the framework of existing schedules. The result would be widespread disruption of the broadcasters' program schedules which the public could hardly be expected to accept without serious complaint. Any such adverse public reaction might be directed against those running for office.

Thus, in addition to our objection that these House bills are discriminatory, we believe that their approach is unrealistic and unworkable, overlooking the complexities of the television broadcast industry and of program production and scheduling.

The remaining bill, S. 3637, would eliminate the "equal opportunities" requirement of section 315 for the offices of President and Vice President of the United States. It would also limit the amounts which candidates for Federal elective offices could spend in the broadcast media. It would seek to establish lower rates on radio and television stations for candidates for public office. And it would require that broadcaster make available an indeterminate but "reasonable" amount of prime time for use by candidates for Federal elective office.

ABC strongly endorses certain features of S. 3637. In a number of prior appearances before congressional subcommittees, we have advocated the permanent suspension of section 315 as to presidential and vice presidential candidates. In fact, we have suggested a trial suspension of 315 for all candidates—National, State, and local. Therefore, we enthusiastically support that feature of S. 3637 which eliminates the "equal time" requirements for presidential and vice presidential candidates. This would enable the broadcast media to cover future presidential campaigns, on radio and television, more flexibly and in far greater depth than was possible in recent elections with 315 in full effect. Furthermore, we believe that the amendment of section 315 in

this fashion will also help to alleviate the spiraling cost of presidential campaigns.

The 1960 suspension of section 315 for the presidential election permitted the broadcasting industry to bring the two major national candidates before the American public in extremely effective and informative face-to-face confrontation, in prime time without charge to the candidates. The four Nixon-Kennedy debates were exciting political innovations and were eagerly viewed and heard by the largest audiences ever to tune into American presidential campaign coverage.

In 1964 and in 1968, we—and I might interject, the other two networks as well—invited the presidential and vice presidential candidates of the major parties to appear on the ABC television and radio networks for a similar series of debates, provided that the “equal opportunities” provision of section 315 were suspended. As you know, section 315 was not waived and these debates did not take place.

I assure you that, given the requisite freedom and flexibility, ABC would, with respect to future presidential and vice presidential contests, make its full national facilities available without charge for a series of prime time debates involving candidates of major parties and for other forms of journalistic coverage now precluded by section 315.

S. 3637 also sets ceilings on the amounts candidates for Federal office and their supporters can spend on radio and television campaigns. ABC agrees in principle to the imposition of limitations on Federal campaign expenditures, but believes they should be across-the-board, covering expenditures of every type and in all media. Realistic, overall ceilings on campaign expenditures would achieve the desired goal of stemming the rising cost of running for Federal office. However, inasmuch as S. 3637 rejects an overall approach to limiting campaign expenditures and establishes limits only in respect to expenditures on radio and television, we believe this facet of the bill is discriminatory in impact. We also regard the potential benefits which could be derived from legislation of this type as unnecessarily curtailed.

Additionally, any proposal to limit campaign expenditures inevitably raises a series of very basic questions. Is 7 cents per vote cast the appropriate figure? Is the \$20,000 ceiling which would prevail in certain of the less populated States realistic? Should limitations be imposed in relation to primary campaigns? We do not in all candor know the answers to these questions, but realistic and satisfactory answers must be found by the Congress before any such limitations are finally established.

Nor does S. 3637 provide means for enforcing the ceiling on campaign expenditures. Without an effective enforcement mechanism this feature of S. 3637 seems impractical. Who would be the appropriate instrumentality for enforcing the limitations on campaign expenditures? Broadcasters, lacking the means for determining with any degree of accuracy the amounts spent by candidates or their supporters on other radio and television stations, could not reasonably be required to assume this responsibility.

Apart from the question of who will enforce any such limitation, the act in our opinion should place primary responsibility for keeping within those limits on the candidate himself, even though the candi-

date will have the onerous task of keeping track of amounts spent by all who support him, whether or not authorized.

We also believe that feature of S. 3637 which would require stations to make "reasonable" amounts of time available in prime time for candidates for Federal elective office is unrealistic and impractical. The wording of the provision recognizes the fact that circumstances vary in different communities, but suggests no guideline or yardstick by which a broadcaster could safely decide what constitutes a reasonable amount of time. The Federal Communications Commission, which would have the responsibility for determining compliance, would undoubtedly become involved in innumerable disputes over whether witnesses had complied with the requirements of this provision. In all likelihood, the Commission's processes would be severely disrupted during Federal elections if this provision were to be adopted. When dealing with highly sensitive matters such as the election of public officials, where contests are frequently decided by only a few votes, the application of vague regulatory standards should be avoided rather than encouraged, in our opinion.

Furthermore, when considered with the "equal opportunities" requirements of section 315, an affirmative obligation to present candidates is impractical and could well create havoc in the larger urban centers where candidates for Federal offices frequently number in the scores. We believe that this aspect of S. 3637 is also unrealistic and that broadcasters should remain free to respond flexibly to the needs of their community as they perceive them, as the Communications Act now requires.

While ABC also opposes the provision of S. 3637 which would obligate broadcasters to charge candidates the "lowest unit charge of the station for the same amount of time in the same time period"—and again because it singles out the broadcast industry for discriminatory treatment—we are certainly in agreement that means should be found for easing the financial burdens of running for public office. It would undermine the very basic structure of our form of representative government if candidacy for public office were to become the exclusive preserve of the wealthy or those with ready access to private wealth. An individual's integrity, ability, and dedication to public service, not his private fortune or ability to attract financial backing for his campaign, should be the controlling qualifications for political office.

To this end, ABC and other broadcasters have already voluntarily taken action to ease the problem of rising campaign costs. ABC's owned radio and television stations have been granting candidates discounts amounting to 33⅓ percent from applicable rates for spot announcements. In future elections, ABC will continue this practice. We will also allocate in advance a number of time periods during campaigns on our owned television and radio stations and make them available at comparable discounts. In addition, the ABC radio and television networks will, for the presidential campaign in 1972, establish a reduction of 33⅓ percent from their then current rates, applicable to both announcements and selected program time periods.

We believe that voluntary action of this nature, supplemented by congressional action making political contributions of limited amounts by individuals tax deductible, is far preferable to the imposition of

discriminatory financial obligations upon broadcasters such as the rate-fixing provision of S. 3637 or the approach of the other bills being considered by this subcommittee. We would strongly urge the Congress seriously to consider legislation that would permit a citizen to make a small contribution to the political party of his choice through his income tax return. In this way, financial support of political parties could truly become representative. The responsibility for supporting political parties would then be where it belongs—on the entire electorate.

In summary, ABC believes that the provision of S. 3637 which would eliminate the "equal time" requirements of 315 for presidential and vice presidential candidates should be enacted into law. We believe that voluntary actions by broadcasters to reduce the cost of using the media for campaign purposes should be encouraged. We urge that means be found which would permit the public to participate in the funding of political campaigns. These actions, in combination, would help the broadcaster serve the public.

They would also help to alleviate the problem of rising costs of running for political office and serve to place the financing of political campaigns on a sound and more equitable basis. Our political system and the public should thereby benefit.

In closing, I wish to thank the subcommittee for the opportunity to be present today to express ABC's views.

Mr. MACDONALD. We thank you, Mr. Erlick, for a fine statement and for your coming here to Washington today to give us the benefit of your views.

One thing I would like to get clear in my mind, because it has come up before the subcommittee through other witnesses. I really cannot understand the industry's testimony that if the cost of broadcast time, both radio and TV, is to be regulated, then you should also, by implication in your testimony, limit the amount of money that could be spent in other publicity methods: billboards, newspapers, magazines, and so forth.

The whole point is that these other media are really private enterprise, and you are private enterprise, too, in a way, but you are given your license to engage in private enterprise—in the public interest or whatever words I have heard other people use—by the Federal Government. You are bound to operate in the public interest. That is the only reason you are given the license. So, how can you possibly compare your situation with that of the other publicity media?

Mr. ERLICK. In this respect, I think, Mr. Chairman: We fully agree with you that we are given licenses at the pleasure of the Federal Communications Commission under an act of Congress and that we are bound to operate in the public interest.

In this same sense, we believe that newspapers and magazines have been given licenses by the Congress to enjoy a second-class mailing privilege. Without that license, without that privilege—

Mr. MACDONALD. That is not a license; it is a subsidy. It is not a license. There is a great difference.

Mr. ERLICK. Whatever word we choose to call it, it is the means by which they continue their existence, and that comes from a congressional action.

Mr. MACDONALD. Mr. Erlick, I know you are a very fine lawyer, and so forth, and I appreciate that fact, and I know you are, personally. But that just is not so; it just is not so. The Congress has not given newspapers a license. It has never given national magazine a license. They are not up for scrutiny by any committee here that I know of, expect perhaps some committee on obscenity that might be forthcoming. But, otherwise, there is complete separation, and there should be, in my judgment. The Government does not want to control the news media—at least, those of us in Congress do not.

Mr. ERLICK. I am not suggesting, Mr. Chairman, that you do. Nor am I suggesting that there is a direct, complete comparison between the two situations.

What I am suggesting is: If a ceiling is to be meaningful in a political campaign, then that ceiling should cover all media, and I believe if it were examined—and I have no authority on this and I have not, frankly, completely examined the question, but I believe that Congress may, and could, examine the question of whether, in fact, it has the authority to make these ceilings and to make the discounts applicable to other media as a result of the second-class mailing privilege which is extended to them.

Mr. MACDONALD. Naturally, we are talking about something that does not belong here, because it is the House Administration Committee that looks into the Corrupt Practices Act and how it works. There is a feeling, a very realistic one, that it may be modified soon. But that is not the problem we have here today. And I would like to point out to you that I think it is a very flattering thing that TV and radio should be singled out, to use your phrase.

Mr. ERLICK. Yes, sir.

Mr. MACDONALD. Because it is the most effective medium. You should be pleased, not hurt, because people who run for office are pretty close to the public. I would think advertisers would take another look at their budget when they see how interested we are in the most effective medium that has proven itself in getting a message to the public.

If I were in business, I would say that maybe we have not been doing enough on radio and TV.

So, you should be flattered, not hurt.

Mr. ERLICK. Thank you very much. We are pleased, Mr. Chairman, that our medium is so highly regarded. We hope it remains so.

We are not—and I think we cannot be—entirely pleased that we are put in a separate category with respect to rate-fixing legislation, which is really what it amounts to, which we think is unnecessary, because we think we have gone beyond that. I cannot speak for all broadcasters—

Mr. MACDONALD. I am congratulating, of course, the steps you have taken in reducing the rates. We appreciate that.

Mr. ERLICK. Thank you, sir.

Mr. MACDONALD. We are knowledgeable of it and commend you and hope the others follow suit.

Mr. ERLICK. Thank you. I think, in other words, we have gone beyond the provisions of this bill. We have done so, because we think it is in the public interest to do so.

Mr. MACDONALD. Right. Therefore, you support the bill wholeheartedly, because you have already gone beyond it and it cannot possibly affect you in an adverse way?

Mr. ERLICK. Subject to the reservations I have expressed, we support the bill, Mr. Chairman.

Mr. MACDONALD. On page 3, Mr. Erlick, I think you underestimate the reaction of people running for public office when you say that a candidate preempts time. I think most people would not insist on going on thereby taking off a program that has a big following in one's district, because I quite agree with you that there would be an adverse public reaction. Therefore, I do not think that is a very valid criticism.

Mr. ERLICK. I would associate myself with the remarks that Dick Jencks made a moment earlier. I do not want to repeat his argument, because I think he did it very well. But in New York City, for example, where you have some 40 congressional districts, probably in excess of 150 candidates for the Congress alone and roughly a 5- or 6-week period in which these gentlemen could avail themselves at these rates—

Mr. MACDONALD. I understand the argument. He made it well. I did not make a rebuttal, because he did make a good argument. Don't you think that candidates would have to be fairly substantial—that not 140 of them would be substantial enough—to pay the rates even at a reduced price?

Mr. ERLICK. At these prices. I would think a substantial number could afford it and would do so.

Mr. MACDONALD. Sure, even though it goes into their district but it goes all over Manhattan and everywhere else, too.

Mr. ERLICK. That is true.

Mr. MACDONALD. Yes. Of course, you were not here yesterday when a gentleman from Nassau County surprised me by saying he purchased spot announcements for \$3,500 per shot. He said it was worth it, even though he was just concerned with Nassau County.

I do not know how they raise money in New York, but I could not do that very often in Boston.

Mr. ERLICK. To go a little further with your question: If \$3,500 was a rate for his announcement and he was going to be able to buy it at an 80-percent discount, he would only pay \$700 for that announcement and would be able to buy 5 times as much.

Mr. MACDONALD. How many of those can an average candidate do over an average 2-month campaign?

Mr. ERLICK. I do not know; I have no idea, except that out of 150 candidates in a major area, using the example you gave, I would guess quite a number.

Mr. MACDONALD. Well, we have different problems, moneywise, I guess, Mr. Erlick.

On page 4, you say that you support the elimination of equal time requirements, and so forth. Of course, I do not think many people will argue as to the amounts to Presidents, but who is going to determine—and I have asked this question before, though I do not mean to be repetitive I would like your opinion about it. Who is to determine who is a major candidate for the Presidency?

Do you think the broadcaster should?

Mr. ERLICK. I think the broadcaster—I cannot say about all broadcasters. ABC would welcome guidance from Congress and/or the Federal Communications Commission in this respect, if 315 were entirely eliminated.

Obviously, we would have to make that judgment, absent such guidance, and we will do so. We have said that we will do so. But I do think that what is or what is not a major party is a subject on which we would welcome guidance from the Congress or the Commission.

Mr. MACDONALD. You also indicated you were for the bill because it repeals 315 as far as the Presidency goes, and, therefore, while you did not say it, I gather you would like to then progress with the repeal to the Senate and then to the House; am I correct?

Mr. ERLICK. Yes, sir. We took the position——

Mr. MACDONALD. And you figure this is the first step?

Mr. ERLICK (continuing). On a trial basis.

Mr. MACDONALD. This is the first step?

Mr. ERLICK. We hope so.

Mr. MACDONALD. Today, Germany; tomorrow, the world.

Mr. ERLICK. That is the chairman's characterization; not mine. But I do not really think that is quite the issue involved here. We took the position that we think a trial suspension of 315 for all elective offices——

Mr. MACDONALD. We had a trial suspension.

Mr. ERLICK. Not for all officers, sir.

Mr. MACDONALD. Of course not.

Mr. ERLICK. This is what I am referring to.

Mr. MACDONALD. I hope you never get it, either. I can say flatly, as long as I am here they have one vote against it, anyway.

Mr. ERLICK. Yes, sir. Having many people obviously on both sides of that question, we think one way of trying to determine on a factual basis what the realistic effect of a complete suspension would be is to try it for one election. Then, the Congress——

Mr. MACDONALD. What happens to all of the people who get defeated because of that?

Mr. ERLICK. We do not know that they would, Mr. Chairman.

Mr. MACDONALD. Well, it would not have been put in there if there was not some reason to have it in the Act, don't you think?

Mr. ERLICK. Well, conditions change; responsibilities change.

Mr. MACDONALD. Some people have been saying for the worst.

Mr. ERLICK. Quite true; and some for the better, because of the conditions.

Mr. MACDONALD. Concentration of power, and so forth. I can hear those words now.

Mr. ERLICK. Well, we believe that the broadcasting industry can exercise this judgment and exercise it fairly, and there is only one way to find out, Mr. Chairman, and that is to give it a chance.

Mr. MACDONALD. I am not going to belabor the point, although I am tempted to.

Isn't that sort of a psychological motivation, like playing Russian roulette?

Mr. ERLICK. I do not see the two issues being equal.

Mr. MACDONALD. You have a chance not to get shot.

Mr. ERLICK. If it is a trial suspension, Congress can always reverse it.

Mr. MACDONALD. I have a terrible feeling it would be a new Congress that would do it.

Mr. ERLICK. I hope not.

Mr. MACDONALD. So would most of us.

I also—and this is the last question I have on this—I also have some question about your thoughts about the enforcement. Obviously, what you say is true. Factually, the FCC is not equipped to do it, they are understaffed with the job they have to do now, as far as that goes. And the network, obviously, could not do it. But you think if it is on the books, that every candidate for office is so mentally equipped or morally unequipped that he is going to try to break the law?

Mr. ERLICK. No, sir; quite the opposite. That is why I suggested—

Mr. MACDONALD. Because these people are running for public service, so I would think, in the main—I repeat, in the main—it attracts people to respect the law, coming down here to make the law.

Mr. ERLICK. We fully agree.

Mr. MACDONALD. And, therefore, they are not about to try to break the law.

So, don't you think the fact that it is on the books, is part of the laws of the land, will be a deterrent?

Mr. ERLICK. I do, sir; but I also think, because of the very reasons you mentioned, that the candidate is the best source to bear that responsibility.

Mr. MACDONALD. And if he signs—the argument has been made people would spend money, and, true, I laughed when I read that, that someone is going to be spending money in his behalf and he does not know about it. We cannot find enough people to spend money for us that we search for, look for. So, to say that people are going to be spending money you do not know about, that is not—as the kids would say—that is just not relevant.

Mr. ERLICK. Right.

Mr. MACDONALD. So, I think your thinking about enforcement—if the candidate signs a paper from the station that this money is within the limits of the law, I would think that would take care of any problem we might have.

Mr. ERLICK. It certainly would be satisfactory to ABC.

Mr. MACDONALD. Mr. Van Deerlin.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

Mr. ERLICK, I was not here at the outset of your testimony, but I assume the thrust of your appearance is on behalf of the networks' owned and operated stations rather than network billings. This bill would hardly affect the business of the network itself—right?

Mr. ERLICK. It is not clear to me, sir, whether it would or not, frankly.

It is directed to stations. But whether the thrust of the bill would apply to charges made by the network as to discounts or as to ceiling limitations, I do not know.

Mr. VAN DEERLIN. Very few candidates—

Mr. ERLICK. I suspect not.

Mr. VAN DEERLIN. Very few candidates for Congress would be using network time.

Mr. ERLICK. That is perfectly true. I did not mean it in that sense. I meant in the national sense.

Mr. VAN DEERLIN. Is it not true that a successful station, doing the volume of business that most first-line stations are doing now, does not really solicit or desire political advertising? It is not really re-

garded as a financial bonanza, is it? Aren't campaign commercials an intrusion on regular programming and regular sales?

Mr. ERLICK. Well, that is not the way we regard it, Congressman. I cannot say how other broadcasters regard it. In the sense that ABC has established a preferential discount which is available on its radio and television-owned stations. I think it is perfectly clear that we do not regard this as any unwelcome burden, but we are making it attractive for those political candidates in those areas where we have stations, to advertise.

Mr. VAN DEERLIN. I take it that this was done out of a sense of public service, because I am sure your sales managers do not throw their caps in the air at the extra burden—having to talk to angry agency executives about cutting in and getting half of the time that an incumbent has already purchased because they did not have their money in time, or demanding lists, as the law requires, of what the opposition has got, and so on. It must be a pain in the neck, especially, for a successful station to have to take on this great volume of business around election time—as well as an annoyance for the viewer.

Mr. ERLICK. It is a problem, but it is one, as I said, which we regard as being part of our obligation to operate in the public interest.

Mr. VAN DEERLIN. On page 3, you refer to severely reduced rates this bill would bring about.

Mr. ERLICK. Yes, sir.

Mr. VAN DEERLIN. That intrigued me a little, because I did not realize just how badly we candidates were being taken. I thought that the thrust of this legislation was going to be to give the end-commercial rate to political candidates—that I as a candidate would come in on even terms with Sears, Roebuck for the short season in which I was interested in competing with Sear, Roebuck.

Mr. ERLICK. I think, perhaps, I may not have made it clear in the statement. I thought I had. But those remarks applied to the legislation which was previously before the House. They do not, of course, apply to the Senate bill. I was referring to H.R. 13271 which provided for an 80-percent discount in one case and a 70-percent discount in another, and not to the Senate bill.

Mr. VAN DEERLIN. Fine.

What would be your estimate as to the maximum reductions that would be achieved under the present legislation?

What kind of rates would candidates be getting?

Mr. ERLICK. It would depend entirely upon the time period involved and upon the price spread in that particular time period, and it would vary greatly. I could not give you any general answer.

Mr. VAN DEERLIN. Generally, we would be talking about prime time, I think.

Mr. ERLICK. Yes.

Mr. VAN DEERLIN. What would be a typical rate-card reduction for, say, a 360-spot campaign by Campbell Soup as compared to what the candidate would get if he wanted a 12-spot purchase?

Mr. ERLICK. It is difficult to say. I would have to refer to one of our rate cards to say. Perhaps, something on the order of 25 or 30 percent. Probably less than ABC is willing, voluntarily, to grant, incidentally.

Mr. VAN DEERLIN. I would hope that a businessman, himself,

would not voluntarily give up anything that belonged to the stockholders.

The question of whether 7 cents per vote at the last previous election is adequate, is one you have asked yourself without answering, toward the bottom of page 6. Of course, with this 25 or 30 percent additional break that would be achieved through the reduction in rates, do you not think that this \$20,000 outside of 7 cents a vote, whichever is greater, would more than blanket the vast majority of present campaigns for public office?

Mr. ERLICK. Congressman, we are just not in a position to say. We have not seen any studies of maximums and minimums and with the amount of advertising it would buy in various localities from, say, Wyoming and including New York City, we really are not in a position to say. We have no opinion on it. We agree in principle with limitations. We think it should be up to Congress to decide precisely what those limitations will be.

Mr. VAN DEERLIN. I think the gist of your recommendation is that we should take a little longer to decide.

Mr. ERLICK. Yes, sir.

Mr. VAN DEERLIN. So, undoubtedly, the way rates are going and campaign costs are going, the next time we have legislation before us, we will be discussing whether it should be 12 cents a vote or \$30,000 or \$40,000.

Mr. ERLICK. I think it would not take the Congress that long, Congressman.

Mr. VAN DEERLIN. You hold a higher opinion of our industry, in that regard, than I do.

I have just come off a statewide primary 2 days ago. In California, we had one candidate who was an absolute unknown 2 months ago. Absolutely unknown. He was a member of the State board of regents where they have 16-year terms, and once they are appointed, you do not hear much of them for the next 16 years. This candidate is a man of great independent wealth, and certainly a man whom I have nothing against—I could not, because I never had heard of him until 6 weeks ago. He spent somewhere between a million and a half and 2 million dollars in a political campaign against the incumbent U.S. Senator—a Senator I have spent no part of my life in defending. But there is a very great question of propriety raised here, it seems to me, because this man—about whom nothing was known and who ran a very positive deodorant-soap type of campaign, just positive image-building—came out with 37 percent on Tuesday. And it is perfectly clear, if he had been just another name on the ballot, the statisticians would say that about 8 percent is what he would have gotten.

It seems to me that this, plus the type of political campaigns we have seen in Texas and Ohio, would not only call for urgent attention to legislation like this, but consideration of expanding it to cover primary elections as well as general elections.

You are familiar with the British system of candidate responsibility for spending, of course?

Mr. ERLICK. Yes, sir; in general. I am not specifically, but in general.

Mr. VAN DEERLIN. Well, the candidate is made responsible for all moneys spent on his behalf, and very severe limitations are enforced. Do you feel this system would not be workable in this country?

Mr. ERLICK. Congressman Van Deerlin, frankly, I am not that familiar with the British system, and I prefer, therefore, not to comment on something that I am not really an expert on. I would say, in response to the observation that you made, as I think we have indicated in our statement, that ABC does agree in principle that reasonable limitations should apply. We think that the Congress, and not the broadcasters, should determine what those limitations are in the various categories.

We believe that the candidate should be responsible for warranting what those expenditures are, because, we as broadcasters, have no way of determining that.

And, as I indicated to the chairman, ABC would be perfectly happy to accept any candidate's warranty in that respect.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

Mr. MACDONALD. Mr. Brotzman.

Mr. BROTZMAN. Thank you, Mr. Chairman.

Mr. Erlick, it has been pointed out that you are honored by being here, so I will not waste any time. I welcome you and the industry before the subcommittee.

Really, you are confronted with the old dilemma question, the kind like Congress faces just about everyday, that you have some good and have some bad in this bill; is that not right?

Mr. ERLICK. Yes, sir.

Mr. BROTZMAN. That is the thrust of your testimony?

Mr. ERLICK. That is quite correct.

Mr. BROTZMAN. You like the suspension of 315(a); you think that the limitation on expenditures by a candidate for electronic media is discriminatory?

Mr. ERLICK. Yes.

Mr. BROTZMAN. Now, the tough question is—and I do not think that anybody has asked you this: Taking the good and the bad, how do you feel about Senate 3637?

Mr. ERLICK. We think it would be a preferable situation to what now exists. But we have reservations about it, which I think I have expressed.

Mr. BROTZMAN. You think the good outweighs the bad in this bill?

Mr. ERLICK. Probably.

Mr. BROTZMAN. Now, I want to be sure I understand your points relative to the reason you feel you are being discriminated against or that it is unfair.

First of all, I think it is quite clear and should be pointed out that the reason you are here before this particular subcommittee is because this is our area of jurisdiction. We do not have jurisdiction in the other aspects of the campaign function, but I would assume that your basic argument is that we place a limitation upon use of your media in a manner that may or may not be arbitrary. I do not know where the 7 cents came from either; I hope we will get someone to testify who will take a realistic figure or peg it for what it is, an arbitrary figure.

So, what you are saying is that we limit you, but we do not really limit the amount that a candidate could expend. More particularly, it still would not be any deterrent to a wealthier candidate because he could rely upon other media to sell his image or his particular point of view. Is that what you are saying?

Mr. ERLICK. Exactly.

Mr. BROTZMAN. Now, in this regard have you made studies relative to campaign costs by use of electronic media?

Mr. ERLICK. Not authentic studies; no, sir.

Mr. BROTZMAN. Generally speaking, are they going up rapidly, or are they holding their own, or how would you evaluate that?

Mr. ERLICK. Based on information which I have seen—not our studies—my guess is that they are going up rather rapidly.

Mr. BROTZMAN. Is there any voluntary effort among the networks to do something about this particular point?

Mr. ERLICK. Yes, sir; there is.

I think I have described ABC's efforts. I am sure that—I think Mr. Jencks described CBS's efforts in this respect—

Mr. BROTZMAN. I did not get to hear his testimony, as I had another meeting to go to.

Mr. ERLICK. And it is my understanding NBC follows the same general practice, in offering these discounts to political candidates.

Mr. BROTZMAN. Turning to your specific testimony just for one moment, I have heard that you are a fine communications lawyer. I have no reason to doubt that—

Mr. ERLICK. Thank you, sir.

Mr. BROTZMAN. Turning to pages 6 and 7, which refer to S. 3637, you put an issue clause here that says, "Provided further that, consistent with the other needs of the community, the broadcast licensee shall make a reasonable amount of time available for legally qualified candidates," and so forth.

Now, I have quite a problem trying to understand what that wording means, and you did not really hit the issue on the nose, as I see it.

You talk about lack of guidelines and standards, but I cannot tell from that language whether the requirement on the licensee is to give that time to a candidate or if you are supposed to mark out time for the candidate to purchase within that reasonable period. What do you think about that?

Mr. ERLICK. Congressman, you stated, far more succinctly than I did, one of the problems that we have with this provision. What I think it means—what we think it means—and I have consulted our FCC counsel here in Washington, and other people, and nobody seems to be quite sure.

Mr. BROTZMAN. Did you talk with your lawyer?

Mr. ERLICK. Yes, I did.

It is put in the bill because under the existing regulatory scheme, a station—let us take a New York station, for example, can decide—indeed, has the obligation to decide, during a general election which of the election contests within its coverage area are sufficiently important that it should recognize those and give coverage to them, either in the form of news programs, public affairs programs, interviews, or whatever.

That being so, it would follow that the station in that market could decide theoretically that a particular contest in a particular district, taken in the whole content of elections that are before the public at that point, it is not sufficiently important to cover, and, therefore, I suspect that this provision is put in the bill so that a congressman who is

running in the 41st District of New York, if there is such a district—there are some 40-odd congressional districts, all-told, I think, within the Greater New York area—and if he wished to buy time under the provisions of this bill, the station then would be obligated to make such time available to him. That is what I think it means.

Mr. BROTZMAN. We all agree it is rather ambiguous.

Mr. ERLICK. Yes, sir.

Mr. BROTZMAN. Just one more question, to really kind of followup on my colleague from California. The idea comes to mind, because of a statement I heard Mr. Hemenway make in his testimony where he said the campaign broadcast reform bill was the first legislative action in nearly 40 years which holds broadcasters responsible to a standard higher than that of economic gain. The reason Congressman Van Deerlin stimulated my thinking: Are political campaigns really good moneymakers from the station's standpoint?

Mr. ERLICK. No, they are not.

Mr. BROTZMAN. You could sell this time to other purchasers?

Mr. ERLICK. As a general rule, I think that is true, yes.

Of course, it depends on the state of the economy and all other things. But taken over a span of time, I think the answer to your question is, "Yes, generally."

Mr. BROTZMAN. All right. Thank you very much.

Mr. MACDONALD. Thank you again, Mr. Erlick.

I would just like to say that I think it is pretty clear that we will have to take care of many of the ambiguities that are in the bill, and I would certainly think the Senate must have felt that the time should be made available, but I can hardly believe they would not accept your so-called discount in the bill and then insist that the time be just outright given to a candidate. So, it is not as ambiguous to me as it seems to be to you.

Mr. BROTZMAN. Would the Chairman yield?

Mr. MACDONALD. Yes.

Mr. BROTZMAN. It is ambiguous to me, and the question I have—maybe we can direct it to counsel: Is there any legislative history on this particular point?

I think it is very ambiguous.

Mr. GUTHRIE. There is some legislative history not going to the question of whether the time was to be paid for or free.

On the basis of the Senate floor debate I take it that the purpose of the proviso you have been directing your attention to is to create a presumption that candidates for Federal office should have some prime time in which to appear. But the caveat is still there, consistent with the other means of the community. What that means, I have no idea.

Mr. MACDONALD. Wouldn't this perhaps be better done in executive session?

Has counsel been identified for the record?

Mr. GUTHRIE. My name is Robert Guthrie.

Mr. MACDONALD. I know, as you said, and, of course, it is true about the rates you offer, one third off, does that hold true of your affiliates, too, or just the stations that you own?

Mr. ERLICK. No, we cannot speak for our affiliates in this respect; nor do we have any control whatsoever on their pricing.

Mr. MACDONALD. So, really, what you are talking about is a network situation only, and it does not really enter into the main thrust of this bill, which goes to senatorial and congressional seats?

Mr. ERLICK. I am speaking for the ABC radio and television networks, as well as—and perhaps more importantly, to answer your question—to the five owned and operated television stations and seven radio, owned and operated, AM and FM stations.

Mr. MACDONALD. Is there any way you could legally urge your affiliates to adopt the same outlook as the network has illustrated?

Mr. ERLICK. I do not know of any way that we could discuss their pricing policy as a group, no.

Mr. MACDONALD. Is there a prohibition against that?

Mr. ERLICK. Well, as a general matter, it is just not very advisable. I do not think Mr. Mitchell or Mr. McLaren would take too kindly to it.

Mr. MACDONALD. Mr. Agnew might.

Thank you very much.

Before you leave, I would just like to welcome back to Washington our distinguished associate, Mr. Hagerty, who spent many pleasant years here. It is nice to see you again.

Mr. HAGERTY. Thank you very much.

Mr. MACDONALD. Thank you, sir.

At this time, I would like to put into the record a statement submitted for the record by the National Broadcasting Co., signed by its president, Julian Goodman.

(The statement of the National Broadcasting Co., Inc., follows:)

STATEMENT OF JULIAN GOODMAN, PRESIDENT, NATIONAL BROADCASTING CO., INC.

As President of the National Broadcasting Company, I would like to outline NBC's views on broadcasting and political campaigning, in relation to the various bills the Subcommittee is considering.

In this discussion, I will deal primarily with the Presidential campaigns that involve the network, and the Congressional campaigns that concern the NBC owned stations. I will briefly describe our practices in past campaigns, our plans for the future, and will conclude with specific comments on the bills now being considered by the Subcommittee.

TELEVISION'S FUNCTIONS IN POLITICAL CAMPAIGNING

The role of television in campaigning has been the main concern of the studies which have led to the proposed legislation. For that reason I have confined my own discussion to television, since both the impact and the problems of political broadcasting are much greater in television than in radio.

Television serves at least two distinct functions in political campaigning: First and foremost, it is a news medium, covering the campaigns with reporting and analysis. It brings the candidates directly to the voters, in a variety of journalistic programs, so that millions of viewers can form their own impressions of the men running for office, their positions and personal qualities. We regard this as a paramount information service of television, developed through programs produced by broadcasters themselves.

Separately, television functions as an advertising medium, on which the candidate can buy time for campaign material, just as he buys space in print media. The material used for this purpose is not produced by the broadcaster, but is generally prepared by the candidate's organization or advertising agency. In recent years, it has consisted primarily of brief spot announcements, with less use made of program periods for speeches, rallies and special presentations.

Because television has such wide reach and forceful impact, candidates have chosen to use it increasingly as an advertising medium in their campaigns. At the same time, as television circulation has rapidly expanded, its costs have increased, although this reflects increased efficiency, i.e., an increasing number of people to whom the advertising message is delivered. Because of these factors—

and primarily the increased use of television—it has been taking more and more of campaign budgets. But the very decisions of political campaigners to use television more extensively demonstrate that they recognize that the costs are more than matched by the values this medium offers them.

This brings us to the matter at hand, which relates to the specific question of what can properly be done to reduce the cost to candidates of advertising in the electronic media, particularly television.

FREE TIME

For years NBC and other responsible broadcasters have urged that the most effective way to provide additional broadcast exposure for candidates would be to modify or repeal the "equal time" requirement of Section 315 of the Communications Act. We are gratified that S. 3637 follows this approach for the offices of President and Vice President of the United States. We hope this Subcommittee, whatever else it may recommend as appropriate legislation, will concur in the proposal to eliminate the equal time restriction, at least for Presidential and Vice Presidential campaigns. If that is done, the broadcasting industry will have the opportunity in the Presidential election of 1972 to repeat, and even improve upon, its generally recognized outstanding performance of 1960.

The well remembered debates of that campaign were only a part of the added appearances which broadcasters provided at no cost to the major candidates once they were received of the impossible equal time burden of Section 315. NBC News presented a television network series of eight evening hour programs called "The Campaign and the Candidates," designed to define the campaign issues and the positions of the candidates through discussions with them. Because of the suspension of the equal time restriction, it was possible to feature John F. Kennedy and Richard M. Nixon in extensive and varied appearances and special interviews; and also to present their running mates, Mr. Johnson and Mr. Lodge. From these appearances the public gained a full and detailed view of the candidates' philosophies and personalities.

During the 1960 campaign, the NBC Television Network provided 14½ hours of broadcast time to the candidates for President and Vice President, excluding news programs and paid political broadcasts. In 1964, when there was no suspension of Section 315, this figure dropped to four hours and eight minutes.¹ Clearly, the most direct measure for encouraging additional broadcast appearances for candidates is through elimination of the equal time provision of Section 315.

At NBC, we have come to the conclusion that if the equal time requirement is terminated, so far as candidates for President and Vice President are concerned, the NBC Television Network will not restrict all offers of broadcast appearances to news and public affairs programs under our journalistic control. This is because we have recognized that between television's function in political journalism and its function as a political advertising medium, there is an additional role it can play because of its special qualities. In this additional role, it can serve as a platform for significant presentations by major candidates in time contributed by the broadcaster.

To advance this purpose, three years ago, I pledged that the NBC Television Network would make available a total of four prime time half hours for appearances by the Presidential and Vice Presidential candidates of the major parties in the 1968 campaign. I proposed to offer the time without charge, for the candidates to use as they saw fit, if Section 315 could be amended to enable us to do this. It was regrettable that the offer failed because there was no legislative sanction that would protect the network and its affiliated stations from having to offer the same number of evening half hours to least ten other Presidential candidates, ranging from the Theocratic to the National Hamiltonian parties.

I renew that pledge today for the 1972 Presidential campaign. If a repeal of the equal opportunities provision of Section 315 comparable to that enacted by the Senate in S. 3637 is adopted, the NBC Television Network will make available four prime time half hours during the campaign for appearances by the Presidential and Vice Presidential candidates of the major parties for use as they see fit. These appearances will be in addition to those we would schedule in the performance of our journalistic function.

¹ The 1959 amendments to sec. 315 permit appearances on a limited number of news and news interview programs, such as "Meet the Press." This type of unpaid appearance was available in 1964.

REDUCED RATES FOR POLITICAL CANDIDATES

In the 1968 Presidential campaign the NBC Television Network took special steps to assure adequate network time for paid political presentations. Experience had shown that minute announcements were the preferred form for campaign advertising, but here we were faced with a dilemma. Looking ahead, we recognized that by the time both major candidates would be nominated and have their campaigns planned, most of the prime time minute positions on the network would already have been sold to other advertisers. Since we could not guess in advance which commercial positions, or how many, the candidates might order, it would not have been practical to withhold enough of them to meet the potential candidate demand. Nor would it be practical to cancel existing commitments to meet such demand, as it might develop week by week in the future, because of the inequities and discriminations this would involve.

Accordingly, we developed this plan: In addition to any unsold minutes that would be available on the network for political sale, we decided to add one more position per hour, in certain network programs, when this would be necessary to meet a political order. All minutes sold to political advertisers—the regular and the added minutes—were priced at 50% of the established rate. Between August 14 and Election Day, we sold 35 regular minutes and 71 added minutes at this 50% “political” rate.

Following this experience, the NBC Owned Television Stations adopted a special discount plan in 1969 which resulted in an 18% to 25% reduction in political advertising rates. This discount was increased to 50% for all announcements sold to political advertisers in 1970, and program periods are offered at a 25% discount from published rates.

The NBC owned stations are only five among the 200 stations served by the NBC Television Network. In order to help meet local needs for additional prime time political availabilities on all these stations, the NBC Television Network plans to set up a special pool of announcements during the 1970 campaign. The affiliated and owned stations will be able to use these, as needed, for political advertising placed on a local basis, on behalf of Congressional, statewide or local candidates. The network plans to offer these political availabilities to the stations without charge. The mechanics relating to the number and placement of these announcements have not yet been worked out in detail, but our purpose is to supplement local availabilities for political sale to help meet a growing need at the local level.

The NBC Television Network has also been doing advance planning for specially reduced political rates for the 1972 Presidential campaigns. This task has not been completed in all details, but we expect to offer at least the following for political advertising:

One minute positions at 50% of the established rate, along the lines of the arrangement we followed in 1968.

Five minute positions directly following the “Today” program, created by terminating that program five minutes early when necessary; this is possible because of the program’s flexible format.

Five minute positions directly following the NBC feature motion pictures, in all cases where these run short or can be edited to terminate at 10:55 p.m.

In creating such five minute units, we would be departing, as an accommodation to political advertisers, from our normal commercial pattern, because we would not otherwise sell five minute units in the evening schedule.

I think you can see from what I have said that NBC does not oppose the principle of reduced rates for political advertisers. We have offered such rates in the past, and we are prepared to do so in the future on a voluntary basis.

LEGISLATIVE PROPOSALS FOR REDUCED POLITICAL RATES

However, we see a basic difference between a broadcaster’s offer of reduced political rates and legislation that selects one advertising medium, out of all the media and services used by candidates, and compels that one medium to establish reduced political rates.

In our opinion, the special effectiveness of television does not provide a basis for legal discrimination against it. We are not speaking here of television as a medium of public information that independently analyzes political positions, issues and events—role we seek to enlarge. We are dealing with advertising by the candidates in purchased time. When it comes to that function, the right to

equal treatment under the law should not depend on differences in advertising efficiency. For us, this is a matter of principle, not of dollars, as our past action and present commitment indicate.

COMMENTS ON SPECIFIC BILLS

*H.R. 13721**

This bill is based on a proposal developed by the National Committee for an Effective Congress and embodies the principle of a mandatory rate reduction on which I have just commented. Apart from that objection, its administration seems to us to present great difficulties and inequities.

Under the bill, each House candidate would be entitled to sixty one-minute announcements, plus one half-hour program period, all in a three hour prime time period within five weeks before the election. Each Senatorial candidate would be entitled to 120 one-minute announcements and a half hour of prime time. The charge could not exceed 30% of the normal rate for the one minute announcements, or 20% of the normal rate for the program time. Each prime time minute could be substituted by more minutes of lower value, and each half hour could be broken into five minute units. If more than one station were involved, all would be required to share equally in providing the reduced rate minute announcements.

To illustrate the effects of such a bill, if it had been in effect in 1968, a station in New York City would have had to offer time to 125 candidates for 39 House seats in the Congressional Districts served by the station. Thus, each station could have been obliged to schedule some 125 evening half hours of political advertising in a five week span, or approximately four of these half hours each and every evening.

Additionally, each of the 125 candidates would have been entitled to 60 one-minute announcements, or a total of 7,500 announcements in aggregate, averaging over 210 announcements per evening. Assuming these would have been shared equally by the eight stations in the area, each station would have been carrying 30 prime time minute announcements of political advertising per evening—without regard to additional time sought by candidates for other offices. This represents more commercial time than is available in the entire prime time period.

By contrast, here in Washington, where only five House seats and ten candidates were involved in the 1968 election, a station would have had to provide ten half hours; and all six stations together would have had to offer 600 one-minute announcements over the five week period, or three per station per evening.

It seems to us that the widely varying results of the bill illustrate its impracticality and inconsistency, quite apart from the question of principle it raises. This is true even if in the extreme example of the New York City station coverage area, not all of the candidates would choose to buy time, even at the sharply reduced rate proposed by the legislation.

We oppose the enactment of H.R. 13721.

S. 3637

This bill as passed by the Senate has four major provisions:

1. Partial Repeal of Section 315

This bill would, in effect, repeal the equal opportunities requirement of Section 315 insofar as candidates for President and Vice President of the United States are concerned. The equal time law would continue to apply to candidates for all other offices, including candidates for both houses of the Congress.

For the reasons already stated, we believe this would serve the public interest more than any other proposal before the Subcommittee. We cannot overemphasize the importance of this step and we urge the Subcommittee to include such a provision in any legislation which it may recommend.

It is our hope that experience gained under a partial repeal of Section 315 may lead to a further relaxation of the equal time law.

2. Reduction of Political Rates

Section 315(b) of the Communications Act now makes it unlawful for a broadcaster to charge a political advertiser higher rates than a commercial advertiser buying the broadcast time in question under comparable conditions. S. 3637 would

*H.R. 13722, H.R. 13751, H.R. 13752, H.R. 13935, H.R. 14047 and H.R. 14511 are substantially similar bills

extend this concept and require a broadcaster to give the political buyer "the lowest unit charge of the station for the same amount of time in the same time period." Since most stations have a higher rate for a one time use of the station than for multiple uses, this provision would give the occasional political buyer the same more favorable rate that a steady customer enjoys. In effect, it would be a reduction in political rates achieved by legislation.

We have already made clear that we are opposed in principle to any such legislation. But this particular device also has a serious practical defect. It would require the station to keep meticulous records and the Federal Communications Commission to maintain a staff of cost accountants to ascertain whether the law was being observed. There would be endless disputes as to pricing practices and no one would ever be sure whether he was or was not complying with the statute. If, despite objections to any legislated reduction in political rates, the Subcommittee decides to follow that route, it would be far simpler to adopt a fixed percentage reduction of a published rate.

3. A Limit on Total Spending

S. 3637 adds a new provision to Section 315 which imposes a limit on the amount of money a candidate for President, Vice President, United States Senator or United States Representative can spend on use of the electronic media during a general election; the limit does not apply to primary elections.

We do not believe that we can be helpful to the Subcommittee on this subject. Our experience as broadcasters does not, in our opinion, qualify us as experts on the important public issue of whether limits should be placed upon a candidate's expenditures for radio and television and the equally important issue of what those limits should be. Therefore, we take no position on this requirement of S. 3637.

4. Availability of Evening Time for Political Candidates

The final provision of this bill reads as follows:

"Provided further, That consistent with the other needs of the community broadcast licensees shall make a reasonable amount of time available for legally qualified candidates for Federal elective offices during the hours 7:30-10:30 post meridian."

We oppose the addition of this language to Section 315 on the ground that it can only create confusion as to the proper interpretation of the Section. Subparagraph (a) of Section 315 now contains this sentence: "No obligation is imposed upon any licensee to allow the use of its station by any such candidate"—a provision which has been in the statute since its enactment in 1934. Indeed, an identical provision was included in the Radio Act of 1927. The Federal Communications Commission and the courts have put varying interpretations on this language to which most broadcasters have learned to accommodate. To inject a new and inconsistent requirement—with standards so vague as to defy rational and uniform application—in a later Subparagraph of Section 315 seems to us an unsuitable legislative step.

We have already outlined NBC's plans for creating prime time availabilities for political advertisers on both the network and our owned stations for the Congressional elections in 1970 and the Presidential election in 1972. We believe other responsible broadcasters have similar plans and that the added language, apart from its inconsistency, is unnecessary. Therefore we oppose the addition of the "Provided further" clause in new Subparagraph (c) of Section 315, as enacted in S. 3637.

Mr. MACDONALD. The next witness is Mr. Herbert Alexander, Citizens Research Foundation.

STATEMENT OF HERBERT E. ALEXANDER, DIRECTOR, CITIZENS' RESEARCH FOUNDATION

Mr. ALEXANDER. I am happy to respond to Chairman Macdonald's invitation of May 27 to testify on the consideration which might bear on the items listed in his invitation. My testimony is my own and does not necessarily reflect the views of members of the Board of Trustees of the Citizens' Research Foundation.

In recent years there has been much comment about the high cost of politics. The rise has been dramatic. I estimate that \$300 million was spent in 1968, for all elective and party politics in this country, at all political levels, in campaigns for nomination and for election. This represents a 50 percent increase from 1964. It represents an increase of more than 100 percent since 1952, when the first national total was estimated.

But political costs need to be considered in perspective. Considered in the aggregate, politics is not overpriced. It is under-financed. \$300 million is just about one-tenth of 1 percent of the amounts spent by governments at all levels (\$282.5 million in fiscal 1958), and that is what politics is all about, gaining control of governments to decide policies on, among other things, how money will be spent. \$300 million is hardly more than the amount spent in 1968 by the largest commercial advertiser in the United States which corporation, according to Advertising Age, had a \$270 million advertising budget in 1968.

But the amounts that have to be raised and spent for any single campaign may be formidable. Political money is relatively scarce, and there is great competition among many candidates and committees at the various levels for financial assistance from those who are willing to give. Anyone who has contested elections knows how hard it is to raise political money. In most cases, fund-raising simply has not kept pace with rising costs.

Political costs tend to be high because the political season is relatively short and intensity must be high for each candidate just before an election. Our system of elections creates a highly-competitive political arena within a universe full of nonpolitical sights and sounds also seeking attention. In this world, politics registers relatively low interest, and what interest there is tends to be diffused among many levels of candidacy and contention. Candidates and parties are not just in competition with each other, but also are in competition with commercial advertisers possessed of large budgets, advertising on a regular basis, often through popular entertainment programs on television and radio.

The FCC Survey on Political Broadcasting informs us that combined political spending for television and radio in 1968 was \$58.9 million.

Mr. MACDONALD. Would you yield for just a second?

Mr. ALEXANDER. Yes, sir.

Mr. MACDONALD. Mr. Alexander, unfortunately, the House went into session early today. It is now in session. We have another witness who represents a number of broadcasters who is going to testify after you do. If you would not mind, could I suggest to you that you insert your statement in the record here, as read, and then sort of give us a synopsis or highlight of it?

Mr. ALEXANDER. Surely, I will be glad to.

Mr. MACDONALD. Without objection, at this point the statement of Mr. Herbert Alexander will be inserted.

(The prepared statement of Herbert Alexander reads in full as follows:)

STATEMENT OF HERBERT E. ALEXANDER, DIRECTOR, CITIZENS' RESEARCH FOUNDATION

I am happy to respond to Chairman Macdonald's invitation of May 27 to testify on the considerations which might bear on the items listed in his

invitation. My testimony is my own and does not necessarily reflect the views of members of the Board of Trustees of the Citizens' Research Foundation.

In recent years there has been much comment about the high cost of politics. The rise has been dramatic. I estimate that \$300 million was spent in 1968, for all elective and party politics in this country, at all political levels, in campaigns for nomination and for election. This represents a 50 per cent increase from 1964. It represents an increase of more than 100 per cent since 1952, when the first national total was estimated.

But political costs need to be considered in perspective. Considered in the aggregate, politics is not overpriced. It is under financed. \$300 million is just about one-tenth of one per cent of the amounts spent by governments at all levels (\$282.6 million in fiscal 1968), and that is what politics is all about, gaining control of governments to decide policies on, among other things, how money will be spent. \$300 million is hardly more than the amount spent in 1968 by the largest commercial advertiser in the U.S., which corporation, according to *Advertising Age*, had a \$270 million advertising budget in 1968.

But the amounts that have to be raised and spent for any single campaign may be formidable. Political money is relatively scarce, and there is great competition among many candidates and committees at the various levels for financial assistance from those who are willing to give. Anyone who has contested elections knows how hard it is to raise political money. In most cases, fund raising simply has not kept pace with rising costs.

Political costs tend to be high because the political season is relatively short and intensity must be high for each candidate just before an election. Our system of elections creates a highly-competitive political arena within a universe full of non-political sights and sounds also seeking attention. In this world, politics registers relatively low interest, and what interest there is tends to be diffused among many levels of candidacy and contention. Candidates and parties are not just in competition with each other, but also are in competition with commercial advertisers possessed of large budgets, advertising on a regular basis, often through popular entertainment programs on television and radio.

The FCC Survey on Political Broadcasting informs us that combined political spending for television and radio in 1968 was \$58.9 million. This is 70 per cent higher than amounts spent for similar purposes in 1964. This represents almost 20 per cent of the \$300 million total for political spending in all categories, an increase over 1964 when 18 per cent of all political spending went for broadcasting.

The FCC figures, however, represent only network and station charges and do not include production or promotion costs related to broadcasting. Experience indicates that from 20 per cent to 33 per cent more must be added to the FCC figures for production charges for programs and spot announcements, and several million dollars more must be included for promotion, including "tune-in" advertising. The full financial impact of broadcasting on politics thus must include air time, production and promotion. A cost analysis of broadcasting for 1968, if production costs were, say, 25 per cent in addition to air time, would bring the broadcast total to \$75 million in all. And that doesn't include the cost of political staff time, travel, or fund raising costs related to broadcast needs. When all these things are combined, there is no doubt that the largest factor in political costs relates to broadcasting.

Of the 1968 broadcast costs, according to the FCC, \$40.4 million, or 69 percent, of the money spent went for television and radio in the general election period, the period covered by S. 3637. Of the general election expenditures, \$27.1 million were spent on television and \$13.3 million on radio. Those figures include \$20.4 million in costs for Presidential broadcasting alone.

The FCC Survey has no comprehensive figures on campaigns for the House of Representatives, but it does specify campaigns for the Senate, which for television and radio combined cost \$6.1 million in the general election period in 1968 (\$4.3 million in primary campaigns). By a process of elimination, if we isolate non-network costs for the general election period for television and radio amounts spent for Presidential campaigning (\$12.4 million), Senatorial (\$6.1 million), and Gubernatorial (\$3.7 million), the total is \$22.2 million, which leaves \$10.2 million, some portion of which includes television campaigning for Congressional campaigns. This process of delimitation permits us to focus on the lower and upper amounts that would be affected by S. 3637, that is, more than \$6.1 million in 1968, but less than \$16.3 million (adding the Senatorial with the remainder which includes the Congressional portion).

One can get at the problem of high political costs by several routes: open up additional or alternative sources of funds, reduce costs, or use some combination. Additional sources of funds would include broadening the base of political contributions; alternative sources would be some form of government assistance, such as subsidies or tax incentives for political contributions. One of the main ways to attempt cost reduction would be through the means of federal regulation of political broadcasting.

With respect to item No. 1 in the Chairman's letter of May 27, 1970, regarding proposed repeal of the equal opportunities provisions (Sec. 315(a)) of the Communications Act of 1934 as it applies to candidates for the offices of President and Vice President of the United States, the arguments for repeal are as follows:

In Presidential elections, there are invariably a dozen or so candidates. Sec. 315 works least well when there are many candidates because it requires broadcasters to give equal opportunity to both major and minor candidates. Only candidates with sufficient funds—usually major candidates—can afford to buy time, so questions raised about section 315 rarely regard purchased time. However, regarding sustaining time, broadcasters are reluctant to give free time to major candidates if the law requires that they thereby incur equal obligations to numerous minor candidates. The suspension of 315 in 1960 for the Presidential and Vice Presidential campaigns permitted the so-called Great Debates but also other network programs featuring the candidates. The suspension worked well, as attested to by both the FCC and the President's Commission on Campaign Costs. There is sufficient interest in Presidential elections to ensure that time will be provided free by at least the networks—and probably by many local stations when candidates are visiting the area—and that programs will be monitored adequately to ensure equal time for major candidates and lesser time for minor candidates. Repeal would reduce political costs to the extent that candidates received free the kinds of broadcast exposure they sought and otherwise would have had to buy.

Arguments against repeal include the following: That Sec. 315 provides a time-tested protection to both candidates and broadcasters. The Fairness Doctrine is not an adequate substitute because fairness is only a debatable standard admitting of after-the-fact administrative procedures. There can be no equity for a candidate once an election is lost. Repeal to Sec. 315 means in effect turning over decisions of free candidate access to a private industry. No matter how well intentioned some broadcasters may be, some candidates may get hurt. Scores of complaints and court cases are ample testimony to the varying interpretations of both "equal opportunities" and "fairness."

Presumably format affects audience size so broadcasters understandably are concerned about format for political appearances. Broadcasters tend to idealize confrontation politics, through debates and similar means. Confrontation may be more exciting but to put it bluntly, many candidates are simply not willing to confront either an opponent or an issue, even to get free time. A leading candidate may not want to give equal exposure to a lesser-known opponent. Some candidates want more exposure than it provided through debate and interview formula. Some candidates want opportunities to speak for themselves, on their own terms, even if they attract smaller audiences. The point is that the campaign interests of the candidate do not always coincide with the interests of the electorate in full discussion; nor do they often square with the interests of the broadcaster in format design or time availability. Repeal of Sec. 315 could put broadcasters into position to dictate campaign strategy by putting offers of free time on a "take it or leave it" basis.

There is a middle ground between outright repeal and retention of 315 in Presidential elections, as stated by the President's Commission: "Despite the widespread popular appeal of the 'Great Debates' in the 1960 campaign, we have not recommended outright repeal of section 315 because we believe it desirable for Congress to review practices that occur under changing conditions in both broadcasting and political campaigning." (*Financing Presidential Campaigns*, p. 27.)

With respect to item No. 2 in the Chairman's letter, regarding limits on charges made by broadcasters to candidates for political office, a few broadcasters are now voluntarily providing discounts. If all broadcasters do not offer discounts, lack of uniformity creates special problems of competition and obligation. It would be difficult to devise a standard unit rate or discount that could uniformly apply to all stations of any class. Accordingly, the lowest unit rate would be a

fair standard for every station. Since licensees receive permission to use the public airwaves, there is question as to whether they should profit from broadcasts serving as important a public purpose as political campaigning.

If there were a discount or lowest unit rate requirement, some campaigners might use the savings to purchase more time. Nothing is known of elasticity of demand if rates are lower, either for those already buying time, or those not now buying time because of prohibitive cost. Presumably there are limiting factors: a candidate fears backfire from a saturation drive; some stations may not have additional time available or want to sell certain of it for political purposes; and some stations might decide to limit the amount of time sold to certain categories of candidacy. Considering the political psychology, and the drive to power, no doubt some campaigners would purchase more time; others might find ways other than broadcasting to spend the money saved, provided they have it or are willing to go into debt. If some discount measure were to be enacted, I hope the next FCC Survey of Political Broadcasting would be designed to reflect the experience as a guide to the Congress on the effects and effectiveness of the law.

Some object to the discount principle, asking why broadcasters should be forced to give discounts for political purchases while other vendors of goods or services to political campaigns are not so required. The answer is that the federal right to regulate the public airwaves permits a ready means to cope with at least one aspect of campaign costs, albeit the largest single costs, broadcasting. But those who believe in broadcaster sovereignty once a license is obtained, or that one statutory discount discriminates against one industry or sets an unfortunate precedent that could lead to others, will not be persuaded by the argument of federal right.

The principle of reduction of costs could be applicable to the other media or forms of political expenditures as well as to broadcasting. A few states now prohibit charging of rates in excess of published rates for political advertising in newspapers or in radio or television broadcasts. The discount proposals offer some possibility of controlling rising costs, and they can be extended to other industries on the basis that they use federal mail privileges or are in interstate commerce.

With respect to item no. 3 in the Chairman's letter, regarding limitations on the amounts which may be spent on the electronic media by or on behalf of candidates for federal elective office, I submit the following arguments:

Federal law has long provided ceilings on overall campaign spending but given exceptions and loopholes, the ceilings have not been effective. S. 3637 contains a partial or segmental limitation applying only to the electronic media. Segmental limitations are untried in the American system so we do not know whether they will actually reduce expenditures or rather lead to more spending in other categories. They might give only a false impression that spending is controlled. Or they might lead to further segmental limits on other aspects of campaigning.

The President's Commission on Campaign Costs in 1962 asserted its belief that limitations of any kind were unenforceable while full disclosure is a better way to control both excessive contributions and unlimited expenditures. The amount of the limitation—seven cents per vote based on turnout in the last preceding election—must be arbitrary because political exigencies change and what was spent in one campaign may be inadequate for another. If limits are low, they invite forms of evasion—such as channelling funds to committees that attempt to influence opinion on issues helpful to the candidate; or inspiring broadcasts against an opponent rather than for a candidate. Opponents to limitations can ask how the FCC or any other agency can monitor such evasions. Or whether limitations can be made effective without greatly centralizing campaign funding. Or whether enforcement is possible when broadcasts can be made across state boundaries.

Endorsements by labor unions or other groups or individual supporters would presumably fall within the candidate's limitation. Such limitations might be politically obnoxious, for the candidate would have to tell some potential supporters they could not broadcast on his behalf. This raises constitutional questions because an effective limitation would give to candidates discretion to prohibit free speech by empowering them to refuse to authorize certain kinds of expenditures by potential supporters. For example, a group seeking to publicize its support of a candidate may determine that the most effective way to reach the public will be through a broadcast endorsement. To prohibit such a broadcast might be construed in the courts as the same thing as prohibiting free speech—on the theory that an expenditure for speech is substantially the same thing

as speech itself, because necessary to reach large audiences, and is therefore protected by the First Amendment. The same theory may apply to an individual who seeks to broadcast his own support of a candidate. The constitutional issue is how far the Congress may go in protecting the purity of elections without abridging freedoms guaranteed under the First Amendment. The judicial presumption could be against enforced surrender of rights unless justified by the existence and immediate impenendency of danger to the public interest. One wonders whether the courts would find the use of money in elections sufficiently dangerous to justify, in effect, giving the candidate discretion to prohibit speech—or even in effect limiting the candidate's own speech over an effective medium.

On the other hand, if limitations are too high they may spur spending to that level. In any case, limitations tend to favor the incumbent who generally is better known. The challenger may well have to spend more to get recognized across the state; the reformer challenging the party organization may well have to spend more. One can argue that if the political system is to be kept open and responsive to challenge, then limitations are undesirable because they tend to favor the status quo. The rates of successful challenge against Congressional incumbents are rather low—not more than 15 per cent in the Senate and 8 per cent in the House in the past 16 years—and one of the key goals of the political system should be a more highly competitive system.

To oppose limitations is not necessarily to argue that the sky's the limit. In any campaign there are saturation levels and a point where spending no longer pays off in votes per dollar. Common sense dictates that only marginal benefits can be derived from unlimited spending. Given the American tendency to vote traditionally for one or the other party, the cost per "swing" vote is already large. Some argue that the emphasis should be on devising ways to give serious candidates minimal access to the electorate; the affluent could spend more just so long as the others are provided with at least the minimal means to conduct modern campaigns.

The argument for imposing limitations is simpler to make: that money has come to affect the democratic ideal of equality of opportunity for public office, that the man of little or no wealth increasingly finds it difficult to enter public life, that the ill-financed candidate has too little chance to win nomination or election, that the well-financed candidate has an unfair advantage and with a media blitz may win. All these arguments are verities although the incidence of such cases is probably smaller than often claimed.

Against these familiar arguments one must balance the argument that limitations tend to favor the incumbent. You must decide which is the greater evil. Permitting unlimited use of money by candidates or their supporters has the positive advantage of enlarging the dialogue by encouraging the voicing of varying points of view and increasing the possibility of competition for public office. Some views would not be voiced adequately if wealthy persons could not use their wealth for this purpose. And some elections would go uncontested were it not for the ability of wealthy persons to use their wealth for that purpose. So the case for greater competition is pitted against the case for delimiting the advantages of wealth in the political process.

With respect to the provision of S. 3637, that consistent with other needs of the community, licensees shall make a reasonable amount of time available for legally qualified candidates for Federal elective offices during prime time hours, I would flag one possible problem that could arise in areas adjacent to other states. For example, New York City stations accommodate time purchases for candidates for certain offices in New Jersey and Connecticut. To make available prime time at discount rates for candidates from three states would triple the obligations of those stations. This could cause clogging and time problems both with respect to spot announcements and program time. Statutory or FCC regulations presumably could be designed to cope with that problem, however.

In Congressional campaigns, there is a special problem in metropolitan areas. In the New York City area, there are about 40 Congressional districts, and some are in New Jersey and Connecticut. Few if any Congressional candidates in the area now find it economically feasible to buy expensive television time given the marginality of their district to the total listening audience. Presumably, even with discounted rates, most candidates would still not find television time feasible financially. But if they did, the most popular stations would get the most requests for discounted time, and unlike under present law, would be obligated to sell at least some discounted time. This could present problems, again particularly with respect to purchases of program time.

The problem would be considered alleviated if the major cities eventually get CATV wiring allocated according to political (perhaps Congressional district) jurisdictions. Thank you.

Mr. ALEXANDER. I would like to read one paragraph, because you have indicated interest in the problem of production costs.

Mr. MACDONALD. Yes.

Mr. ALEXANDER. I state that the FCC figures represent only network and station charges and do not include production or promotion costs related to broadcasting. Experience indicates that from 20 to 33 percent more must be added to the FCC figures for production charges for programs and spot announcements, and several million dollars more must be included for promotion, including "tune-in" advertising. The full financial impact of broadcasting on politics thus must include air-time, production, and promotion.

If we add these costs on the average to the costs the FCC survey indicates, we are in the area of \$75 million spent on political broadcasting in 1968.

Mr. MACDONALD. Could I ask your opinion about both the House bill and the Senate bill before us?

Are you for them or against them, or what do you think should be changed, if anything?

Mr. ALEXANDER. Mr. Chairman, I work for a foundation, and under the Tax Reform Act of 1969, our counsel advises me that I am not permitted to give my views, but rather to give the arguments pro and con on the various aspects of the provisions of the bills before you.

Mr. MACDONALD. Well, we cannot really ask too many questions, can we?

Mr. ALEXANDER. That may be.

Mr. MACDONALD. Well, without giving your personal opinion and that of the foundation-supported group you are representing, would you feel it would be unwise to include some coverage of production costs that you have just gone into?

Mr. ALEXANDER. I do not believe it would be unwise. I do believe it would be harder to get at than would be the purchase of air time through radio or television stations, the reason being that there are many firms which produce commercials, there are many public relations firms which can give advice, advertising agencies which can help in producing commercials or programs, with the result that I think it would be relatively difficult to get at the problem of production costs.

On the other hand, production costs are a real problem.

I have studied campaigns in which production costs have run as high as 50 percent, as much as the air time that was purchased. And when production costs are high, for example, on a spot announcement, the tendency is to run it again and again and to average down the initial investment.

Mr. MACDONALD. Have you done any research in the field of relative turnover in primaries?

Mr. ALEXANDER. Not so much—

Mr. MACDONALD. Here in the United States, all 50 States.

Mr. ALEXANDER. Not so much in primaries as in general elections, pertaining to the Congress.

Mr. MACDONALD. Would you care to comment on that?

Mr. ALEXANDER. I believe that several studies of the Congressional Quarterly and another study which is going to be announced next

week by the Twentieth Century Fund will indicate that the turnover with respect to incumbents in the Senate and the House is relatively low, not more than—I believe it is 8 or 15 percent in the Senate and the House. I am not sure of the figures with respect to primaries, but I think that it raises the point that there may not be sufficient challenge. In the American political system the incumbent has an advantage. Because of that advantage I have been led to conclude at times that it may be necessary for the challengers to spend more money in order to become better known, in order to compete equitably with the incumbent, with the person who is better known. And I think that that is a consideration that bears on the determination which the Congress makes with respect to limitations in this bill.

MR. MACDONALD. I yield to Mr. Brotzman, the gentleman from Colorado.

MR. BROTZMAN. In the interest of time—we do have a time problem and also trying not to get you in trouble with the Government or your lawyers, but on page 4 you say :

There is a middle ground between outright repeal and retention of 315 in Presidential elections.

MR. ALEXANDER. Yes, sir.

MR. BROTZMAN. What is the middle ground?

MR. ALEXANDER. I simply state that rather than abolish section 315 with respect to presidential and vice-presidential elections, as the Senate bill would do, it is possible to suspend it on a one-election basis, the idea being that the Congress could then look at how well the suspension worked, as it did in 1960, and make a determination again the next time around.

MR. BROTZMAN. Let me ask you this: Are you recommending that or can you say whether you are recommending that?

MR. ALEXANDER. I am not supposed to be saying what I recommend.

MR. BROTZMAN. You are just pointing it out. We can do it the way we are doing it now or we can abolish it; is that what you are saying?

MR. ALEXANDER. Yes, sir.

MR. BROTZMAN. Thank you, Mr. Chairman.

MR. MACDONALD. I just like to point out that I am not sure your research was all that inclusive, because I had someone in my office working on primaries versus general elections, and in 1968 five incumbents were defeated in the general election and three were defeated in the primaries. In 1966, 40 incumbents were defeated in the general election and only three were defeated in the primaries. Forty-four were defeated in the general election in 1964, and only five incumbents were defeated in the primaries.

So, I am not asking for your opinion, but I just point out that I think that primaries should be included in this bill, and if you have any argument against it—as you say you are here just to give the pros and the cons—what is the “con” against including primaries?

MR. ALEXANDER. Probably, the only argument against it at present is the fact that the Corrupt Practices Act, the Federal Corrupt Practices Act, does not apply to primaries currently.

MR. MACDONALD. So, you feel if the Federal Corrupt Practices Act does not cover it, we should not either?

Mr. ALEXANDER. I am not saying that is right or wrong. I am merely stating a fact.

Mr. MACDONALD. That is a pro, not a con.

Mr. ALEXANDER. There are many good arguments to be made for Federal inclusion of primaries with respect to both the Federal Corrupt Practices Act and with respect to broadcast legislation; yes, sir.

Mr. MACDONALD. Mr. Van Deerlin.

Mr. VAN DEERLIN. I would not want to get the witness into any trouble either, Mr. Chairman, so I will desist from questioning him.

Mr. MACDONALD. Thank you very much, sir.

Our next witness is Mr. Paul Comstock, general counsel, National Association of Broadcasters.

STATEMENT OF PAUL B. COMSTOCK, VICE PRESIDENT AND GENERAL COUNSEL, NATIONAL ASSOCIATION OF BROADCASTERS; ACCOMPANIED BY JOHN SUMMERS

Mr. Comstock. Thank you, Mr. Chairman.

My statement is very brief, so perhaps I could hastily go through it and then seek to answer any questions.

I am vice president and general counsel of the National Association of Broadcasters which is a nonprofit organization of radio and television broadcast stations. Its membership includes, as of June 30, 1970, 2,217 AM radio stations, 1,224 FM radio stations, 551 television stations, and all of the national radio and television networks.

I appreciate this opportunity to appear before the Subcommittee on Communications and Power to give our views on H.R. 13721 and identical bills and S. 3637.

The increasing cost of campaigning for political office is a major problem in the public life of our country and it is one of which every conscientious broadcaster is aware. The cost of virtually every commodity, facility, and service used in political campaigns has increased and, in fact, the cost of doing business and of living in general has risen substantially in recent years. It is necessary to view the cost of broadcast time in this overall perspective if we are to seek meaningful solutions to the total problem. Action with regard to broadcasting alone would not, in our opinion, solve the problem. Available funds would be spent on other means of promotion.

Repeal of the so-called equal opportunity provision of the Communications Act would be the most significant action that Congress could take with regard to campaign users of radio and television. Although it was intended to provide equal opportunities for all candidates, the provision actually restricts broadcasting stations and networks from giving the widest possible airing of political candidates because the same amount of time must be provided to numerous minor party candidates. Repeal of the provision would permit broader use of radio and television by the candidates of significant parties and it would allow broadcasters to demonstrate their dedication to the principle of fairness. Thus, NAB favors the repeal of the inhibiting provision.

NAB does not favor the approach in H.R. 13721 and identical bills which embody the principle of a mandatory percentile-rate reduction on a specified number of announcements and a specific amount of

program time. It would be highly discriminatory because it would apply only to broadcasters and not to the other media who are their business competitors. Broadcasting is a competitive enterprise. It is not a public utility. Radio and television stations and networks are highly competitive with each other and with the several other media. There are more than 6,000 commercial radio stations and more than 600 commercial television stations in the United States. New UHF television and FM radio stations are coming on the air each year. The charges for their services are set as a result of competition in a free market. The fixing of rates by statute for any purpose would be a radical departure from sound principles now in the law and it would serve as a destructive precedent.

Like other businesses, radio and television stations must invest substantial time, talent, and material resources to provide their services. They must acquire land and equipment, meet payrolls, pay interest on capital, pay for electric power and other utilities, pay taxes, buy programing, pay copyright fees, and so on. All of these costs are rising. By way of example the telephone company proposes substantial increases for use of its facilities by radio and television stations. The FCC itself proposes an increase of 1,500 percent in fees to be charged the broadcasting industry.

Any enforced reduction in rates would, of necessity, have equal applicability to all licensees in the designated service. Thus, the burden would fall upon all stations regardless of their profitability. Fortunately, a majority of the stations are profitable enterprises. But many are not. Most UHF stations are losing money. Many television stations in the smaller markets are not highly profitable. The FCC annual report published in April of 1970 reports that 14 percent of VHF television stations and 55 percent of UHF television stations were unprofitable during the reporting period and that 28 percent of all radio stations were unprofitable. Another 20 percent reported annual profits of less than \$5,000. Sixty-five percent of all independent FM stations were unprofitable. To say the least, a legal requirement to reduce rates would be extremely burdensome upon these less successful stations.

In this connection, it should be noted that many of the more profitable stations and groups of stations have voluntarily provided for a favorable rate to political candidates, as noted in testimony here this morning. Each of the three networks has provided for such treatment on its own group of stations. In addition at least six of the major groups of stations have provided some kind of favorable rate for political use.

Thus, more and more stations that can afford to provide a favorable rate or significant amounts of free time are doing so voluntarily. Those who cannot afford it should not be forced to do so.

Turning now to S. 3637 which has passed the Senate and is now before the Subcommittee on Communications and Power, NAB, as noted, favors the amendment to section 315 which would repeal the so-called equal opportunity provision as it applies to candidates for the offices of President and Vice President.

We do not favor the amendment to section 315(b). That section now provides as follows: "The charges made for the use of any broadcasting station for the purposes set forth in this section shall not

exceed the charges made for comparable use of such station for other purposes." Clearly the existing law provides that there shall be no discrimination between political and commercial uses.

The proposed section 315(c) raises serious problems. It would limit the expenditure that a candidate could spend on the electronic media. To be fair it should apply to all media. To be effective a limitation upon expenditures should apply to campaign expenditures for all purposes. Surely money saved in one medium will be spent to promote the campaign in other ways. I am aware that the Federal Corrupt Practices Act has not served its purposes but I have no expertise on that subject. The Congress itself has the greatest knowledge of the political process.

Finally, the proposed provision that broadcast licensees shall make a reasonable amount of time available for legally qualified candidates for Federal elective offices during the evening hours is inconsistent with the provision in the present section 315 which imposes no specific obligation on a station to provide time in the first instance. We believe that the basic public interest, convenience, and necessity clause of the Communication Act insures that candidates will have sufficient access to radio and television stations in evening as well as in the daytime hours.

Mr. Chairman, I want to assure you that NAB stands ready to cooperate with this subcommittee in its effort to find genuine solutions to the problem of the cost of political campaigns. It is a problem of major national importance.

Mr. MACDONALD. Thank you very much, Mr. Comstock, for your assurances that you will cooperate with us.

Just today, I would like to find out whether you favor the bill or not.

Mr. COMSTOCK. We favor it only in part, Mr. Chairman.

Mr. MACDONALD. I take it that you favor the repeal of 315 as it applies to the presidential and vice-presidential candidates?

Mr. COMSTOCK. Yes, sir; we do.

Mr. MACDONALD. And after that?

Mr. COMSTOCK. After that, we could not favor the other provisions, because we deem them to be discriminatory.

Mr. MACDONALD. Well, what you are saying then is that if we turn out a bill here that applies just to the President and Vice President and repeals section 315 to that extent, we have your approval; but, if we do not, we have your disapproval?

Mr. COMSTOCK. Disapproval of what part, Mr. Chairman?

Mr. MACDONALD. Of any bill that goes beyond repealing section 315 as far as the presidential and vice-presidential candidates are concerned.

Mr. COMSTOCK. I would say a majority of the broadcasters whom we represent would not favor any provision that would impose a limitation upon them that would not apply to their competitors.

Mr. MACDONALD. Well, I know you are in close contact with many broadcasters, but you say you are speaking for all broadcasters when you say that?

Mr. COMSTOCK. No, sir. I would say I speak for a majority of the members of our association.

Mr. MACDONALD. Now, you say that the broadcasting industry should be treated in the same way as billboards—Are you saying that as far as congressional scrutiny and control is concerned?

Mr. COMSTOCK. Well, no, not precisely. Obviously, broadcasting is licensed, each broadcaster is a licensee, and cannot be treated exactly the same as other media in that regard.

Mr. MACDONALD. As I understand, billboards are licensed by the various States, too.

Mr. COMSTOCK. Of course, broadcasting, specifically, is not. The Federal Government has preempted the field, and the States cannot—

Mr. MACDONALD. In the interest of time, I will go on to newspapers.

Do you think Congress should regulate newspapers, give them licenses?

Mr. COMSTOCK. No, sir, I do not.

Mr. MACDONALD. Do you think that Congress should issue licenses for magazines?

Mr. COMSTOCK. No, sir.

Mr. MACDONALD. Then, how can you possibly say—You do not object to Congress licensing the broadcast business?

Mr. COMSTOCK. I favor it.

Mr. MACDONALD. When you say that, how can you say all of the media should be treated alike?

We have no control over billboards.

We have no control over newspapers.

We have no control over magazines.

So, how can you say we should treat them as we do you, who we do have control over?

It seems to me rather an absurd statement.

I would be happy to hear your explanation, if you have one.

Mr. COMSTOCK. I think you went over it to some extent with one of the previous witnesses and developed the dichotomy there. I think it is not a question of regulating; I think it is a question of limiting a charge that may be made and, although I have never researched the question because it has never been proposed that a specific limit or control be placed on the other competing media. I do believe that there may be possibilities under which Congress could limit the charge for this particular purpose.

Mr. MACDONALD. You want the Congress to take further control of the other branches of the media?

Mr. COMSTOCK. No; because I do not believe the Congress should.

Mr. MACDONALD. Do you have anything that comes to mind that this committee could do anything about concerning the other media?

Mr. COMSTOCK. Well, I am not as familiar with the jurisdiction of this committee as the chairman is.

Mr. MACDONALD. I accept that.

Can you think of any other committee who may have jurisdiction over that issue?

Mr. COMSTOCK. I would think that Congress would have jurisdiction over the legislation that it has enacted with respect to other media, other businesses, and one of those mentioned was the mailing subsidy.

Mr. MACDONALD. Are you urging the Congress to revoke the low-class mailing privileges—

Mr. COMSTOCK. No, sir; I am not.

Mr. MACDONALD (continuing). That the national magazines have?

Mr. COMSTOCK. No; I am not. Believe me, I am—

Mr. MACDONALD. The whole point of this—I am going back and forth like a ping-pong ball, and you are not giving me answers that impress me. I am really curious why you come in here and represent the broadcasters and indicate you feel you are being discriminated against when you admit yourself that the Congress has, according to your words—that Congress should not have any further control over the other branches of the media. The two things are not comparable.

If you have any further explanation, I would be delighted to hear it. Otherwise, it seems to me your argument is just a statement, not an argument.

Mr. COMSTOCK. Well, in the first place, I do not believe that the Congress should set the rates in broadcasting and it has not since the first Radio Act of 1927.

Mr. MACDONALD. There was no intention—Where in the bill is there a mention of setting rates?

Mr. COMSTOCK. The first bill.

Mr. MACDONALD. If you read the bill—and I take it you must have, in line with your duties—it merely goes to getting the same rates as that offered commercial advertisers. Is that Congress setting rates?

Mr. COMSTOCK. Well—

Mr. MACDONALD. The whole thing—I am sure you know your subject better than it sounds. The whole thing goes directly to a rate-making basis that is already established by the various stations. That is all that is being asked for in this bill, is that Congressmen be treated as Mr. Van Deerlin indicated, on the same parity as soaps or deodorants, or cigarettes—cigarettes is a bad word to use these days—

Mr. COMSTOCK. I was referring in the first instance to H.R. 13721 which would propose to establish a specific percentile rate—

Mr. MACDONALD. No, it establishes a discount, not the rate.

Mr. COMSTOCK. Right.

Mr. MACDONALD. A discount.

Mr. COMSTOCK. The Chairman is correct. It would establish a percentile discount. However, with regard to S. 3637, I believe that the provision establishes a more favored position for the political user than the commercial user. The present law provides for equality or nondiscrimination. The proposal in S. 3637 would give the political candidate more favorable treatment than the commercial user, because if the commercial user were to come in on the same basis as the political candidate he would pay a higher rate.

Mr. MACDONALD. Do you think that the political system here in the United States has much to do with the welfare of the country?

Mr. COMSTOCK. I think that is axiomatic, Mr. Chairman.

Mr. MACDONALD. How do you say it is preferential treatment to sell to somebody who is trying to serve the public who is coming down here to Washington to make laws that affect every life in the United States? How can you, in any candor at all, compare the two things and say: "Well, it is all unfair." I thought, and if I am wrong you can correct me, your broadcasters got their licenses both in radio and TV to serve in the public interest. If you can tell me of some-

thing that more closely affects the public interest than the kind of people that are sent here to Washington to govern lives, please tell me.

Mr. COMSTOCK. I know of nothing more important in American public life than political elections. When I talk about discrimination, though, Mr. Chairman, I have to think about the many, many small radio stations and small television stations, in both large and small markets—

Mr. MACDONALD. Before you go on, I do not want to take the time of my colleagues—I will tell you the people who run for public office are not all stupid. They are not about to go on a station that is so small it is in financial difficulty to pay money to advertise to people who are not going to hear it. So, your pleading for the small station does not really impress me one iota, because the people who have a limited budget are going to go to the station in the area that can do them the most good.

So, I would think that your talk about how the small station is going to be adversely affected is not very appropriate.

Mr. COMSTOCK. Well, Mr. Chairman, there are small stations in many communities where the stations are not profitable or not very profitable, and they are among the principal outlets for the political life of the community. And the candidates for office, whether it be Congress, sheriff or county commissioner, do use those stations. The stations feel obligated and, indeed, they should, to provide a means of public expression in those communities.

Mr. MACDONALD. Well, Mr. Comstock, I guess we are on a.c.-d.c., because I am talking about Federal elections. I am not talking about a county commissioner or a sheriff.

I am talking about a Congressman, Senator, and President and Vice President of the United States.

Who are you talking about?

Mr. COMSTOCK. Well, I am talking about all of the candidates for public office.

Mr. MACDONALD. This bill does not uniformly apply to all the candidates for public office. I hope you read the bill.

Mr. Van Deerlin?

Mr. VAN DEERLIN. Welcome to our midst, Mr. Comstock.

Mr. COMSTOCK. Thank you, Mr. Van Deerlin. That is very warming.

Mr. VAN DEERLIN. On page 3 of your testimony, you say, "Fortunately, a majority of the stations are profitable enterprises but many are not. Most UHF stations are losing money." And you say that 14 percent of VHF television stations and 55 percent of UHF television stations were unprofitable during the reporting period and 28 percent of all radio stations were unprofitable.

You are not here, though, are you to plead poverty?

Mr. COMSTOCK. Certainly not.

Mr. VAN DEERLIN. The bulk of the 550 television stations for whom you speak and on whose air candidates would like to conduct their campaigns are well able to absorb some sort of adjustment in the present system if it can be determined it is in the public interest, are they not?

Mr. COMSTOCK. I believe that is correct.

Mr. VAN DEERLIN. And a station—I presume a New York station—that the chairman referred to, which was able to charge \$3,500 for one, I presume, 60-second spot—

Mr. MACDONALD. He did not say which one.

Mr. VAN DEERLIN. But it was a spot; not an hour's time.

Mr. MACDONALD. Right.

Mr. VAN DEERLIN. It clearly does not cost that station 35 times as much to air that signal for 1 minute as it does a station in Fresno, Calif., that might only charge \$100 for 60 seconds of prime time; does it?

Mr. COMSTOCK. I do not really know.

Mr. VAN DEERLIN. The high rate is determined by the market area?

Mr. COMSTOCK. Certainly, that is correct. Each case is one of supply and demand.

Mr. VAN DEERLIN. They have a somewhat higher cost of doing business, obviously, running a station in New York, but to put a signal on the air that can be picked up, the price that you charge is determined by the number of people who are within the range of the signal and who are likely to get it—isn't that one of the cardinal rules of rate-making?

Mr. COMSTOCK. Yes, Mr. Van Deerlin. You are very familiar with this background.

Mr. VAN DEERLIN. Never at the management level, however.

Well, now, I know I get into a slightly sensitive area here. You quoted section 315(b), "the charge made for the use of any broadcasting station for the purposes set forth in this section shall not exceed the charges made for comparable use of such station for other purposes."

And you offer this as the guarantee a candidate for public office has, that he is not going to pay a premium rate as he's compelled to do in newspaper advertising, where they start with a rate down here for chainstores, and another for grocery advertising, and then you get up to the top where they have a political rate which may be two or three times as much as the regular foodstore advertising rate.

Now, you would not wish to tell this subcommittee, would you, that the rate card is faithfully followed by all of your 551 retainers—

Mr. COMSTOCK. No, sir.

Mr. VAN DEERLIN. There is a certain amount of salesmanship in going out, to bargain and deal—you make deals, do you not, that do not sometimes have very much to do with the rate card?

Mr. COMSTOCK. I think it varies from station to station, Mr. Van Deerlin. And I think, basically, what you say is correct.

Mr. VAN DEERLIN. Is it not likely the successful No. 1 station in any market area is more likely to adhere faithfully to the rate card than those second, third, and sometimes fourth stations that are competing with the No. 1 station and fighting for the business?

Mr. COMSTOCK. That sounds very logical.

Mr. VAN DEERLIN. But when the political campaign representative comes in, the rate card is much more likely to prevail, is it not, exactly as it is written?

Mr. COMSTOCK. This I do not know, because it would seem to me that section 315(b) which you cited would require that the charge not exceed the charge for comparable use, and if they have had comparable

uses based on something other than the rate card, then the charge to the candidate could not exceed that for the other use.

Mr. VAN DEERLIN. But the sales manager is not required to reveal, under any law that I know, what deals he has made with the local tire outlet to get part of a national advertising account come in here with some special rate that is other than what the rate card calls for. All he is required to tell as far as I know, is what has been sold to other candidates for office—for the same office this candidate is running for.

You are required to list all of the time you have sold to opposing candidates. There is nothing in the law that goes into this matter of rates other than what the rate card shows. Would you not agree this is true

Mr. COMSTOCK. With me is Mr. John Summers, our chief counsel, who is more expert than I on that aspect of the communications law. Could I ask him to answer the question?

Mr. VAN DEERLIN. Oh, yes, certainly.

Mr. SUMMERS. The law, of course, requires equal treatment. The political purchaser would have to be accorded the same treatment the commercial advertiser has been accorded.

It is very difficult—because you have a rate card, as you say, and there are other arrangements made. I would think if the political purchaser is interested in buying the same sort of an arrangement that has been sold to the commercial advertiser under some kind of negotiated treatment, then if he were interested in that sort of thing, he would have to be given the same opportunity.

Mr. VAN DEERLIN. He would have to know about it, would he not?

Mr. SUMMERS. Yes, he would.

Mr. VAN DEERLIN. Very often the sales manager does not tell one salesman what another salesman in the same organization has sold. It would be impossible, unless an agency executive had negotiated the deal off the rate card for the tire dealer to have any idea what had been done commercially. So, he could not possibly come in with any claim for a rate under the law—which is all that we can be concerned with here in legislation—any claim that he could hope to make stick. There is nothing evil about this, in my opinion. It is just a manner of doing business, and it permeates the entire broadcasting field. Why, at broadcasting conventions, it is a standing joke about the rate card.

So, what we have under the present law is no protection that candidates for political office will not in effect pay a premium rate.

Mr. SUMMERS. I agree with that. It is a very difficult situation.

Mr. VAN DEERLIN. So, all this legislation would do—and I have not reached any final judgment, myself—but what we are being asked to do, under this law, is to say that the rate card shall be used to guarantee that the end rate, the lowest per unit rate—and if I misunderstand it, I hope counsel will correct me—the lowest end rate that is available on the rate card will be made available to candidates for Federal office.

Mr. SUMMERS. Well, I am not sure the legislation mentions the rate card. It is possible that you might have the same problem with respect to legislation. It says “the lowest unit rate.” Of course, that could be a negotiated rate on the side, again.

Mr. VAN DEERLIN. Yes, but I do not think we can warm our hands on that very much.

Mr. MACDONALD. Would the gentleman yield?

Mr. VAN DEERLIN. Yes.

Mr. MACDONALD. Negotiated between whom?

Mr. SUMMERS. The salesman and a commercial client.

Mr. MACDONALD. You were not indicating that anyone from any public office would have enough clout to negotiate a rate cut?

Mr. SUMMERS. I would think if they were interested in buying multiple spots or considerable amounts of time.

Mr. MACDONALD. Even the best thought-out campaign only lasts at that pitch for about 30 to 45 days, to saturate the area with spot announcements, and so forth. So, why would a station make a real cut-rate deal with somebody who is only going to occupy the spot for only 30-45 days?

Mr. SUMMERS. Again, I figure it depends upon the number and the situation of the individual station that we were referring to before.

Mr. VAN DEERLIN. I am through, Mr. Chairman, and I would just add that I have the highest regard for Mr. Comstock, and I think he has done very well with a bad set of circumstances.

Mr. MACDONALD. Mr. Comstock, when you talk about the trials and tribulations of the industry, you refer to a rather startling figure on which you say, on page 3 of your statement, "The FCC itself proposes an increase of 1,500 percent in fees to be charged the broadcasting industry."

Would you care to elaborate on that?

That is a rather startling statement.

Mr. COMSTOCK. Here, again, I might ask Mr. Summers, if I could, to summarize very briefly the rulemaking pending before the FCC on that subject.

Mr. SUMMERS. Yes. The Commission now has a schedule of filing fees which are rather nominal and, under the present schedule, I believe they recover—if my memory serves me correctly from my days at the Commission—recover about \$500,000-\$600,000 from the broadcasting industry under the concept of these filing fees.

Now, under the proposed fee they would recover something over \$9 million and that equates to approximately a 1,500-percent increase.

Mr. MACDONALD. Do you have any idea, Mr. Comstock, what the average member of your organization pays in filing fees?

Mr. COMSTOCK. No, sir; I do not.

Mr. MACDONALD. I will not ask for the average. I will ask: What is the lowest figure? What is the highest?

Mr. SUMMERS. \$75 for renewal application.

Mr. MACDONALD. Then, the highest for TV?

Mr. SUMMERS. \$150, I believe.

Mr. MACDONALD. So you are talking of it as a great burden, an increase from \$75 or \$150?

Mr. SUMMERS. No, not at all.

Mr. MACDONALD. An onerous burden on the industry for their licenses.

Mr. SUMMERS. No, this is not the increase.

Mr. MACDONALD. No, I know. You just stated the fee itself was \$75, the lowest in the radio, and the highest was \$150 for a TV.

Mr. SUMMERS. That is correct.

Mr. MACDONALD. I am asking, do you feel this is a great burden on the industry?

Mr. COMSTOCK. It would be on some stations.

Mr. MACDONALD. How much do you think you could get for that if you thought \$150 was too much for a license? How much do you suppose that would go for in the open market?

Mr. COMSTOCK. I do not know, but the concept—

Mr. MACDONALD. Give a guess. This is your industry; you represent the broadcasters.

Mr. COMSTOCK. It would vary, Mr. Chairman.

Mr. MACDONALD. I know it would vary, but give a figure.

Mr. COMSTOCK. There, again, it is a free and open market on the sale of stations, provided—

Mr. MACDONALD. What do you think the flagship in New York, CBS's station, would go for?

Mr. COMSTOCK. I could hardly guess. I know it would be a great many million dollars.

Mr. MACDONALD. When you are talking about increase of 1,500 percent, I think you should be fair and spell out what it is an increase from. If the fee was a nickel and then suddenly someone decided to charge \$4, I guess that would be a terrible increase, too. But do you think that is a very fair thing to put into a statement like this that the FCC is picking on you?

Mr. COMSTOCK. I think probably the only unfair thing about it, from my own point of view, is not to give all of the proposed increases in other areas of the stations' doing business, particularly as it would affect the less profitable or unprofitable station. There are many others: performance fees, a proposal to double the stations' payments for music—a very serious proposal pending. They have just lost cigarette advertising, which was 10 percent of the gross billing of the broadcasting industry—or they will lose it in January.

Mr. MACDONALD. Do you have any stations for sale?

Mr. COMSTOCK. Sir?

Mr. MACDONALD. Under all of these pathetic circumstances that you are outlining, I ask: Are there many stations for sale?

Mr. COMSTOCK. I am sure there are some stations for sale.

Mr. MACDONALD. Could you name me a TV station for sale?

Mr. COMSTOCK. No, sir; not offhand, but each week in the trade press they note sales of stations.

Mr. MACDONALD. Thank you very much.

Mr. Van Deerlin?

Mr. VAN DEERLIN. I was going to add to the discussion that if a licensee has real property and equipment worth \$2 million and he sells his station for \$15 million, it could be assumed, could it not, that the value of the license was \$13 million?

Mr. COMSTOCK. Well, it can be assumed that the value of things other than that real property is \$13 million, yes, sir.

Mr. VAN DEERLIN. Like goodwill?

Mr. COMSTOCK. Well—

Mr. SUMMERS. For tax purposes, yes.

Mr. VAN DEERLIN. What?

Mr. SUMMERS. For tax purposes, it is goodwill, yes.

Mr. MACDONALD. Or a great desire to serve the public.

Thank you very much.

The hearing will be closed.

(The following statements and letters were received for the record:)

STATEMENT OF WILLIAM G. HARLEY, PRESIDENT, NATIONAL ASSOCIATION OF
EDUCATIONAL BROADCASTERS

The National Association of Educational Broadcasters endorses the principle of an informed electorate as embodied in S. 3637 and in H.R. 13721.

The NAEB is the professional association of institutions and individuals engaged in educational radio and television. This membership consists of universities, colleges, schools, and non-profit community corporations which are licensees or permittees of almost 200 educational television stations; about 192 educational radio stations; 90 closed-circuit and instructional television fixed service systems; and some 3500 individual producers, teachers, writers, directors, students, artists, engineers and others who are involved in various phases of educational communications.

On behalf of the NAEB member stations and individuals, I feel strongly that enactment of this legislation will provide an opportunity to increase meaningfully the public's awareness of candidates and issues which confront them during election campaigns.

Educational radio and television stations fully recognize their responsibilities to engage the public through the use of the media in meaningful discussion and debate on the candidates and issues which affect their lives. Last November, and again in April of this year, the managers of America's public television stations met to discuss their programming priorities. Local issues ranked first as matters of principal concern to public broadcasters. They placed considerable emphasis on the need to present candidate broadcasts as an essential public interest service to local citizens. The reports of these conferences include the following comments:

"Listed most often was the broad range of *local public issue programming*, from *presenting candidates to covering elections* to delving deeply into *local issues and local government*, using local resources, local tie-ins—event-oriented programs, involvement programs, local crises. 'Nothing affects the local audience with as much impact as this sort of local programing.'

"Through all the discussions ran the vital thread of *increasing local citizen participation* in the process—and *providing citizens with the political sophistication necessary to act responsibly in that process.*"

A recent survey of our public television stations indicated that these stations have expanded time allocated by them to political candidates significantly over the past 6 years. These figures do not generally include program time allocated to candidates for the offices of President and Vice President. Rather, it is our understanding that a great portion of this time is devoted to candidate broadcasts for both primary and general Congressional elections. We believe we can be proud of this record of public service. The statistics concerning time allocated to candidate broadcasts are as follows:

	1962	1964	1968
Number of stations on air.....	75	98	174
Number of stations presenting candidate broadcasts.....	18	26	132
Percentage of stations presenting candidate broadcasts.....	24	27	76
Total hours of candidate broadcasts.....	(1)	240	1,859
Average hours per station.....	(1)	9.2	14.1
Number hours of primary election candidate broadcasts.....	(1)	39	1,053
Number hours of general election candidate broadcasts.....	(1)	201	806

1 Not available.

We were pleased to see recently the recommendations included in *Voters' Time: The Report of the 20th Century Fund Commission on Campaign Costs in the Electronic Era* with regard to the participation of non-commercial television and radio stations in election campaigns:

"The Commission considers it essential that noncommercial or educational radio and television stations also broadcast Voters' Time programs. Their number and importance is increasing. Their participation befits their avowed objectives of public service. They are eager to participate.

"By definition, these noncommercial stations do not operate for profit. Neither they nor commercial broadcasters should benefit from carrying Voters' Time programs.

"Noncommercial stations must, however, meet their operating costs. Therefore we recommend that noncommercial stations be compensated for their operating and network interconnection costs."

The Corporation for Public Broadcasting, established by the Congress to support public broadcasting activities, shares our interest in providing greater opportunity for an informed electorate via public broadcasting. Attached to this statement is a letter from John W. Macy Jr., CPB President, which indicates his views in this matter.

We are pleased to present our views and support for this important legislation on behalf of America's educational and public broadcasters.

* * *

CORPORATION FOR PUBLIC BROADCASTING,
Washington, D.C., June 1, 1970.

Mr. WILLIAM HARLEY,
President, National Association of Educational Broadcasters,
Washington, D.C.

DEAR BILL: As the House Communications and Power Subcommittee begins to hear testimony on legislation to lower the costs of commercial television time for political candidates, I thought it appropriate to commend you and the Educational Television Stations Division of NAB for your efforts to expand campaign public service broadcasts by public stations.

I was heartened to learn that 76 per cent of the public stations on the air in 1968 presented candidate broadcasts in that year, averaging about 14 broadcast hours per station. Significantly, a large percentage of the candidate time provided by public stations in that year was devoted to primary contests. This is one indication that public stations are concentrating on local contests where the need for this public service is least likely to be met by commercial broadcasters.

The Corporation believes that there is a great need for all the media to help inform citizens of the attitudes of candidates for public office on critical issues. We feel also that since public service is the very reason for the existence of public broadcasting, public stations have a special obligation to allow candidates to present their views to our ever growing audience.

We hope very much that your efforts to inform public stations of the Federal Communications Commission regulations regarding candidate broadcasts will be of assistance to them and that all of the 191 television stations and scores of radio stations will provide this kind of public service for their viewers in the forthcoming elections.

With best wishes,
Sincerely yours,

JOHN W. MACY, Jr.,
President.

STATEMENT OF JOSEPH A. BEIRNE, PRESIDENT, COMMUNICATIONS WORKERS OF AMERICA

Television and radio have become the most powerful media of informing and influencing public opinion. Half a century ago, when the first radio broadcasting was begun, the American citizen was afforded another means of getting more information in order to live a better life.

After World War II, television became an integral part of American life. And we are all benefiting from the medium. Within the last year, we have had live television from the moon, and from the space capsules in flight there and back to earth. It is all reminiscent of the popular comic strip of the 1930's and 1940's, Buck Rogers; his 25th century adventures have arrived 500 years early.

I am proud to note that the Union of which I am President, the Communications Workers of America, has played an important part in establishing and maintaining the earth-to-moon communications network used by NASA.

It is possible to see what is happening on the moon, because there are no artificial barriers.

But it has not been possible, in the last two Presidential elections, to see the candidates themselves facing each other, confronting the major issues of our times, simply because of artificial barriers.

The Communications Workers of America, knowing the value of communications to mankind, has taken strong positions in support of televised debates involving the candidates for President and Vice President. These offices are so vital to our Nation and the world that the barriers which now seem to stand in the way of debates must be lifted. We must have the freest possible access to information about those whom we choose to be the official spokesmen for the American People. There must be the public clash of ideas on the hard questions.

I hope never to have to see another Presidential campaign with staged "panel shows" of carefully screened "questioners" and thousands of balloons and straw men and even appeals to raw bigotry.

Your Subcommittee has under consideration S. 3637, one of whose purposes is to allow legally qualified candidates for those offices to take part in debates. Both of the major Parties have been remiss in avoiding debates. S. 3637 will accomplish the aims expressed by the Communications Workers in ensuring that televised debates are possible.

For the Subcommittee's guidance, I have attached copies of the 1969 Convention Resolution 31A-69-22, entitled "Presidential Nominees", a CWA Executive Board Statement, "TV Debates in Presidential Campaigns," adopted in February 1969; and a display advertisement, "This Is No Time for a Fractured Campaign," which appeared in 17 major daily newspapers and the CWA News during autumn 1968.

Many arguments are advanced as alleged reasons against televised debates. All are specious; I say this irrespective of the situation in any given election, whether the incumbent President is the man of my choice or not.

Without any validity is the canard that an incumbent President should not debate because some "security-sensitive" information that "might" be blurted out over the airwaves. The simple fact is that each candidate now gets high-level intelligence briefings so as to avoid precisely that danger. And it has to be demonstrated to me that any man nominated by any of the non-Communist political parties would be so irresponsible as to instantly declassify information on his own initiative. If any candidate is a security risk, we had better know it before the election, not afterward, when he has the power to do damage to the Nation.

Under analysis, another canard used as an excuse to avoid debates can be rejected. It has been said that one candidate may be a superlatively skilled debater, who would outshine the other candidates. But it would be irresponsible for any party to nominate a pair of candidates who are unable to express themselves adequately or to defend their convictions, commitments and party platforms. The fact is that the nominating process is such an arduous trial that only the fittest become the choice of the delegates of any given convention.

The true reason for the absence of debates is that some candidates have substituted personal convenience for the public good, rationalizing that a candidate's choice is more important than a citizen's right.

The American people are choosing a President and a Vice President, not a detergent or gasoline or toothpaste. The moral suasion of the American people, backed by appropriate law, should be brought to bear against all Presidential and Vice Presidential candidates to get them to face each other on live television. By this means, the people can get the information they so urgently require to make sound choices.

S. 3637 also contains provisions that would help reduce the need for great sums of money in Congressional and Senatorial campaigns. It appears a reasonable means of helping remove the dependence on large scale donors.

While the provisions dealing with Congressional and Senatorial campaign spending on broadcast time appear complex, the Federal Communications Commission should be able to devise appropriate rules to carry out the intent of the Congress. The legislative history of S. 3637 certainly will give the Commission adequate guidance in drafting the rules.

It is most important that no one be elected to the Congress after having outdone his opponent simply by reason of wealth or access to special interest money.

I should hope that your Subcommittee, the full Committee, and the House of Representatives will adopt S. 3637 as passed by the other body, in order that the long-needed reform of the use of broadcast media can be realized in the 91st Congress.

I regret that I am unable to appear before your Subcommittee in person to testify.

* * *

PRESIDENTIAL NOMINEES DEBATES

Free elections in a democratic society require the participation of an enlightened electorate. The "right to vote" can become almost meaningless unless it carries with it the "right to know." The right to have the major national issues sharpened and clearly defined, and the right to have the candidate's position on those issues enunciated loud and clear, are essential ingredients to intelligent judgment.

Since the Kennedy-Nixon debates of 1960, there has been an increasing interest in and growing demand for direct confrontation of the major candidates in every Presidential election campaign. The 1960 nationally televised debates brought clearly into public focus the essential value of enlightening the electorate through the vast coverage afforded by the major commercial TV and radio networks.

It is estimated that the first 1960 debates were watched by 75 million persons in 27 million homes, the largest such audience up to that time.

For through these confrontations the paramount issues facing the nation were made clear and the rhetoric of the candidates stripped bare of evasions and equivocations. The voters were informed and enlightened, not subjected to the technique of a Madison Avenue sales pitch.

We are living in an electronic era where the impact of radio and TV has a tremendous effect upon our thinking processes. Its power to mould opinion and shape our lives is awesome in its potential. But properly used, its potential for the good of society and for all of mankind is almost unlimited.

One of the more pressing needs in channeling the effects of the commercial TV and radio networks toward the common good is by providing the media through which the "right to know" concept can be fulfilled. This publicly owned, publicly licensed media has access to virtually every American home and is tailor-made to inform and enlighten the voters.

Prime TV and radio time is presently available only to those candidates who can afford its almost prohibitive costs. Even when they purchase time, most candidates present to the viewing voters a canned, well-rehearsed program deliberately designed to cast a favorable image. It amounts to a beautifully wrapped package that frequently bears little, if any, resemblance to its contents.

The election of the President of the United States of America is so grave a responsibility for the voters to fulfill, that they should be given the facts from which an intelligent decision might be made.

The U.S. Congress in 1964, and again in 1968, debated the issue of waiving Section 315 (equal time provision) of the Communications Act of 1934, in order to provide the means for TV and radio confrontation of the candidates, but it took no affirmative action. Consequently, there were no debates.

CWA believes the public interest can best be served by bringing the candidates together—face to face—where the voters can see and hear them, and then appraise the merits of the candidates. Therefore, be it

RESOLVED: That the Communications Workers of America calls upon the 91st Congress to enact legislation to provide, without cost, adequate prime time each election year for the purpose of direct confrontation of the nominees for the office of President, who appear on the ballot in at least 35 of the 50 states.

Mr. Chairman, the Resolutions Committee moves the adoption of Resolution No. 22 entitled "Presidential Nominees Debates."

* * *

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO—EXECUTIVE BOARD
STATEMENT, FEBRUARY 1969

TV DEBATES IN PRESIDENTIAL CAMPAIGNS

Free elections in a democratic society require the participation of an enlightened electorate. The "right to vote" can become almost meaningless unless it carries with it the "right to know." For the right to have the major national issues sharpened and clearly defined, and the right to have the candidates' position on those issues enunciated loud and clear are essential ingredients to intelligent voter judgment.

Since the Kennedy-Nixon debates of 1960, there has been an increasing interest in and growing demand for direct confrontation between or among the major Presidential candidates in every Presidential election campaign. The 1960 nationally televised debates brought clearly into public focus the essential value of enlightening the electorate through the vast coverage afforded by the major commercial TV and radio networks media. For through these confrontations the paramount issues facing the nation were made clear and the rhetoric of the candidates stripped bare of evasions and equivocations. The voters were informed and enlightened, not subjected to the technique of a Madison Avenue sales pitch.

We are living in an electronic era where the impact of radio and TV has a tremendous effect upon every facet of our thinking processes. Its power to mold opinion and shape our lives is awesome in its potential. But properly used its potential for the good of society and for all of mankind is almost unlimited.

One of the more pressing needs in channeling the effects of the commercial TV and radio networks toward the common good is by providing the media through which the "right to know" concept can be fulfilled. These publicly owned, publicly licensed, but privately operated air waves have access to virtually every American home and are tailor-made to inform and enlighten the voters. The very preservation of our cherished free election system demands that they be offered the opportunity to hear the Presidential candidates in a direct confrontation where they assess the vital national issues and tell where they stand on them and what they propose to do about them.

Prime TV and radio time is presently available only to those candidates who can afford its almost prohibitive costs. Even when they purchase time, most candidates present to the viewing voters a canned, well-rehearsed program deliberately designed to cast a favorable image instead of the substance. It amounts to the soft sell of a beautifully wrapped package that frequently bears little, if any, resemblance to its contents.

Our great nation can ill afford to permit its election system to be reduced to the low level of selling the candidates as though they were deodorants or detergents. It is to precious a heritage to be sacrificed on the altar of expediency or political ambition.

The election of the President of the United States of America—the highest office in our land and the most influential in the world community—is too grave a responsibility for the voters to fulfill, unless they are given the facts from which an intelligent decision might be made.

The U.S. Congress in 1964, and again in 1968, debated the issue of waiving Section 315 of the Communications Act of 1934 in order to provide the means for TV and radio confrontation of the candidates, but it took no affirmative action. Consequently, no debates.

Accordingly, the Communications Workers of America calls upon the 91st Congress to enact legislation requiring the major commercial TV and radio national networks to offer, without cost, five hours of prime time each election year for the purpose of direct confrontations between or among the candidates for the office of President who appear on the ballot in at least two-thirds of the 50 states.

* * *

THIS IS NO TIME FOR A FRACTURED CAMPAIGN

The world is too small and the problems too big for piecemeal handling.

At a crucial point in our history, when the thrust of our nation's policy for years to come is to be decided, we are confronted with a fractured campaign.

Three candidates for President, scattered throughout the country, offer the voters their views through the filter of carefully prepared television shows, the impressions of newspaper reporters as to what they said, and a grab bag of TV commercials and newscast clips.

We, in the Communications Workers of America, believe that only through a direct confrontation of the candidates can the voters of America learn what they need to know to make an informed and intelligent choice.

We believe the only way to achieve that confrontation is by a series of nationally televised debates with the three candidates at the same place at the same time addressing themselves to the same issues, exposing each other's views for all to see and hear.

Thus far only one candidate—Hubert H. Humphrey—has expressed himself on this subject clearly. He wants to debate.

We applaud him for that stand.

The other two candidates—Richard M. Nixon and George C. Wallace—have hedged.

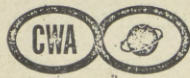
Voters need to know the precise stand of all candidates on such vital issues as Vietnam, law and order and social justice, taxes, education, medicare and social security, labor-management relations, agriculture, race relations, and the others that confront us.

Voters can't know, if all they get is a fractured campaign.

Presidential elections are too important for the nation and the world to continue to be a hit or miss affair. A more intelligent vote can be cast only if we can see and hear the candidates from the same platform in a series of debates.

This should be the method for 1968 and every presidential election.

All voters should insist on it.



A public service message of the

**COMMUNICATIONS WORKERS
OF AMERICA, AFL-CIO**

THE COMMUNITY-MINDED UNION

1925 K Street, N.W., Washington, D.C. 20006

JOSEPH A. BEIRNE
President

WILLIAM A. SMALLWOOD
Secretary-Treasurer

FEDERAL BAR COUNCIL,
COMMITTEE ON LEGISLATION,
New York, N.Y., June 8, 1970.

Mr. W. E. WILLIAMSON,
Clerk, Committee on Interstate and Foreign Commerce, House of Representatives,
Washington, D.C.

DEAR MR. WILLIAMSON: Enclosed please find a copy of a report of the Committee on Legislation of the Federal Bar Council concerning pending legislation dealing with television time for political campaigns. It would be greatly appreciated if our report could be included in the record of the hearings on this subject conducted by the Committee.

Respectfully,

RICHARD A. GIVENS,
Chairman.

* * *

REPORT ON LEGISLATION TO PROVIDE REDUCED RADIO AND TV RATES TO
CONGRESSIONAL CANDIDATES

(Federal Bar Council, Committee on Legislation, New York, N.Y.)

We believe that widespread dissemination of information should be encouraged in political campaigns. Accordingly, we support the repeal of the equal time requirements applicable to Presidential elections as proposed by S. 3637, 91st Cong., 2d Sess. (1970), passed by the Senate. These requirements have had the unfortunate effect of reducing the exposure to the public of candidates over the public broadcast media.

We also see advantages in the bill's provisions giving candidates the benefit of the lowest applicable price charged for television time, and requiring that reasonable amounts of prime time be made available to candidates. However, there are difficulties in the determination of what constitutes the price yardstick and what particular times are to be made available; we also fear that candidates with more money would obtain greater benefit from the reduced rates.

While we would encourage means to equalize the ability of candidates to reach the public without regard to money-raising ability, we oppose the bill's provision placing a maximum limit on the amount that can be spent for the purchase of television time on behalf of a candidate. This provision raises serious constitutional questions under the First Amendment by restricting a candidate's ability to disseminate his views and the public's ability to hear those views. Depriving candidates of television time results in depriving them of the most effective means of reaching the public.

A further unfortunate effect of this restriction is to give undue advantage to incumbents. Incumbents usually have received greater publicity and are better known than their challengers, who may need additional public exposure during campaigns to correct the imbalance.

The provision also contains a serious technical defect in that while it restricts amounts that can be spent on behalf of a candidate, it does not restrict amounts that can be spent against a candidate. As a result, a candidate may be unable to defend himself to the same degree his detractors attack.

We recognize the problems posed by rising campaign costs, and the resulting dependency of candidates on wealthy contributors. However, this bill's restriction on expenditures for television time is not the proper remedy.

We believe that a better remedy is to reduce campaign costs, rather than limit campaign expenditures, and to facilitate the making of political contributions. Such efforts, by means of tax incentives, have been urged by the Committee on Federal Legislation of the Association of the Bar of the City of New York on two occasions, by the Committee on Federal Legislation of the New York State Bar Association, and by the Committee on Federal Legislation of the New York County Lawyers Association. See Bulletin of Committee on Federal Legislation, New York State Bar Association 23 (January 1969), 115 Con. Rec. No. 33, S2015, S2019 (daily ed. 2/25/69); Report of Committee on Federal Legislation, New York County Lawyers Association, 115 Cong. Rec. No. 43, S2618, S2619 (daily ed. 3/11/69); Tax Incentives for Political Contributions, 2 Reports of Committees of the Association of the Bar of the City of New York Concerned with Federal Legislation No. 3, p. 87 (October 1963); Proposed Campaign Reform Legislation, 7 Id. No. 1, p. 1 (July 1968); New York Law Journal, 3/11/68,

p. 1. We join these other Bar groups in unanimously recommending that this approach be adopted. We agree with the State Bar group that:

"... we propose a *credit against federal income tax* be accorded to taxpayers for all contributions to a bona fide candidate for federal office or his party or committee to be used for specified political purposes only, the credit to be available up to a maximum limit of a moderate amount to be fixed by law. The amount of this limit should be set with a view to keeping the cost of the tax incentive within desired limits, but should in no event exceed \$100, in order to encourage large numbers of small contributions rather than a few large concentrated donations likely to give the contributor a privileged position in influencing political policy of a candidate." Report of Committee on Federal Legislation, 2/15/68, p. 2-3.

This step, combined with repeal of the equal time provisions as to Presidential campaigns, would in our view be preferable to enactment of the pending legislation.

Respectfully submitted.

RICHARD A. GIVENS,
Chairman.
PETER K. LEISURE,
Secretary.

SOCIALIST LABOR PARTY OF AMERICA,
NATIONAL EXECUTIVE COMMITTEE,
Brooklyn, N.Y., June 5, 1970.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Rayburn House Office Building,
Washington, D.C.

DEAR SIR: The Socialist Labor Party of America, being unable to send a representative to testify in person at the public hearings on political broadcast legislation conducted by your Subcommittee on Communications and Power on June 2, 3 and 4, because of the short notice given us of those hearings, hereby submits the following statement for the record.

The Socialist Labor Party of America is unqualifiedly opposed to any and all proposals to amend and/or repeal what is left of the equal opportunities provision, Section 315 (a) of the Communications Act of 1934, as amended. In presenting our views here we shall not repeat in detail all the arguments advanced and evidence submitted in our formal statements to the House Subcommittee on Communications and Power and the Senate Subcommittee on Communications at previous hearings in 1959, 1960, 1962, 1963 and 1967. Instead, we refer you and the members of your Committee to those statements already on the record as being, on the whole, relevant to the issues presently under consideration. A copy of one of these statements, that was presented to the Senate Subcommittee on Communications on June 27, 1963, is attached hereto. We consider this statement to be particularly relevant at the present time and respectfully request that it be included in the record as a supplement to our present statement.

Ever since the *Lar Daly* case was used as a smokescreen in 1959 behind which the licensed broadcasters of the publicly owned airwaves launched their successful effort to drastically limit the application of Section 315 (a), it has been clear that their real goal was, and still is, the complete and permanent elimination of the equal opportunities provision of Section 315 (a) from the Communications Act of 1934, as amended. And during the past decade they have left no stone unturned in their persistent efforts to accomplish this. If in this latest effort they succeed in convincing the members of the House of Representatives to concur in the Senate's approval of S. 3637, they will have all but accomplished their original purpose.

S. 3637 proposes to amend Section 315 (a) by striking out the colon in the first sentence of that section and inserting the following: "except that the foregoing requirement shall not apply to the use of a broadcasting station by legally qualified candidates for the office of President and Vice President of the United States." It is a short step, a very short step, from exempting presidential and vice presidential candidates from equal opportunities provision to exempting all candidates from that provision by the simple expedient of eliminating the provision itself as soon as it is felt that the electorate has been conditioned to accepting the erosion of this democratic provision.

The change in attitude toward the concept of equal time in the past ten years is graphically illustrated in the changed attitude of Senator John O. Pastore, Chairman of the Senate Subcommittee on Communications, who sponsored S. 3637. During the 1959 hearings conducted by his Subcommittee, Senator Pastore stated:

"The purpose of equal time is to give equal time. Equal time is not to serve the candidate. Equal time is to serve the public. That is the reason for the rule."

The Socialist Labor Party of America fully concurs in this view. And we would add that nowhere is it more imperative to assure that "equal time serve the public" than during the campaigns in which the highest offices in the nation—the offices of President and Vice President—are being contested.

At the 1959 hearings of the Senate Subcommittee on Communications, Senator Pastore further stated:

"And once the person is qualified [as a candidate], then the question arises that if the people have a right to decide whether or not they shall vote for that man . . . then I think that people have an equal right to hear what he has to say if you are going to listen to somebody else . . . for the same office. And that is the philosophy behind equal time . . . we have got to preserve the philosophy of equal time . . ."

But the bill, S. 3637, which the Senator has now sponsored and successfully steered through the Senate, ignores his own concept that "the purpose of equal time is to give equal time" in order to "serve the public." It also contradicts the Senator's logical observation that if the people have the right to decide whether or not to vote for a legally qualified candidate, they "have an equal right to hear what he has to say." Finally, the bill completely negates the Senator's admonition that "we have got to preserve the philosophy of equal time . . ."

We believe it important to note that the drastic limitation of democracy that would result from the final enactment of the proposed revision of Section 315 (a) has been completely submerged by the fact that most of the debate and most of the publicity given the bill have concentrated on the proposed amendment of Section 315 (b) to set limits on the charges that may be made for the use of any broadcasting stations by legally qualified candidates, and the proposed new Section 315 (c) which would set limits on the amounts that legally qualified candidates for the offices of President and Vice President may expend on "the electronic media." But the fact is that if Section 315 (a) is amended to exempt the offices of President and Vice President, Sections 315 (b) and 315 (c) become meaningless for all candidates for those offices except the candidates of the two major parties. For Section 315 (a) as presently constituted obligates the broadcasters to give not only free equal time to all qualified candidates, if they give time to any one of such candidates on a non-exempt program, but it also obligates them to *sell* equal time to all candidates on demand, if they sell time to any candidate. Under the proposed amended version of Section 315 (a), the broadcasters would not only be relieved of the obligation to give equal time, but they would also be relieved of the obligation to sell equal time. In short, the broadcasters, and they alone, would determine which candidates for the offices of President and Vice President would be heard and seen by the electorate.

The broadcasters, to be sure, in pressing for the right to be free to make such determination, have repeatedly given "assurance" that they would give (and sell) time to "significant" third party candidates. The record belies the promise. For one thing, who is to decide on what basis the significance of a third-party candidate is to be determined? What kind of significance must he have to entitle him to exposure, and how much exposure, on the electronic media? Second, and more importantly, it is an incontestable fact that the following and impact that will be needed by a candidate to convince the broadcasters that he is a "significant" candidate in our modern society can only be the result of repeated exposure on radio and television and not the reverse.

Nothing in the record of the overwhelming number of broadcast licensees justifies the conclusion that they can or should be trusted to treat all candidates for public office in keeping with the basic principles of democracy. In the past they have resorted to every conceivable device to evade their legal responsibilities to the democratic process as spelled out in Section 315(a). If they fail to meet their responsibilities and obligations when the law is on the books, what justification is there, or can there be, for assuming that they will act responsibly when the law is removed? To ask the question is to answer it.

The truth is that the "equal time" provision even as it stands now is a shambles—made so by the 1959 amendment, the modified interpretations and

rulings by the F.C.C. since the 1959 amendment was passed, and the invoking of technicalities to place many obviously political programs in categories exempt from Section 315(a). The inclusion in the 1959 amendment to Section 315 of the innocuous provision known as the "Fairness Doctrine" in no way alters this fact. It is particularly pertinent to consider this point because of the oft-repeated claim that if Section 315 were completely repealed the "Fairness Doctrine" would still afford a measure of protection to all candidates, including those of minority parties.

The experience of the Socialist Labor Party is that the "Fairness Doctrine" is practically meaningless since no effective effort is ever really made to enforce it, except possibly where powerful or influential organizations are involved. For the most part it is ignored by the licensees with impunity, particularly where minority parties and their candidates are concerned. This is especially true of the networks and the stations owned by, or affiliated with, them. Unless Section 315(a) clearly applies to a given case, the broadcasters generally refuse to consider—many won't even acknowledge—a request from a minority party or one of its candidates for a "fair" and "reasonable" opportunity to present its opposing views on an issue or issues that candidates and representatives of the two major parties have been given *repeated* opportunities to discuss. And, when the matter is taken to the F.C.C. the net result, almost invariably, is receipt of a letter from the F.C.C. blandly informing the complainant that while the licensee is obligated "to afford reasonable opportunities for the presentation of opposing views," the question is one of "reasonableness of a licensee's action." The F.C.C. doesn't bother to say whether it believes such "reasonableness" has or has not been practiced by the licensee in the particular instance under consideration. It simply leaves the matter hanging there, and nothing further is ever done about it. The broadcasters understand that they are off the hook and act accordingly.

In its "Public Notice-B," dated October 3, 1962 (page 2), the F.C.C. stated in part:

"... We are of the view that the 1959 amendments to the Act constituted an affirmation and codification by the Congress of the Commission's 'fairness doctrine.' With regard to programs not coming within the 'equal opportunities' provision of Section 315, but relating to important public issues of a controversial nature, *including political broadcasts*, it is particularly important that licensees recognize that the specific obligations imposed upon them by the provisions of Section 315 of the Communications Act with respect to certain types of political broadcasts *do not in any way limit the applicability of general public interests to political broadcasts not falling within the 'equal opportunities' provision of Section 315.* On the contrary, in view of the obvious importance of such programming to our system of representative government, it is clear that these precepts ... *are of particular applicability to such programming.*" (Italics ours.)

Despite this strongly worded enjoinder, the Socialist Labor Party cannot point to a single instance since 1959 in which the F.C.C. has supported, by word or action, our Party's request for time under the "Fairness Doctrine," including many such requests made during state and national campaigns.

In short, the broadcast licensees manifest a complete disregard for the "Fairness Doctrine," as far as minority parties are concerned, despite the specific emphasis placed upon this doctrine in the 1959 amendment. They arrogantly refuse to recognize any obligation to minority party candidates, and invariably are upheld by the F.C.C. in this respect. This speaks volumes on what would happen if Section 315 were repealed and political broadcasting were left to the vagaries of the "Fairness Doctrine."

It cannot be repeated too often that creating the opportunity for a more frequent presentation of the substantially identical views of the two major parties, while at the same time suppressing, or drastically limiting the expression of all divergent views, is the very antithesis of democracy. It would eliminate not only an essential ingredient of democracy—the right of proponents of new ideas to be heard on an equal basis with those who defend and uphold the status quo—but also an essential prerequisite for human and social progress, the free competition in the market place of ideas.

It has been frequently claimed that Section 315 "has the practical effect of keeping everybody off." The words in quotes were used by the New York *Herald-Tribune* in an editorial on Sept. 16, 1964. Ironically, the claim made on the editorial page was emphatically refuted on the radio page of the same issue of that

paper. Writing under the headline, "Networks' Problem: 'Selling' Free Time to Presidential Candidates," the Herald-Tribune's TV and Radio Editor, Richard K. Doan, reported that Messrs. Johnson and Goldwater had failed to accept a single one of the many offers of free time on *exempt* programs made to them by the various networks! In short, it was not Section 315, but political expediency that kept the major party presidential candidates off the air.

An example of the political expediency that motivates many candidates was provided by Senator Barry Goldwater in January 1964, when he stated that if he were President he would not debate his opponent. "Why buy his audience?" asked Senator Goldwater. "Let him get his own." Some eight months later he was asking his audience, "Why won't the President debate with me?" The answer was obvious. Mr. Johnson as saying, in effect, "Why buy this audience? Let him get his own." It was the same "principle" on which Mr. Goldwater had refused to debate Messrs. Rockefeller and Scranton some months earlier when they were all contending for the Republican nomination. In 1966, Mr. Rockefeller refused to debate his Democratic opponent for Governor of New York. In 1968, Mr. Humphrey refused to debate Mr. McCarthy, and later Mr. Nixon refused to debate Mr. Humphrey.

In other instances it was the broadcast licensees themselves who kept candidates off the air. For example, following the 1962 elections an analysis of U.S. Senate races in 36 states revealed the following: In eight states where there were more than two candidates, 26 per cent of the TV stations included in the analysis gave free time. In the 28 states where there were only two candidates running only 23 per cent of the TV stations included gave free time. The record of the radio stations in the same states was ever worse. In the eight states where there were more than two candidates, 14 per cent of the stations gave free time. In the 28 states where there were only two candidates running only nine per cent of the stations did so.

This probably explains why the contention that exempting the presidential and vice presidential candidates from the equal opportunities provision would permit "enlightening debates" has been conspicuous by its absence from the current arguments in favor of the proposed change in Section 315(a). In fact, it appears that the broadcasters have assured the supporters of the change that they will *not* insist upon debates between those candidates. During the discussion of S. 3637 on the Senate floor, Senator Pastore declared:

"I will say to the Senator [Mr. Pearson] that if ABC, CBS, or NBC in 1972 insist upon a format without consultation with the candidates, and if they do not give this time to the candidates at the choosing of the candidates—and I am here—I will introduce a bill to repeal this provision. I want the record to show that declaration emphatically and categorically, just as I have said it, because that is my understanding.

"There has been a tremendous amount of discussion as to whether a candidate for President of the United States should be placed in the position of being forced into a debate, without embarrassment or with embarrassment if he did not accede to it. The business of 'Here is the empty chair. Where is my opponent?'—if we are going to get into that sort of undignified format in presidential campaigns, the Senator from Rhode Island will be the first one to stand up and say, 'Boys, you have had it. This is the end. You have had it.'

"My understanding is that they have pledged that they will give 30-minute segments—several of them—over to the candidate, and that the format will be at the choosing of the candidate.

"If there is any misunderstanding about that—I want the record to show this clearly—I am saying right here and now, should there be any violation of this agreement, we will have it repealed the next time." (*Congressional Record*, April 14, 1970, pg. S5717.)

Today our nation at every level—local, state, national and international—is faced with a host of problems of staggering proportion and complexity. Some of them have been plaguing the country for decades, defying solution via the usual panaceas offered by politicians within the framework of our existing social and political institutions. If anything, then, this certainly is a time when more than ever we should keep the prime channels of communication—radio and television—open to the fullest degree to all proposals that aim to solve these manifold problems. On the other hand, conferring a monopoly of the public airwaves on those who advocate the status quo and general conformity, can only lead to disillusionment with our vaunted democratic ideals, and a growing rejection of, and abstention from the political process. And there has been considerable

evidence lately that this is precisely what is happening in our nation. The result has been a growing resort to anarchy and violence as a substitute for political action.

Recently, we received a letter from a young college student that is particularly relevant to this point. We believe both the source and contents should give the members of Congress pause before they further restrict the electoral process. The letter follows:

"The current attack on Section 315 is taking place alongside a general assault on political freedoms now being waged by the government in all three branches: executive, legislative, and judicial. Since 1960, when Section 315 was first suspended, our country has been convulsed by millions of its citizens seeking relief from the problems of war, racism, poverty, and the rest. And their government has responded with unconstitutional invasions, surtaxes, wiretaps, and 'Southern strategies.'

"Now the supreme assault. Not only does the government refuse to solve social problems, it now seeks to make sure no one else does. The proposed suspension of Section 315 is part of the attack on the most basic freedom—even more so than free speech—the right to free and open elections. Through corrupt campaign practices, unbelievably oppressive ballot laws and now monopolization of the mass media, the access of the people to the political process is being dangerously closed. The Congress apparently is seeking to define the political process and free elections as lifeless motions by two almost identical parties. Is democracy to be replaced by a 'two-party system' where there are no differences between the two parties?

"There is nothing in the past 10 years (or 50) to suggest that either the Democrats or Republicans are going to meet the challenge of the time. All their efforts seem to be aimed at closing the doors to minorities or restricting the free ballot. Once the doors to the political process have been successfully closed—what then?

"Throughout the turmoil of the last decade, we have been urged to use the political process to change the system. There has been no stauncher defender of the use of the ballot for accomplishing revolutionary social change than the Socialist Labor Party. In the midst of exhortations to go into the streets the Socialist Labor Party was repeatedly urged, and conducted where possible, peaceful and civilized political activity. Should Congress continue its assault on the ballot and free elections, the peaceful and civilized road to social change will be closed. People will be given into the streets, not by 'radicals' or 'foreign agents,' but by a government that refuses to listen and takes steps to frustrate and repress attempts to propose and discuss ways to peacefully change our society. Violence is a product of frustration and is caused by those who obstruct the traditional democratic processes for accomplishing social change. Should Congress follow its present course of restricting political rights, the repeal of Section 315 may cause more violence than all the demonstrations put together.

"The Democrats and Republicans will not—cannot—solve the problems of American society. The doors must be open for those who can."

These are sound observations that reveal a sincere and serious concern for the future welfare of our nation. And they merit equally sincere and serious consideration by all who claim to share a similar concern for the future of our nation.

In conclusion, we repeat the following from the Socialist Labor Party statement to your Committee on March 6, 1963:

"The retention of our 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. 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, re-establishing freedom 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."

Respectfully submitted.

NATHAN KARP,
National Secretary.

* * *

STATEMENT OF THE SOCIALIST LABOR PARTY OF AMERICA PRESENTED TO THE
U.S. SENATE COMMERCE COMMITTEE SUBCOMMITTEE ON COMMUNICATIONS,
JUNE 27, 1963

Once again the "equal opportunities" provision of Section 315(a) of the Federal Communications Act is under attack. And once again the Socialist Labor Party of America appears before this Senate Subcommittee on Communications to record its vigorous and principled objections to the latest proposals to suspend and/or amend this important provision of the Communications Act.

Previous attempts to effect a major change in the F.C.A. so as to eliminate minor party candidates from participating in radio and television during political campaigns have met with a considerable degree of success. The changes made in the law to date have served obviously to dilute the democratic principles to which this nation is traditionally dedicated. It is a demonstrable fact that the 1959 amendment of Section 315(a) laid an effective (if of questionable constitutional validity) foundation which enables the broadcast licensees of the public airwaves practically to bar all minority party candidates from the publicly owned airwaves except for what can only be described as "token appearances." During 1960 the minority party candidates for president and vice president were completely prevented from obtaining equal time on any radio or TV station.

It is now proposed that Section 315(a) be suspended again for the 1964 presidential campaign. In fact, the House of Representatives has already passed a resolution (H.J. Res. 247) to this effect. And they did so with what appeared to us to be unseemly haste and practically no publicity after the bill had been sent to the floor by the Committee on Rules. As we have stated before, it would be naive to assume that these temporary suspensions are the final aim of the broadcast licensees and their supporters. Their original goal was, and still is, the complete and permanent elimination of the "equal opportunities" provision from the Federal Communications Act. And they are leaving, and will leave, no stone unturned in their efforts ultimately 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.

The truth is that the "equal time" provision of the F.C.A. is already a shambles—made so by the 1959 amendment, the 1960 suspension, the modified interpretations and rulings by the F.C.C. since the 1959 amendment was passed, and the invoking of technicalities to place many obviously political programs in categories exempt from Section 315(a). All this has served to create a set of conditions under which the broadcast licensees find it possible to give unlimited free time to major party candidates for all elective offices without incurring any legal obligation to extend "equal opportunities," or even "reasonable opportunities" (under the oft-mentioned but little-heeded "Fairness Doctrine") to candidates of minority parties.

It is questionable whether anyone can recall another instance in our history in which an already existing law, embodying a basic democratic principle, has been openly and repeatedly subjected to attack over a long period of time under the pretense of extending democracy—and successfully so. Yet this is precisely what is happening, and has happened, in the case of Section 315.

Today our nation is faced with a host of problems of staggering complexity. These problems exist at all levels of our society—local, state, national and international. Some of them have been plaguing the country for decades, defying solution via the usual panaceas offered by politicians within the framework of our existing social and political institutions. In fact, if ever America needed to consider carefully and avail itself of the ideas and proposals of all its citizens in order to survive and prosper, it needs to do so in these critical times.

Some may wonder what all this has to do with Section 315(a). To such we point out that radio and television have become the most important media of communication of ideas among the people of this nation. Clifford J. Durr, former member of the F.C.C., put it well when he said:

"... You can talk all you want to, but your talk is not very effective on the street corner if the prevailing point of view, the other point of view, owns [or has access to] a radio or television station..." (Broadcasting and Government Regulation In a Free Society—A Center Occasional Paper)

For this reason, it is of the utmost importance that these modern media of mass communication be kept open for the widest possible discussion of the problems facing us and their possible solutions, particularly during campaigns for public office when the public mind is most alert to a consideration of these

vital subjects. Where these media are restricted, or operated in such manner as to deny the people the full opportunity to hear and consider all serious views on the unprecedented questions of paramount importance to all of us, then democracy itself has been debauched, and an act of usurpation, intended or not, has been committed. The claim that the restriction had for its purpose the extension of knowledge, or that the act of usurpation was the very essence of democracy, does not alter the fact that the result is the limitation of knowledge and the curtailment of democracy. For it is simple logic that creating the opportunity for a wider and more frequent presentation of *one* view while at the same time suppressing, or, at best, drastically limiting, the expression of *all other* divergent views, is the very antithesis of democracy. We agree with Supreme Court Justice Hugo J. Black, who stated in a speech to the American Character Conference:

"I subscribe to the belief that there is no progress possible anywhere where the differences of people are stifled, their voices are not able to be heard, and where they all speak as one voice, when all of us know that human beings don't feel that way." (*The Power of Reason* by Prof. R. M. Hutchins, Pres., Center for the Study of Democratic Institutions.)

The truth is that our nation (or any division of it) cannot effectively and intelligently consider or avail itself of all possible social and economic solutions to our many problems unless all proposed solutions are assured the right and opportunity to be fully presented and explained via the media of radio and TV. And it is particularly important that this be possible during our election campaigns, when more widespread discussion and thought is generated. Surely, no one will deny that radio and television constitute the prime channels for communicating new ideas to the people, and especially during a campaign which has helped to create the social atmosphere in which new ideas are more readily listened to and carefully considered, thus offering them the greatest opportunity to influence directly the nation's welfare and progress. To allow licensed broadcasters, who are dominated by selfish corporate and material interests, to determine who and what shall be heard over the public airwaves would, in effect, give rise to a form of censorship thoroughly abhorrent to our democratic principles and traditions. The fact that minority political parties and their candidates would be the first to suffer as a result, by no means guarantees that they would be the last. This should give legislators ample food for thought.

Moreover, equal access to the *publicly owned* airwaves for all legally qualified candidates cannot help but encourage citizens holding constructive, but yet minority, views to actively participate in America's political processes generally, and thereby contribute to the shaping of the nation's progress and future through the perilous days ahead. On the other hand, conferring a *de facto* monopoly of the public airwaves on those who advocate the status quo and general conformity, can only lead to disillusionment with our vaunted democratic ideals, and cause a growing abstention from the political process, both among those who might otherwise actively inject themselves into election campaigns as well as those who merely vote. The net result can only be to affect adversely the welfare and interests of all of society. Indeed, nowhere is the principle that "an injury to one is an injury to all" more completely and profoundly applicable than with respect to the free elections on which our nation rests. The political franchise which the Founding Fathers so wisely wrote into our basic law is necessarily a universal, and not a divisible or discriminatory right. It was not their intent merely to guarantee the individual citizen the opportunity to choose his representatives from among those who upheld the status quo, but rather to guarantee the collective and individual right of the people to hear, consider and choose those propositions they found most desirable and suitable to the social welfare and security. Accordingly, freedom of speech for all legally qualified candidates over the public airwaves cannot be abridged and trammelled for some without in fact abridging and trammeling the political franchise for all. 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.)

There is another important factor to be considered. We refer to the fact that the amendment, repeal or suspension of Section 315(a) would not only hinder the growth and effectiveness of those minority parties already in existence, it would also inhibit the emergence of new political parties claiming to represent ideas and plans for improved or superior forms of government such as the Declaration of

Independence envisages, and which that great document declared to be the right and duty of citizens to present for adoption by the people. The only exception to this fact would be the possible formation of parties which are merely satellites of the old parties. The net result would be to "freeze" our political campaigns into contests between the two existing major parties.

The consequences of these tendencies are already clearly visible. The voters, having no real alternative, being effectively hindered from creating an alternative, have in recent years shown a growing contempt and apathy towards the entire election process. Millions of eligible voters throughout the nation do not participate in the voting at election time. They have withdrawn themselves from the educational and enlightening effects of participation in political campaigns. The history of modern society shows such apathy, contempt and withdrawal to be the early stage in the withering of political democracy. If allowed to continue unchecked, or, worse, given impetus by further restrictions on free speech over the public airwaves during campaigns, this tendency can only terminate in eventual political dictatorship. James L. Fly, former Chairman of the F.C.C., clearly warned of this danger when he said:

"What is important is the diffusion of information and of opinion to the public, to the electorate. Democracy is based on the capacity of the individual citizen to make intelligent decisions. Without that capacity democracy fails, and we have seen it fail in countries where the citizenry lacked that capacity. The important thing is that adequate presentations be made to serve the interest of the radio and TV listener and the public. That's the only thing that counts. Whether or not any given speaker is permitted to talk has a major impact, not on the speaker, but on the public. The public is the one that is injured." (*Broadcasting and Government Regulation in a Free Society*, Center occasional paper No. 110.)

The Socialist Labor Party of America declares that the real question comes down to this: Do the American people have the right to hear all sides of the throbbing social, political and economic issues of the day? We hold that they do, and that, indeed, they *must* hear all sides if they are to vote and act intelligently. The opponents of Section 315(a) say, in effect, that they do not have this right. Their contentions amount to saying that the American people have the right, or the need, to hear only the candidates of the major parties; candidates, that is to say, who hold substantially identical views on all the vital social, political and economic questions of our age. We have repeatedly pressed the question: How can the people be kept informed concerning vital questions and new ideas if those who present the truly vital questions and new ideas are denied equal opportunity with the upholders of the status quo, the major political parties? The question remains unanswered. Those who have attempted to deal with this question at all have resorted to the false claim that ours is a two-party political system. We have conclusively demonstrated that this claim has no basis in law, no basis in fact, and no basis in our traditional concept of free elections, and is particularly absurd in face of the fact that there is no basic or important difference between the two major parties. The late conservative columnist, George Sokolsky, put it quite bluntly when he wrote:

"The next presidential election may be a very peculiar one. Rockefeller vs 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.)

We are, of course, familiar with the claim that with Section 315(a), a part of the F.C.A., the broadcasters cannot afford to give free time to all the minor party candidates so they give no time to any candidates. This argument is merely a rationalization, and serves as a cloak behind which the broadcast licensees attempt to justify their demands for a free hand in operating their facilities over the public airwaves. It is a demonstrable fact that the profits of the broadcast licensees, with few exceptions, have grown by leaps and bounds. In this connection we are prompted to repeat here the following excerpt from our July 12, 1962 statement to this Committee:

"(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 [and repeated many times since], that they could not afford to give more free time than they did give. In fact, in 1960, they admittedly could afford to offer 2½ million dollars' 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 dollars in 1959. The net profits of the television networks alone rose from \$9,900,000 in 1952 to \$95,200,000 in 1960 [a year in which they gave almost 6 million dollars' worth of free time to the major parties], almost a ten-fold increase in eight years.)"

We believe it is pertinent and enlightening at this point to deal briefly with the testimony of Mr. LeRoy Collins, President of the National Association of Broadcasters, before the House Subcommittee on Communications and Power last March. Mr. Collins charged that Section 315(a) inhibited the broadcasters from giving full broadcast coverage to the 1962 campaign, stating:

"Last year, there were elected over the land 35 Governors, 38 Senators and 435 Representatives. Also, the whole election process involved thousands of local and State offices. In many key contests, more than two 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." (Congressional Record Appendix, March 14, 1963, pg. A1458)

"Unquestionably," indeed! Mr. Collins' wishful thinking was effectively refuted by the F.C.C.'s report on the performance of broadcasters generally during the 1962 elections. We cite the following from *Broadcasting Magazine* of June 10, 1963, which discussed this report:

"... An analysis of U.S. Senate races in 36 states indicates that broadcasters were no more willing to give free time when only two candidates are running than when three or more are involved.

"Break-down in the eight states [where more than two candidates were running], the summary said, 29 of the 110 TV stations reporting (26%) gave the candidates free time. In the 28 states [where only two candidates were running], 68 of 290 TV stations covered (23%) gave time.

"In radio, the comparable percentage in the two-candidate contests was even lower. In the 28 states [with only two candidates], 9% of the AM's reported giving time, in the eight [with more than two candidates], 14%."

Comments seem superfluous. The figures speak for themselves.

During his testimony before the House Committee, Mr. Collins also made the following statement:

"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 . . ." (Congressional Record Appendix, March 14, 1963, pg. A1459).

The obvious contradiction apparently escapes Mr. Collins. He pays lip service to "human friction" and cites the need for "argument," "dissent," "disagreement, etc., etc., and in the very same breath urges that the media of radio and TV be relieved of the obligation to provide the equal opportunities for presenting "argument," "dissent," and "disagreement"! Or perhaps it is Mr. Collins' contention that the two major parties and their identical views on all basic social, political and economic issues provide all the "human friction" to which we dare expose the people of this nation.

We are also familiar with the argument that the broadcasters down through the years have demonstrated their "maturity," "sense of fair play," etc. In this connection repeated reference is made to the broadcast licensees' performance during the 1960 campaign in presenting "The Great Debates." Before dealing with these debates we wish to cite on brief, but representative, example of the Socialist Labor Party's experiences with the broadcasters and the "maturity" and "fair play" they exhibited to a minority party and its candidates.

In 1956, when Section 315 was fully operative, our national candidates were granted equal time to make their acceptance speeches over the radio and television networks under the equal opportunities provisions. The time was not equal in all respects, but it was at least equal in amount. And we did not secure it in all instances without putting up a battle for it. Nevertheless, with the aid of Section 315(a) we finally secured the time. Following the appearances of our candidates on these networks, we tracked down at least 77 radio stations and 79 television stations affiliated with the various networks that had broadcast or telecast the acceptance speeches of the major party candidates by direct pickup from the network release, or by making tape or other recording for later release, but failed in either respect with the network release of the Socialist

Labor Party candidates' acceptance talks. After considerable correspondence and effort most of these 156 stations did release the Socialist Labor Party programs, 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 "neotiation." And for all we know, there may have been as many more stations that failed to fulfill their clear statutory obligation in 1956, but it was simply beyond our physical and financial means to follow them all up.

Under the best of circumstances, many broadcast licensees repeatedly violated or ignored Section 315(a) with impunity, just as in 1960 they showed a brazen disregard for the "fairness doctrine" enunciated in the suspension resolution. They knew that the resources, energies and time available to minority parties and their candidates were definitely limited, and they took full advantage of this situation. 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"—or does it justify placing in their hands even more power to abuse their privileges by again suspending Section 315 for the 1964 elections, or worse still by removing Section 315(a) permanently as proposed by Senator Hartke.

Time and again those who are demanding the suspension or repeal of Section 315(a) cite the 1960 debates to support and justify that demand. The claim that the broadcast licensees fully demonstrated that they could and would operate their facilities fairly has been repeated ad nauseum. And, of course, no one makes the claim more vociferously than the licensees themselves. Even the former Chairman of the F.C.C., Mr. Newton Minow, reported to the Senate's Subcommittee on Freedom of Communications, on April 3, 1961, that the broadcasters had been "scrupulously fair" during the 1960 presidential and vice presidential campaign. "Scrupulously fair"—to whom? To Messrs. Kennedy and Nixon! They were, indeed! But were they also "scrupulously fair" to the Socialist Labor Party candidates? The record amply proves they were not! The S.L.P. candidates were not only denied equal time, but were even denied the "reasonable opportunity" which is provided for in the F.C.C.'s "Fairness Doctrine." And it should be emphasized that this statutory obligation was specifically reaffirmed in both the 1959 amendment to Section 315 and the suspending resolution S.J. 207. Yet, at least two networks and the overwhelming majority of the individual stations arrogantly and insolently refused to recognize any obligation to minority party candidates, and in this they were upheld by the F.C.C. This all speaks volumes on what would happen if Section 315(a) were repealed and the vagaries of the "Fairness Doctrine" became the rule that would apply to candidates.

The broadcasters naturally repeat the cliché that they will give "reasonable opportunity for exposure" (to use Mr. Sarnoff's words) to all candidates in keeping with their "following and position in the community." We are not impressed with these assurances. First of all, the record belies the promise. Secondly, who is to be the judge of the "following and position" of these candidates? Finally, and most importantly, this approach to the matter ignores the all-important fact that in our modern society "following and position in the community" can only be the result of repeated exposure on radio and TV, and not the reverse.

As for the debates themselves, we disagree with the view that they were an extension of democracy and a source of enlightenment to the electorate. We agree with Mr. Earl Mazo, head of the Washington bureau of the New York *Herald Tribune*, that—

"Next to candidate Kennedy, the television industry was the chief beneficiary of the debates. . . . With presidential candidates performing free, in the most extensively seen spectacular ever televised, the industry amassed a type and volume of publicity and advertising it could not have bought at any price." ("The Great Debates.")

As for the issues debated, these were conspicuous by their absence. The so-called debates were hardly more than popularity contests, with each candidate careful to offend no one and striving to project the most acceptable and attractive personality. This was hardly conducive to clarifying any issues, with the result that the electorate was neither stimulated to think nor enlightened on the burning issues of our day. 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 . . ."

And Mr. Hoffman added:

"... They gave their devotion not to genuine political discussion but to popularity. Most persons who watched the shows could recall almost no political issues at all; but they knew whether they liked the candidates. . . ." ("The Great Debates")

But even more disturbing was the fact that the debates added to the illusion that ours is a two-party system, and that when one heard the two major party candidates for national office he had heard all sides. The truth is that with no real challenge being voiced, the upholders of the status quo were not moved to discuss any issues seriously or in depth. We are not alone in holding this view and pointing to its stagnating effects. Harvey Wheeler, former Professor of Political Science at Washington and Lee University, expressed it as follows:

"The spread of homologous bipartisanship to all issues is rendered especially serious by another factor associated with the debates. In order to hold them at all, it was necessary to qualify the equal-time provision so that only the two major parties would have access to television audiences. For reasons of cost and discriminatory state legislation it had already become almost impossible to start a nation-wide third party. The precedent of the debates has now institutionalized America's functional bias against all but the two major parties. When this is coupled with the muting of substantive disputes produced by the debates there is serious cause for concern. For from the standpoint between the contending parties, those differences should be real. There should be more than the appearance of politics. Today the gravest issue facing America and the world is the issue of peace. But peace, disarmament, and co-existence are precisely the issues that were left out of the campaign." ("The Great Debates")

We cannot emphasize too strongly the obvious fact that the widest knowledge and understanding cannot possibly be achieved by limiting the discussion of important issues during a campaign to participants who are in substantial agreement on all basic questions. Nor can we extend, let alone retain, democracy by such practice. The modern means of communications must be kept open for new ideas, new parties, new philosophies of government and new ideas of social importance. This means that Section 315(a) must be retained, and its application extended to again include equal opportunities for all candidates for political office.

On February 26, 1963, Senator Vance Hartke, who has introduced a bill calling for the outright repeal of Section 315(a), delivered a speech at a conference of presidents of the state broadcasters associations, in which he called for the outright elimination of Section 315(a). In defense of his position Senator Hartke stated:

"A section that has been by-passed once and partially shelved and which the President feels should again be partly set aside, is not serving the public needs. I think it's obvious that a law which needs to be lifted in whole or part from time to time is not a good law."

And the Senator added:

"I do not want people to be unconcerned with what we say or do here. I would prefer that people agree with me, but if they can't, then I prefer that they disagree with me. . . ."

Taking Senator Hartke at his word we register our most emphatic disagreement with his expressed view in this matter. We believe he has placed the democratic principle involved on its head. We are firmly of the opinion that a law such as Section 315(a), that embodies a basic democratic principle, that guarantees equal treatment to all citizens running for public office, that assures the people who own the airwaves the right to hear, see and consider the widely divergent viewpoints and programs of the various candidates—that such a democratic law should never be by-passed, or shelved, or partly set aside, nor suspended from time to time, simply because it serves the interests of a powerful group of profit-conscious licensees. Nor yet in order to give unfair advantage and special privileges to some candidates running for a particular public office, while denying them to all others.

The New York Times once observed editorially that—

"It is one of the glories of our way of life and our tradition that the most divergent views may be expressed and compete in the free market of public opinion. . . ." (October 6, 1956).

We feel sure that no one, not even the broadcasters and their defenders, would argue with this view. How, then, can the demand for the permanent, or even temporary or partial, suspension of Section 315(a) be justified?

For the reasons made clear in the foregoing (as well as in the two detailed statements which we presented to this Committee on June 25, 1959 and July 12, 1962), 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 S. 251, S. 252 and S. 1696. And we shall be as irrevocably opposed to any other bill that may be introduced in the Senate or House which would have as its objective the further amendment, suspension or repeal of the equal opportunities provision of Section 315(a) of the Federal Communications Act.

We cannot emphasize too strongly that at best Section 315 establishes in principle the right of all candidates to have equal access to the public airwaves, and, equally important, it also re-affirms the right of the people to hear all views. At the least, it provides, and still partially provides, 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. Again to suspend or permanently abolish Section 315 can only hasten the process by which this democratic provision will completely wither and die, thereby intensifying the tendency toward the complete destruction of political democracy itself. The people of this nation can exercise their competency only if fully informed, without hindrance or discrimination, and without a virtual censorship being imposed on views in opposition to those of the major parties.

In the name of the democratic freedoms proclaimed by the founding fathers of our country—freedoms assured only by an informed people—we ask that no further violence be done the equal opportunities provisions of Section 315, that in short, action be taken to re-establish its former scope and applicability. None better has given winged words to the importance of freedom of speech than that typically American poet, Walt Whitman, who wrote:

"I say discuss all and expose all—I am for every topic openly; I say there can be no salvation for These States without innovator—without free tongues, and ears willing to hear the tongues; And I announce as a glory of These States, that they respectfully listen to propositions, reforms, fresh views and doctrines from successions of men and women. Each age with its own growth."

Respectfully submitted.

ARNOLD PETERSEN,
National Secretary.

(Whereupon, at 12.15 p.m., the subcommittee adjourned.)

O

