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September 13, 1996

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AOR 1996-41

Lawrence M. Noble, Esq.  
Office of the General Counsel  
Federal Election Commission  
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FEDERAL ELECTION  
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OFFICE OF GENERAL  
COUNSEL

Re: **A.H. Belo Corporation: Request for Advisory Opinion**

Dear Mr. Noble:

This letter requests an Advisory Opinion, pursuant to 2 U.S.C. § 437f(a)(1), for A.H. Belo Corporation ("Belo"), Dallas, Texas, concerning the application of the Federal Election Campaign Act ("FECA") to its proposed production and broadcast of television programs that would provide congressional and gubernatorial candidates the opportunity to answer questions on campaign issues without interruption.

**I. BACKGROUND**

**A. A.H. Belo Corporation ("Belo")**

Belo currently owns and operates (through subsidiaries) seven network-affiliated television stations. These stations and their affiliations are: WFAA-TV (ABC) in Dallas, Texas; KHOU-TV (CBS) in Houston, Texas; KIRO-TV (UPN) in Seattle, Washington; KXTV (ABC) in Sacramento, California; WWL-TV (CBS) in New Orleans, Louisiana; WVEC-TV (ABC) in Hampton/Norfolk, Virginia; and KOTV (CBS) in Tulsa, Oklahoma. Belo also publishes The Dallas Morning News and several other smaller daily newspapers.

Belo's business philosophy emphasizes quality journalism, local news coverage, and community service. Collectively, its seven stations have received a number of awards for excellence in journalism and public affairs programming, including seven George Foster Peabody Awards, five duPont-Columbia awards, and three Edward R. Murrow awards. Belo concentrates on increasing local news coverage in the programming for each station. For

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example, KIRO-TV, its Seattle station, now offers eight hours of news programming daily, among the highest amounts offered by any network affiliate in the nation.

Belo is not owned or controlled by a political party, political committee, or candidate. Stock in Belo is publicly traded on the New York Stock Exchange under the symbol "BLC." No one person, group of persons, or organization has a majority ownership interest in the company.

### B. Programming Plan

As a public service, Belo plans to produce a series of television programs, in conjunction with local PBS affiliates, featuring candidates for federal and state office. This series, slated to begin in October 1996, will feature the views of candidates for the United States Senate, House of Representatives, and Governor in each area served by a Belo station. In the case of House races, Belo will feature candidates from districts within its stations' respective Grade A contours (which is the technical FCC measurement of the geographic area containing the primary audience of a television station's broadcast signal). 47 C.F.R. §§ 73.683-73.684. When there are more than two candidates for the office, Belo will select candidates to participate based on pre-established objective criteria for public support and credibility, as contemplated by the Commission in its candidate debate regulations. See 11 C.F.R. § 110.13(c).

Each of the Belo stations will invite the candidates to its studios. Officials from the participating Belo and PBS stations will introduce the program segment. A news division interviewer will introduce each candidate, and then ask each candidate in turn to respond to the same question. Candidates will have an uninterrupted five minutes to reply. Once taped by the station, the candidates' five minute responses will be combined by the station's news division into a program to be broadcast on both the local Belo station and the PBS outlet in the market. The order of appearance of candidates for the same office will be determined by lot. The news division and producers intend to run the candidates' answers in their entirety, subject only to the five minute limit for each response. Each program in the series is expected to run one hour. To accommodate all candidates in larger markets, it may be necessary to produce two episodes, though all of the candidates competing for the same office would always appear in the same broadcast.

After taping, the program will be made available to both the local PBS station and the Belo station to broadcast in their respective schedules. In addition, as a public service, Belo expects to make the taped program available to local cable operators and radio stations. Belo plans to schedule the program for a time period usually devoted to news and public affairs

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programming and, as a public service, will feature the program without commercial interruption. This is consistent with Belo's coverage of other newsworthy events, such as major public policy addresses by federal and state officials.

### C. Recent FCC Action

The Federal Communications Commission ("FCC") concluded only weeks ago that a similar proposal met its standard for "on the spot coverage of a bona fide news event." See Fox Broadcasting Co., et al., FCC 96-355 (Aug. 19, 1996). Even though this ruling does not bind the FEC, the expert decision of the FCC as to what constitutes a bona fide news event by a broadcaster for the purposes of the Communications Act of 1934 may also be of interest to the FEC in its consideration of this request.

At issue before the FCC were requests by Fox Broadcasting Company, PBS, and ABC for exemptions from the equal opportunity requirement of Section 315 of the Communications Act, for programming providing major presidential candidates with uninterrupted broadcast time. All three of these networks proposed to include on their program the same candidates selected for the national presidential debate by the Commission on Presidential Debates.<sup>1</sup> Fox proposed a one-hour election eve program in which the candidates, each given an equal amount of time, would answer the question "Why should the American voter vote for you?" Fox would broadcast their statements back-to-back. Fox also proposed providing one-minute segments for candidates to broadcast "position statements" in response to ten questions, written by an independent group.

Similarly, PBS proposed providing two and one-half minutes of time at the same time each weeknight, to be rotated among the candidates, for them to use without restriction as to content. ABC proposed a one-hour prime-time special for the final week of the campaign, which would be a live, unrestricted opportunity for the candidates to discuss issues without questions or interruptions from others.

The FCC determined that each proposal involved "on-the-spot coverage of a bona-fide news event" and thus was exempt under Section 315(a)(4) from the requirement that broadcasters provide equal opportunities to all legally qualified candidates. In particular, the

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<sup>1</sup> The Commission on Presidential Debates was established to plan and sponsor debates among the leading candidates for the Presidency and Vice Presidency. It selects these candidates based on several criteria, including the newsworthiness of their candidacy.

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FCC determined that the proposals passed its two-part test for exemption as coverage of a bona fide news event:

- (1) the format of the program fit within the exemption for news events; and
- (2) the decision to carry the program was a result of good-faith news judgment and not for partisan purposes.

Fox Broadcasting, FCC 96-355 at 11; see also King Broadcasting Co., 6 FCC Rcd. 4998 (1991) (applying news exemption to candidate statement); Aspen Institute, 55 FCC 2d 697 (1975) (stating two-part test for exempt news programming), aff'd, 538 F.2d 349 (D.C. Cir. 1976), cert. denied, 429 U.S. 890 (1976). In reaching its decision in Fox Broadcasting, the FCC examined whether the proposals contained safeguards against partisanship, such as a plan to air competing candidates in comparable time slots, back-to-back, or in the same slot on successive days; formats that give each candidate equal time; and objective criteria for selecting participating candidates. See FCC 96-355 at 11-14.

We recognize that this Commission is not bound by an FCC decision. Nevertheless, Congress has expressed its intent in both the communications and campaign finance statutes that news programming be exempted from the regulatory scheme. Therefore, we believe that the FCC's ruling on this question can help frame the issue for this Commission. For the Commission's convenience, we have attached a copy of the Fox Broadcasting decision to this request.

## II. FEDERAL ELECTION LAW AND FEC PRECEDENT

As a general rule, federal election law bars corporations from making contributions or expenditures in federal elections. 2 U.S.C. § 441b. However, excluded from the definition of "expenditure" is:

Any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate.

2 U.S.C. § 431(9)(B)(i). In enacting this exemption, Congress intended to preserve the role of the press in political campaigns:

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**[I]t is not the intent of Congress ... to limit or burden in any way the first amendment freedoms of the press and of association. [The exemption] assures the unfettered right of the newspapers, TV networks, and other media to cover and comment on political campaigns.**

**H.R. Rep. No. 93-1239, (3d Cong. 2d Sess. at 4 (1974)). The FEC's regulations therefore state that "[a]ny cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publication is not an expenditure." 11 C.F.R. § 100.8(b)(2).**

**Several FEC Advisory Opinions have addressed in more detail the proper interpretation of these rules. Most recently, in FEC Advisory Opinion 1996-16, Fed. Election Camp. Fin. Guide (CCH) ¶ 6197 (1996), the Commission approved a proposal for the production and broadcast of "Electronic Town Meetings" coordinated by Bloomberg, L.P. Bloomberg proposed to invite presidential candidates to appear in a television studio and respond to questions both from a live television audience and from others linked to the program via electronic mail. The one-hour program would then be broadcast on Bloomberg's television, radio and other networks, and would also be available for broadcast by other news organizations.**

**The Commission concluded that this proposal fell within the press exception for a number of reasons. First, it recognized that Bloomberg was a press entity not owned by a political party or a candidate. And second, it noted that Bloomberg was acting as a press entity in covering this event:**

**In essence, Bloomberg proposes to create and cover a news event in much the same way as a newspaper would arrange, report and comment on its own staff interview with a political candidate or cover a press conference. Much like the presentation of more traditional news stories and news programs, the means of presentation are controlled by the press entity. This is a discrete, structured forum with a moderator, a set format, and a time limit.**

**Id. at 12,191-92.**

**This conclusion is in contrast to the result in Advisory Opinion 1996-2, Fed. Election Camp. Fin. Guide (CCH) ¶ 6188 (1996), where the facts were materially different from those in the Bloomberg and Belo proposals. In Advisory Opinion Request 1996-2, CompuServe, an incorporated on-line information service, proposed to offer free member accounts (without**

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limits on usage) to all candidates for federal and statewide office in order to encourage the broader dissemination of their positions and proposals to voters.

The Commission concluded in Advisory Opinion 1996-2 that such a program would be viewed as a corporate contribution unless the candidates were assessed the "usual and normal charge" for the on-line accounts. *Id.* at 12,168. The Commission noted that the news exception was inapplicable because "neither CompuServe nor its described online services is a facility qualifying for the media exception." *Id.* at 12,168 n.2. Here, of course, Belo is a bona fide news organization producing a news program. In addition, the candidate appearance is subject to Belo's control and is limited as to length and format.

In Advisory Opinion Request 1992-26 (E-Z Communications) the Commission was asked to approve the provision of free advertising time to federal candidates by a radio station. While the Commission failed to issue an Advisory Opinion, the facts of that request are instructive here. The radio station stated that the proposal for free advertising time to candidates stemmed in part from its frustration in calculating the required lowest unit rate. Notably, this proposal did not impose any limits on the amount of air time that candidates could be offered, nor did it contain a "news exemption" component.

Finally in FEC Advisory Opinion 1982-44, Fed. Election Camp. Fin. Guide (CCH) § 5691 (1982), the Commission concluded that a television network could provide two hours of free programming time to the two major political parties in advance of the 1982 election. That time would be used for party candidates and officials to address public issues and party programs (without expressly advocating the election or defeat of any particular candidates), and to solicit contributions.

The Commission concluded that the plan fell within the news exemption because the party speech was properly viewed as "commentary." The Commission recognized that the news exemption was intended to permit entities other than broadcasters to have access to the media. It was irrelevant, in the Commission's view, that the network provided two hours of programming and did not dictate content. "The statute and regulations do not define the issues permitted to be discussed or the format in which they are to be presented under the 'commentary' exemption nor do they set a time limit as to the length of the commentary." *Id.* at 10,917.

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### III. CONCLUSION

Accordingly, the FEC should determine that Belo's proposal, designed to meet the standards reflected in the FCC's recent approval of the Fox, ABC, and PBS programming plans for coverage of statements by political candidates, is consistent with the exemption afforded news coverage in the federal election laws.

Belo's proposal comports with prior FEC advice interpreting the "news" exemption. First, Belo meets all of the formal criteria for application of the exemption. Unlike CompuServe, Belo's stations clearly fall within the list of press entities set forth in 2 U.S.C. § 431(9)(B)(i). In addition, those stations are not owned or controlled by a political party, political committee, or candidate.

Second, unlike the situation presented in the E-Z Communications request, the stations here will act as press entities in producing this series. They will exercise their own editorial judgment to create a limited amount of news programming, designed and produced by their news divisions. They will not merely air video produced by candidates or their campaigns. Instead, Belo and PBS will select the questions to be posed to candidates, and the candidates will respond in person in a Belo studio. These responses will be within strict time limits. In summary, Belo proposes to create and cover a news event very similar to that in Advisory Opinion 1996-16, with the production of the event under the control of the Belo stations and their local PBS partners.

Finally, as noted, the FCC has recently held that similar programming proposals by Fox, ABC, and PBS all meet the standards of the Communications Act for bona fide news events. That certification by the FCC should provide additional proof, if any is necessary, of the legitimacy of the characterization of this programming as within the exemption for bona fide "news."

Accordingly, we respectfully request that the Commission advise Belo that its proposed activities are permissible under the Federal Election Campaign Act, as amended.

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**Thank you very much for your consideration of this Advisory Opinion request. If you have further questions, or require additional information, please contact me at 202-429-7064.**

**Sincerely,**

A handwritten signature in black ink, appearing to read "James R. Bayes". The signature is fluid and cursive, with a large initial "J" and "B".

**James R. Bayes**

**Enc: Fox Broadcasting, et al., FCC 96-355 (Aug. 19, 1996).**



Before the  
Federal Communications Commission  
Washington, D.C. 20554

In re Requests of )  
 )  
Fox Broadcasting Company, )  
Public Broadcasting Service, )  
and Capital Cities/ABC, Inc. )  
 )  
For Declaratory Rulings )

**DECLARATORY RULING**

Adopted: August 19, 1996

Released: August 21, 1996

By the Commission:

1. The Commission has before it three separate requests for declaratory ruling filed by the Fox Broadcasting Company (Fox), the Public Broadcasting Service (PBS) and Capital Cities/ABC, Inc. (ABC). Each seeks a Commission ruling that its respective proposal to provide free air time in the context of news coverage to the major presidential candidates prior to the November 5, 1996 general election is exempt from the "equal opportunities" provision of Section 315(a) of the Communications Act of 1934, as amended. 47 U.S.C. Section 315(a). For the reasons discussed below, we believe that the proposals are consistent with the statutory exemptions and related Commission and judicial case law and that, accordingly, each should be deemed exempt from the equal opportunities requirement as "on-the-spot coverage of *bona fide* news event" programming under Section 315(a)(4).

**I. FACTUAL BACKGROUND**

2. Fox Proposal: Fox proposes the following two-pronged format for presentations by the "major" presidential candidates in order to "contribute to the public interest in an open and vigorous exchange of ideas prior to the November 5, 1996, general election":

(1) A taped one-hour prime time program to be aired election eve, with each candidate accorded an equal amount of time to make a statement in response to the question, "Why should the American voter vote for you?" The statements would be broadcast back-to-back, the candidates would have no interaction with reporters or with each other, and the order of appearance would be determined by coin flip if two candidates participate or by a drawing of straws if there are more than two; and

(2) During the last six weeks of the campaign, each candidate would respond, in taped one-minute "position statements," to ten questions to be furnished to them by September 1, 1996. Each candidate would be asked the same questions, and the questions would be formulated by an independent consulting or polling organization. The statements, though not contemplated as back-to-back, would be "broadcast in prime-time programs of comparable audience size." The initial order of the statements would be determined by a coin toss or by drawing straws and would alternate in sequence for the duration of the broadcasts. The statements would be publicized and regularly scheduled.

3. Under the Fox proposal, selection of major presidential candidates for participation in both elements of its proposed programming will be determined by reference to selections made by the Commission on Presidential Debates for participation in the presidential debates.<sup>1</sup> Further, Fox states that it will not exercise any control over the content of the candidates' statements with respect to either of these proposals. Finally, Fox states that it will make production facilities available, "free of charge and at mutually convenient times and locations," for the candidates to record both their one-minute position statements and their election eve statements. The statements are to be recorded "live on videotape," which Fox explains means that "the candidates appear live and provide . . . responses, without any opportunity to edit or otherwise modify or enhance the responses in the post-production process."

4. In support of its request, Fox claims that "the spoken presentations by the candidates on issues of concern to voters," consistent with the Commission's 1991 *King* decision,<sup>2</sup> may reasonably be viewed as news events subject to broadcast coverage in the exercise of its good faith news judgment. Fox states that it has designed structural safeguards to prevent against possible candidate favoritism, a concern of Congress when it enacted the news exemptions. Fox maintains, for example, that, by deferring to a third party for the selection of candidates, it has removed itself from even the possibility of broadcaster favoritism. Fox thus contends that both formats are *bona fide* news events consistent with the Commission's interpretations of Section 315(a)(4) of the Act and, alternatively, that both formats also satisfy the criteria enunciated by the Commission for *bona fide* news interviews under Section 315(a)(2) of the Act.<sup>3</sup>

5. PBS Proposal. PBS proposes to present a series of programs as part of its "PBS Democracy Project," to "contribute to a better informed and active electorate in the forthcoming

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<sup>1</sup> The Commission on Presidential Debates is an organization established to plan and sponsor debates among the leading candidates for the Presidency and Vice Presidency. The debate Commission selects candidates based upon a variety of factors including the newsworthiness of their candidacy. It would not be involved in Fox's production in any manner.

<sup>2</sup> King Broadcasting Company, 6 FCC Rcd 4998 (1991), on remand from King Broadcasting Company v. FCC, 860 F.2d 465 (D.C. Cir. 1988), vacating WEBC-108 Radio Company, 2 FCC Rcd 5963 (M.M. Bur. 1987), review denied, FCC 88-162, released May 13, 1988 (*King*).

<sup>3</sup> In light of our finding herein that both parts of the Fox proposal satisfy the requirements for the *bona fide* news event exemption, analysis of the alternative news interview exemption request is unnecessary.

presidential election" and "to stimulate voter interest and involvement." Candidate selection would be based on objective criteria such as national polling results or could be predicated on selections made by the Commission on Presidential Debates. Conditioned on the acceptance by the presidential candidates of at least the two "major parties," individual candidate statements lasting at least 2½ minutes would be broadcast on successive days during prime time, for several weeks before the November 5, 1996 election. Each candidate would be afforded an opportunity to present his or her views without restriction as to content.<sup>4</sup> The statements would be aired each day at the same time and would be rotated with one candidate statement per night.

6. The following conditions would be imposed by PBS on each candidate: (1) only the candidate would be permitted to appear and would have to be on screen for the entire length of the broadcast; and (2) the candidate's visual appearance would be limited to a prescribed format, such as a depiction of only the candidate's head and shoulders, with no props or sound effects permitted. PBS asserts that any station agreeing to carry the programming would be obligated to carry all of the programs in the series. PBS contends that its proposal will provide for a more extensive and substantive discussion than that afforded by 30-second candidate advertising, which, in its view, is obscured by the use of production techniques typically associated with the selling of products and services. PBS argues that both the newsworthiness of its proposed programming and its good faith news judgment in deciding to carry it are consistent with Commission precedent, most notably the King decision. PBS thus requests that the Commission rule that its proposed programming is exempt *bona fide* news event programming under Section 315(a)(4) of the Act.

7. ABC Proposal. ABC proposes to offer the "major" presidential candidates the opportunity to appear on a one-hour prime-time special during the final week of the campaign. ABC states that this would be a "live unrestricted event," with the candidates appearing without interruptions or questions from any third party. ABC explains that the candidates would discuss with each other, and the American people, the issues they believe to be most important in the election. ABC contends that spontaneous interaction and dialogue between or among the candidates is indistinguishable from debates, which have been held by the Commission to be exempt news events for over twenty years. ABC also contends that the Commission's decision in King is even more clearly supportive of its format, particularly in light of the structural safeguards identified in its request.

8. ABC asserts that it will defer selection of the candidates to be included in the program until a point later in the campaign when it can determine who the major candidates are. ABC commits to prevent favoritism by looking to objective criteria such as polling results, the number of states in which the candidate is on the ballot, and whether the candidate has engaged in a nationwide campaign, to make the selection. ABC believes that a free form discussion involving the major presidential candidates in the week before the election is a highly newsworthy event and that its use of the proposed safeguards against favoritism indicate its good

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<sup>4</sup> Because these appearances would, if the request is granted, not be "uses" under Section 315, which cannot be censored, PBS reserves the right to edit any potentially libelous remarks or personal attacks.

faith news judgment. ABC thus asks that the Commission rule that its proposed programming would be exempt news event programming under Section 315(a)(4) of the Act.

## II. COMMENTS AND *EN BANC* TESTIMONY

9. On May 13, 1996, the Commission issued a Public Notice asking interested parties to comment on the issues raised by the Fox request and, more generally, on the Commission's interpretations of the news exemptions to the equal opportunities requirement.<sup>5</sup> The Commission also announced that it would conduct an *en banc* hearing on June 25, 1996, to provide further public exploration of the issues generated by the various network proposals and requests.<sup>6</sup>

10. In our request for comments, we asked whether approval of the Fox proposal would be consistent with statutory language, legislative history, and judicial and Commission case law regarding the news exemptions. In addition, we sought comments on whether the Commission's current interpretation of Section 315 of the Act limits ways in which broadcasters may voluntarily provide time for candidates to speak directly to voters, and whether programming that broadcasters in good faith deem to be *bona fide* news should be exempt regardless of format.

11. We received a total of 25 comments in response to our request and 12 panelists participated in the *en banc* hearing. In addition, United States Senators Bill Bradley (D-NJ) and John McCain (R-AZ) appeared at the hearing and made statements. The majority of commenters and *en banc* participants generally recognize the benefits to the public of free, unfiltered broadcast presentation of the major presidential candidates and specifically support finding both parts of the Fox proposal exempt as "on-the-spot coverage of *bona fide* news event"

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<sup>5</sup> The list of commenting parties is attached as Appendix A hereto. PBS and ABC first described their programming proposals to the Commission as part of their comments for this proceeding. In addition, at the time of the Public Notice, the CBS, NBC and CNN networks had also announced plans for news coverage of the presidential campaign. Those networks have not sought a Commission ruling concerning their respective programming.

<sup>6</sup> A list of participants in the *en banc* hearing is attached as Appendix B. The *en banc* hearing was scheduled in response to the April 16, 1996 request of The Free TV for Straight Talk Coalition (Coalition), who asked the Commission to convene an *en banc* hearing "to promote a maximum contribution by the electronic media, especially broadcast television, to the coming general election campaign for President, with special focus on recent proposals to provide free network television time to the major presidential candidates." The Coalition argued that a hearing should address the Commission's statutory responsibility to interpret Section 315 of the Act so as to increase the amount and level of substantive political discussion. The Coalition stated that it had urged the television networks to offer the major candidates "a few minutes a night during prime time in the culminating weeks of the 1996 presidential campaign," and argued that if the networks accepted its proposal, such coverage would be exempt as *bona fide* news event programming under Section 315(a)(4). The Coalition did not, however, file with us a specific request for a ruling on whether its proposal is exempt under Section 315(a). Nonetheless, our decision here addressing the requests by Fox, PBS and ABC serves to provide general guidance to others who wish to offer various types of exempt programming formats.

programming.<sup>7</sup> These commenters contend that uninterrupted presentations by the major presidential candidates reasonably can be considered news events under the statute and Commission precedent. Consistent with the views of a number of commenters, the National Association of Broadcasters (NAB) stated that the election eve back-to-back portion of Fox's proposed format fully satisfies the criteria established in the Commission's 1991 King decision. In addition, NAB asserts that the same rationale should apply to the sixty-second statements, even if they are not back-to-back, so long as they air in comparable time periods.

12. Senator Bradley commented on the importance of having the candidates themselves communicate directly with the voters, in contrast with the negative campaigning increasingly associated with paid political advertising. He also stated that broadcasters are granted a privilege to use a limited public resource and that use of the airwaves should not be available only to the highest bidder. Senator McCain endorsed the Coalition's call for the networks to give the major Presidential candidates several minutes of time per night in the closing weeks of the campaign. He stated that simulcasting the candidates' appearances on the major networks would provide the greatest impact on the electorate.<sup>8</sup>

13. To the extent that commenters supportive of the Fox proposals voice any concerns about the impact of granting the requested rulings, they generally relate to the treatment of third-party candidates and the likelihood that these candidates may be excluded from coverage. In addition, three commenters (The LaRouche Committee, Daniel Walker and the World Workers Party) oppose the Fox proposal entirely because they believe it would exclude coverage of minor candidates.<sup>9</sup> However, Frank Fahrenkopf, Jr. and Charles Manatt state that political communication is enhanced -- and the public interest served -- by focusing the public's attention on the major candidates through political broadcasts. PBS states that there are often numerous candidates on the ballot in Presidential elections, yet there is usually a demonstrable lack of interest on the part of the public in most minor party candidacies. PBS points out that the top three vote recipients in the 1992 Presidential election received 99.37% of all votes cast.<sup>10</sup> During his *en banc* testimony on behalf of Fox, Rupert Murdoch stated that, although the views of all candidates are respected, it is simply not possible to offer time to candidates who have failed

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<sup>7</sup> Fox's proposal is supported by the comments of ABC, CSAE, Common Cause, Frank Fahrenkopf, Jr. and Charles Manatt, Henry Geller, the Robert Wood Johnson Foundation-Healthy Nations Program, Media Access Project, Michael Meyerson, the National Association of Broadcasters, NBC, NTIA, Norman Ornstein, People for the American Way, Public Broadcasting Service, Paul Taylor, Woodstock Theological Center, and WTTW.

<sup>8</sup> The broadcast industry describes the kind of simulcasting proposed by the Coalition and supported by Senator McCain as "roadblocking." It would involve a voluntary decision by the networks to provide broadcast time to cover a news event at exactly the same time.

<sup>9</sup> The Natural Law Party, while not opposing the Fox proposal, asks the Commission to make clear that, if time is provided to candidates of the two major parties, it also be provided to other candidates meeting a prescribed standard.

<sup>10</sup> According to information compiled by the Federal Election Commission, 23 candidates for the presidency received votes in the 1992 general election.

during the campaign to obtain significant public support.

14. Concern over the possibility of broadcaster favoritism was also voiced by a number of commenters who support Fox's request, and they stress the importance of the Commission's emphasis on safeguards against abuse. For example, Professor Michael Meyerson expressed concern that broadcaster favoritism may more readily occur in local races where multiple candidacies and parochial concerns abound. Consequently, he urges the Commission to be careful in its consideration of the Fox request to assess the potential impact of our ruling at the local level. Most of the commenters, including Common Cause and NTIA, pointed out that the Fox proposal contains adequate safeguards against possible broadcaster favoritism, such as removing itself from the selection of the participating candidates and the questions to be presented, as well as ensuring that the one-minute statements air in periods of comparable audience share.

15. CBS and ABC recommend that the Commission rule that programming which broadcasters in good faith deem to be *bona fide* news coverage is exempt regardless of format, provided there are adequate safeguards against broadcaster favoritism. They argue that the public is best served by giving broadcasters the freedom to employ a variety of formats to cover and present views of candidates for public office. These commenters thus suggest that the Commission eliminate from its news exemption analysis the determination of whether the program at issue falls under one of the enumerated formats of Section 315(a). Henry Geller states that the Commission should continue granting exemptions as broadly as possible consistent with its wide discretion under the statute. However, eliminating format considerations from Section 315(a), Geller argues, must occur through congressional action, something he asserts the Commission should urge Congress to do. WTTW states that it would be helpful for the Commission to give specific guidance as to the permissible variations of exemption formats. During his *en banc* testimony, Timothy B. Dyk, on behalf of the NAB, voiced a similar concern about the need for broadcasters to request Commission rulings on a case-by-case basis.

16. While supporting Fox's request, MAP strongly opposes further expanding the news exemptions as suggested by ABC and CBS, arguing that the Commission has already interpreted the news exemptions too broadly. Instead, MAP suggests that the Commission consider changing the definition of "legally qualified candidate" contained in its rules.<sup>11</sup> By more narrowly defining a legally qualified candidate in the Commission's rules, MAP argues, the Commission could at least at the national level reduce the number of candidates entitled to equal opportunities without having to assess the merits of particular news programming. Under MAP's proposal, the standards for the redefinition would include: support in independent opinion polls; signatures on nominating petitions; amount of campaign contributions; and votes in prior elections. The

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<sup>11</sup> Only "legally qualified" candidates are afforded equal opportunities rights under Section 315 of the Communications Act. Section 73.1940 of the Commission's rule defines a legally qualified candidate by reference to whether a candidate has qualified for a place on the ballot in accordance with the law of the election jurisdiction or has made a substantial showing of candidacy. A substantial showing involves the traditional indicia of an actual candidacy such as the establishment of campaign headquarters, speech making, fund raising, etc. In the Presidential context, a candidate who has so qualified in at least 10 states is deemed a candidate in all states. 47 C.F.R. Section 73.1940.

Natural Law Party requests that the Commission make clear that all candidates achieving national party status, as evidenced by qualifying for the ballot in states with a total of at least 270 electoral votes and qualifying for matching funds from the Federal Election Commission, should be entitled to participate in Fox's programming.

### III. DISCUSSION

#### A. Legal Background

17. We begin our analysis with a review of the statute, the legislative history, and the relevant precedent. Section 315 of the Act provides that if a broadcaster or origination cablecaster<sup>12</sup> permits a legally qualified candidate for public office to "use" a broadcast station or cable television system,<sup>13</sup> it must afford equal opportunities to all legally qualified opponents for the same office. In 1959, the Commission ruled that the appearance of the incumbent Mayor of Chicago on a local newscast during his reelection campaign triggered equal opportunities rights for his opponents. In re Telegram to CBS, Inc. (Lar Daly), 18 Rad. Reg. 238, recon. denied, 26 FCC 715 (1959). Congress, fearing that the ruling would inhibit news coverage of the political arena, within months enacted four news exemptions to the equal opportunities requirement:

- 1) *bona fide* newscast;
- 2) *bona fide* news interview;
- 3) *bona fide* news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary); and
- 4) on-the-spot coverage of *bona fide* news events (including but not limited to political conventions and activities incidental thereto).

47 U.S.C. Section 315(a)(1)-(4).

18. Rather than specifically enumerating the characteristics of the programming formats intended to be covered by the exemptions, Congress left it to the Commission to interpret the full scope of the exemptions. See S. Rep. No. 1539, 86th Cong., 2d Sess. 2 (1960). The legislative history evidences Congress's recognition that the exemptions defied clear format characterizations and that the Commission was to have broad discretion to interpret them:

It is difficult to define with precision what is a newscast, news interview, news

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<sup>12</sup> For purposes of applying the equal opportunities requirement, Section 315(e) defines "broadcasting station" as including cable television systems. In implementing this provision, the Commission has applied Section 315 only to a cable system's origination cablecasting, defined as programming over which it exercises exclusive control. 47 C.F.R. Section 76.5(p).

<sup>13</sup> In general, a use is any "positive" identified or identifiable appearance of a legally qualified candidate. This excludes disparaging depictions by opponents or third-party adversaries. See Report and Order, 7 FCC Rcd 678, 684 (1991).

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

S. Rep. No. 562, 86th Cong., 1st Sess. 12 (1959). Furthermore, as the U.S. Court of Appeals for the D.C. Circuit observed in Chisholm v. FCC, 538 F.2d 349, 358 (D.C. Cir. 1976), Congress came to the realization that the notion of absolute equality for all competing candidates, first envisioned when Section 315 was enacted in 1934, would have to give way to two other noteworthy objectives:

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

Chisholm v. FCC, *supra*, at 358, quoting Hearings on Political Broadcasts-Equal Time Before the Subcommittee on Communications and Power of the House Committee on Interstate and Foreign Commerce, 86th Cong., 1st Sess. at 1-2 (1959) (Comments of Chairman Harris). With respect to Congress's intent to facilitate greater news coverage of the political process, the court in Chisholm v. FCC also observed that "the basic purpose" of the news exemptions is "[t]o enable what has become the most important medium of political information to give the news concerning political races to the greatest number of citizens, and to make it possible to cover the political news to the fullest degree."<sup>14</sup> Thus, the Commission was faced with the formidable task of implementing Congress's intention to strike a balance between fairness to the candidates and greater broadcast coverage of elections.

19. Initially, the Commission interpreted the exemptions narrowly. Over the last twenty years, however, the Commission has interpreted the exemptions to allow for more diverse kinds of news programming, particularly with respect to the *bona fide* news interview and on-the-spot coverage of *bona fide* news event exemptions. In recognition of Congress' primary goal in enacting the exemptions -- to facilitate a better informed electorate through greater news coverage of the political process -- the Commission has accorded greater deference to a licensee's good faith news judgment. The following discussion outlines the interpretive evolution reflected in the rulings most pertinent to the issues raised by the instant requests.

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<sup>14</sup> Chisholm v. FCC, *supra*, at 356, quoting 105 Cong. Rec. 14451 (1959) (remarks of Sen. Holland).

**B. On-The-Spot Coverage of a *Bona Fide* News Event**

20. The Commission narrowly construed the news event exemption until its 1975 decision in Aspen Institute, 55 FCC 2d 697 (1975), aff'd sub nom., Chisholm v. FCC, supra, cert. denied, 429 U.S. 890 (1976) (Aspen), when the Commission reversed earlier rulings that had denied requests to treat debates and press conferences as exempt *bona fide* news events. In Aspen, The Commission reevaluated its reading of the statute and legislative history, concluding that:

[t]here is no indication that Congress intended the Commission to take an unduly restrictive approach which would discourage news coverage of political activities of candidates. Rather, Congress intended that the Commission would determine whether the broadcaster in such cases had made reasonable news judgments as to the newsworthiness of certain events and of individual candidacies and had afforded major candidates broadcast coverage. . . . In some circumstances this might logically entail exclusion of certain programs from within an exemption, such as programs designed for the specific advantage of a candidate, or those which are patently not *bona fide* news. It would not in our view extend to a restrictive application as to certain categories of events simply because the candidate's appearance is the central aspect of the event.

Aspen at 705. Thus, the Commission determined that it could be flexible in evaluating whether a format was reasonably within the news event exemption and that, in the absence of bad faith, it should defer to a broadcaster's good faith news judgment in deciding to broadcast an event.

21. In Aspen, the Commission also adopted a two-part test for analyzing whether a program should be considered *bona fide* news event programming. First, it determined whether the format of the program reasonably fit within the news event exemption category and, second, it assessed whether the decision to carry a particular event was the result of good faith news judgment and not based on partisan purposes.<sup>13</sup> After deciding that debates and press conferences could reasonably fit the news event exemption under the first prong of the test, the Commission decided that, under the second prong, it could, when certain safeguards were present, defer to a broadcaster's good faith news judgment in deciding to broadcast an "event." With respect to candidate debates, the Commission ruled that, to be considered an exempt news event, a debate

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<sup>13</sup> In Kennedy for President Committee (Kennedy), 77 FCC 2d 965, 968-69, aff'd sub nom. Kennedy for President Committee v. FCC, 636 F.2d 417 (D.C. Cir. 1980), the Commission further clarified Aspen and emphasized that in making the analysis of whether a program is exempt, the Commission will first "determine whether a particular scenario falls within one of the classes of appearance exempt under Section 315(a)(1)-(4)." Id. at 969. Second, the Commission will explore "whether a particular broadcast which is claimed exempt was presented using a broadcaster's good faith news judgment." Id. The second aspect of this analysis places considerable reliance on the exercise of a broadcaster's discretion to determine "newsworthiness" once it is determined an exempt news event is involved. Thus, "absent evidence of the broadcaster's intent to advance a particular candidacy, newsworthiness of an event is left to the reasonable news judgment of the professionals." Kennedy for President Committee v. FCC, 636 F.2d at 427.

must be sponsored by a non-broadcaster third party, such as the League of Women Voters, must be aired in its entirety, and must be aired live. Press conferences also were required to be aired live and in their entirety to qualify for the exemption.

22. In Henry Geller, 95 FCC 2d 1236, aff'd sub nom., League of Women Voters v. FCC, 731 F.2d 995 (D.C. Cir. 1983) (Geller), the Commission held that its decision in Aspen had, in some respects, been unnecessarily restrictive. Applying the two-prong test, it therefore allowed broadcasters to sponsor and air debates from their own studios and to tape and air a "reasonably recent event." The Commission reasoned that, although there was a chance that according broadcasters additional freedom and flexibility in their news programming might result in an occasional abuse, Congress clearly had accepted that risk in order to foster a more informed electorate.<sup>16</sup> The Commission explained that the common denominator of all exempt programming was *bona fide* news value and that the identity of a debate sponsor should not affect the *bona fides* of the programming. Similarly, Geller eliminated the so-called "one-day rule," which had required that the broadcast be nearly contemporaneous with the event covered. The Commission reasoned that a broadcaster's good faith determination to delay or rebroadcast a newsworthy debate later than the day after the event in order to maximize audience potential did not destroy its "on-the-spot" nature and furthered, to an even greater degree, Congress's goal of increasing the presentation of political campaign news. Accordingly, the Commission determined that the "rule-of-thumb" on the timing of an exempt news event program should be that the program encompasses news reports of any "reasonably recent event," so long as intended in good faith by the broadcaster to inform the public and not intended to favor or disfavor any candidate.<sup>17</sup>

23. In its 1991 decision in King, the Commission further expanded the Section 315(a)(4) exemption by granting a request for a broadcaster-initiated news event involving appearances alone, with no journalistic or other interaction with the candidates.<sup>18</sup> The Commission reasoned that "candidate presentations, in which the major nominees for the highest office in the land set forth in speeches 'their essential campaign messages to the American people' reasonably may be viewed as news 'events' subject to broadcast coverage within the meaning" of Section 315(a)(4).<sup>19</sup> It thus concluded that "the mere fact that the presentations

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<sup>16</sup> See Geller at 1244.

<sup>17</sup> Id.

<sup>18</sup> The first program in the series proposed by the licensee consisted of a one-hour taped program in which the two major party nominees for President would be allocated 30 minutes each to set forth their respective campaign messages without the involvement of journalists or any interaction between the candidates. The order of appearance would be reversed in a similar one-hour broadcast at the end of the series. The licensee indicated that there would be one, possibly two, broadcasts in between the opening and closing programs, which would consist of separate 45-minute interviews with each of the two candidates, combined into 90-minute programs. The series would be made available to broadcast stations and cable systems for airing no later than one week after taping.

<sup>19</sup> Id. at 4999.

allow the candidates to present their views in the most favorable light, without spontaneous interaction with the press or opposing candidates, does not preclude application of the news exemption."<sup>20</sup>

24. The Commission emphasized as critical to its decision the need for structural safeguards to avoid the possibility of abuse, such as the back-to-back appearances by opposing candidates, which the licensee in King included as part of its proposed format.<sup>21</sup> The Commission also reasoned, as it had in Geller, that, on balance, Congress's goal of fostering greater news coverage of the political process outweighed any increased possibility of abuse.<sup>22</sup> Finally, the Commission stressed in King that the exclusion of third-party candidates whose "significance" can be established by objective criteria such as polling results, would raise questions about the *bona fides* of the programming.<sup>23</sup>

### C. Legal Analysis of Pending Proposals

25. As explained above, since the Aspen decision more than twenty years ago, the Commission's interpretations of the news event exemption have accorded broadcasters significant discretion in the formulation of innovative news programming formats and in the overall exercise of their good faith news judgment. These decisions have served to promote the central objective underlying the Section 315 exemptions. They are fully consistent with congressional intent to permit increased broadcaster discretion, and to encourage greater coverage of political news, in a context in which "the Commission has been granted greater than normal discretion." Chisholm v. FCC, 538 F.2d at 364. According to a number of commenters, allowing broadcasters to sponsor and air debates from their own studios and to present those debates live or on a reasonably tape-delayed basis in Geller has increased the number of such events and the public has clearly benefited. Likewise, the decision in King to allow for more innovation has increased the amount of broadcaster-initiated news event programming, again increasing the amount of election-related information available to the public.

26. Although the Commission has appropriately relied on broadcaster discretion, we nevertheless retain an obligation to ensure that there exist reasonable safeguards against broadcaster favoritism. As discussed below, we conclude that, consistent with the principles established in our prior decisions, the proposals under consideration are within the statutory exemption for on-the-spot coverage of a *bona fide* news event. Hence, the programs are not subject to the equal opportunities requirement in Section 315 of the Act.

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<sup>20</sup> *Id.*

<sup>21</sup> King, 6 FCC Rcd at 5000.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

27. Fox Proposal. We agree with the majority of commenters and *en banc* panelists that the back-to-back election eve appearances fall squarely within the Commission's King decision and are exempt as on-the-spot coverage of a *bona fide* news event. First, it is clear that these are *bona fide* news events. As we observed in King, appearances by major presidential candidates, "by any reasonable standard, are news 'events,'" provided that sufficient structural safeguards against broadcaster favoritism are in place. Furthermore, Geller established that the "on-the-spot" element of the news event exemption is not lost when programming is taped and shown at some later date as long as the broadcast is of a "reasonably recent event." Thus, Fox's proposed election-eve broadcast of back-to-back appearances satisfies the first prong of our analysis.

28. With respect to the second prong of our analysis -- whether the broadcaster is exercising good faith judgment that the event is newsworthy -- it is also clear that Fox has met the test enunciated in King. There is no evidence of intent to advance a particular candidacy. The election eve statements are identical to the back-to-back programming approved in King with the added safeguard that each candidate's statement would respond to the same question. The candidates who would be offered time would be those selected by the Commission on Presidential Debates for inclusion in the debates it sponsors. While we do not require a broadcaster to defer selection of candidates to independent third parties in order to demonstrate good faith, doing so adds a greater level of assurance of good faith by minimizing the potential for broadcaster abuse in the selection of candidates. The World Workers Party argues that exclusion from the news prevents third-party candidates from gaining sufficient public support to warrant their being deemed newsworthy. However, through the news exemptions, Congress intended to do no more than ensure that broadcasters are not inhibited from covering newsworthy events.

29. The one-minute position statements are also exempt as on-the-spot coverage of *bona fide* news events. Again, as in the election eve broadcast, statements by the major presidential candidates are, consistent with the Commission's reasoning in King, reasonably viewed as news events, provided safeguards against favoritism are built into the format. Also consistent with Geller, the tape delay does not present an impediment to the "on-the-spot" element of the exemption. Furthermore, we agree with the comments of Henry Geller that in light of Fox's plan to present a series of candidate statements in response to identical questions about important campaign issues, these statements can reasonably be treated as exempt "mini-debates" in that the public will be exposed to the differing views of each candidate on identical important campaign questions. As with reliance on independent third parties for candidate selection, we do not require that a broadcaster pose questions to candidates, but doing so helps demonstrate that a broadcaster is exercising good faith news judgment.

30. Further, although Fox's format for the one-minute statements does not envision back-to-back presentation, it does incorporate other safeguards. King did not require presentations to be back-to-back to meet the good faith test; rather, the Commission explicitly contemplated the need to clarify in future rulings, on a case-by-case basis, any other safeguards

that would suffice.<sup>24</sup> Fox's pledge to air the statements during comparable time periods will serve the same essential purpose as back-to-back statements by ensuring that the candidates have roughly equal access to viewers. Further, the questions to be answered during the statements are to be formulated by independent nonpartisan organizations. This element of Fox's format lends an additional assurance that Fox's proposed programming is not designed to favor any candidate in the same way as the decision to defer to the Commission on Presidential Debates for its candidate selections. Finally, we do not believe that the short length of each statement affects the *bona fides* of the programming. The legislative history is silent on the issue of whether Congress envisioned a minimum length for a news program, and we see no reason to impose one.<sup>25</sup> These programs are also distinguishable from political advertising. The candidates must appear throughout the broadcast and are not permitted to edit or utilize other post-taping production techniques. The presence of these structural safeguards satisfies us that Fox does not intend to favor one candidate over another.

31. PBS Proposal. We similarly find that PBS's proposal qualifies for a news event exemption. The Commission has stated that statements by the major candidates for President are "by any reasonable standard 'news events'" provided adequate safeguards against favoritism are implemented. As stated above, a licensee is not required to ask questions of candidates or to arrange for third parties to do so. Though PBS's programming will not be aired live, Geller makes clear that the rebroadcast of any "reasonably recent event" suffices for the purpose of being "on-the-spot." Consequently, we find that PBS's proposal involves a *bona fide* news event satisfying the first prong of our analysis.

32. Nor is there any basis to question the good faith news judgment of PBS with respect to its decision to broadcast the event. PBS's format includes reasonable safeguards. First, PBS states that it will select the candidates for inclusion in its programming based upon objective criteria such as national polling data, or as in Fox's proposal, by reference to those candidates selected by the Commission on Presidential Debates. Further, the statements will be equal in length and aired at the same time each day. While airing the spots at the same time of day is not a requirement, it is a significant safeguard against the potential for broadcaster favoritism. Thus, we find that PBS has satisfied the second prong of our analysis -- that the decision to broadcast the event is the result of good faith news judgment, not an intention to favor one candidate over

<sup>24</sup> In King, 6 FCC Rcd at 5000, n.4, we stated:

We emphasize here that the balanced nature of the program format, which includes structural safeguards for objective news coverage of political candidates, is critical to our assessment of the *bona fides* of a news event under Section 315(a)(4) in this case. We will carefully scrutinize any future requests for exemption pursuant to these standards. To the extent there is need for further clarification of the kind of objective structural criteria we might consider in allowing an exemption under Section 315(a)(4) in any future cases, we shall address such matters on a case-by-case basis.

<sup>25</sup> In Silver King Broadcasting Company, 3 FCC Rcd 2819 (MMB 1988), the Mass Media Bureau ruled that a program of 3-4 1/2 minute duration was exempt as *bona fide* news interview programming.

another.

33. ABC Proposal. Last, we find ABC's proposed one-hour prime-time "live unrestricted event" to be exempt under King. As is the case with debates, discussion between or among the major presidential candidates during the final week of the campaign is reasonably viewed as a *bona fide* news event. Furthermore, ABC has indicated that its programming would be aired live, which is not required in light of Geller, but adds to the event's newsworthiness. In fact, as ABC points out, its proposal is somewhat similar to a debate format which we exempted twenty years ago in Aspen and subsequently permitted broadcasters to sponsor in Geller. Consequently, ABC's proposal satisfies the first prong of our analysis.

34. With respect to the second prong, there is no indication that ABC's news judgments will not be *bona fide*. ABC asserts that it will employ objective criteria in selecting the candidates, considering polling results, the number of states in which a candidate has achieved ballot status, and the extent to which a candidate has engaged in a nationwide campaign. As we pointed out above, a licensee is not required to delegate the selection of the candidates to a third party as long as its own criteria for candidate selection is reasonable. We find that the criteria that ABC has committed to use for candidate selection meets this standard and that ABC's decision to broadcast the event is not intended to favor one candidate over another.

#### IV. OTHER MATTERS

35. As discussed above, and in accordance with congressional intent, we have flexibly construed the statutory exemption for on-the-spot coverage of *bona fide* news events. However, we are unwilling to abandon completely our review of programming formats as proposed by ABC and CBS. Had Congress intended that the Commission take such an approach, it would have been unnecessary to enumerate the four exemption formats of Section 315(a). Moreover, we do not believe that review of program formats to determine exempt status impedes broadcasters in providing election-related information to the public. Our interpretations of the exemptions have allowed broadcasters substantial discretion and flexibility to formulate formats they believe will provide for a more informed electorate.

36. We also decline in this proceeding to adopt MAP's suggestion that the Commission redefine the term "legally qualified candidate." This term is used in determining those candidates entitled to equal opportunities under Section 315 and to reasonable access pursuant to Section 312(a)(7).<sup>28</sup> In this proceeding, we are asked to determine whether a licensee can reasonably consider certain appearances by candidates it deems newsworthy as news events exempt from equal opportunities requirements. To do so, we need not reach the question of whether the candidates are "legally qualified." Moreover, to the extent that MAP believes that reducing the number of legally qualified candidates will alleviate the necessity for expanding the news

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<sup>28</sup> Section 312(a)(7) provides that broadcast stations must provide or make available for sale reasonable amounts of time to candidates for federal elective office. 47 U.S.C. Section 312(a)(7).

exemptions, we note that the definition of "legally qualified candidate" is codified in our rules (see 47 C.F.R. § 73.1940) and, as such, any change thereto must be considered in the context of a rule making proceeding.

37. A number of commenters voiced concern that a favorable ruling on the Fox request would risk a greater potential for broadcaster favoritism at the local level. While the Commission has speculated that the potential for favoritism may be less in "prominent" elections, particularly presidential campaigns,<sup>37</sup> we have not limited our news exemption rulings only to the presidential level. However, the proposals and the record before us involve coverage only of the presidential election and thus do not directly implicate other elections. As discussed above, in King the Commission stated that it would review future requests, on a case-by-case basis, to determine whether particular formats in particular contexts are consistent with the statute. Accordingly, should requests for exemptions regarding elections below the presidency be made, each will be considered consistent with the principles set out in today's decision, taking account of differences in context, as appropriate.

## V. CONCLUSION

38. We believe that our decision today implements Congress's intent in enacting the news exemptions by allowing broadcasters to inform the public about election-related news while ensuring that candidates are treated fairly. Accordingly, IT IS ORDERED that the programming proposals presented to the Commission by Fox, PBS and ABC ARE DECLARED EXEMPT under Section 315(a)(4) of the Communications Act from the equal opportunities requirements.

## FEDERAL COMMUNICATIONS COMMISSION

William F. Caton  
Acting Secretary

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<sup>37</sup> In Aspen, for example, the Commission stated that "realistically the likelihood of broadcaster abuse is remote in the coverage of more prominent political users . . . ." 55 FCC 2d at 707. The Commission in King similarly reasoned that [w]here both of the major opposing candidates for President are interviewed pursuant to an unbiased format, the potential for favoritism in coverage is even more remote." Id. at 5000, quoting the Commission in Aspen.

## APPENDIX A

## LIST OF COMMENTERS

Benjamin Barber, Director of the Walt Whitman Center for the Culture and Politics of  
Democracy, Rutgers University  
The Benton Foundation  
Capital Cities/ABC, Inc. ("ABC")  
CBS Inc.  
Committee for the Study of the American Electorate ("CASE")  
Common Cause  
Jan Crawford Communications  
Frank J. Fahrenkopf, Jr. and Charles T. Manatt  
Henry Geller  
The Robert Wood Johnson Foundation - Healthy Nations Program  
Committee to Reverse the Accelerating Global Economic and Strategic Crisis: A LaRouche  
Exploratory Committee ("The LaRouche Committee")  
Media Access Project ("MAP")  
Michael Meyerson, Professor of Law, University of Baltimore School of Law  
National Association of Broadcasters ("NAB")  
National Broadcasting Company ("NBC")  
US Department of Commerce/NTIA (as delivered by Larry Irving, the Assistant Secretary for  
Communications and Information) ("NTIA")  
Natural Law Party  
Norman Ornstein, American Enterprise Institute  
People for the American Way  
Public Broadcasting Service ("PBS")  
Paul Taylor, The Free TV for Straight Talk Coalition  
Daniel Walker  
Woodstock Theological Center, Georgetown University  
Workers World Party Presidential Campaign Committee  
Window To The World Communications, Inc. ("WTTW")

**APPENDIX B**

**PARTICIPANTS IN JUNE 25, 1995 EN BANC HEARING**

**United States Senators Bill Bradley and John McCain appeared and made statements.**

**The following witnesses appeared and participated on the panel:**

**Rupert Murdoch, Chairman and CEO, Fox Broadcasting Company  
Paul Taylor, Executive Director, The Free TV for Straight Talk Coalition  
Timothy B. Dyk, Jones Day Reavis & Pogue (on behalf of Natl. Assn. of Broadcasters)  
Frank J. Fahrenkopf, Jr., Former Chairman, Republican National Committee  
Charles T. Manatt, Former Chairman, Democratic National Committee  
Dr. John Hagelin, Presidential Candidate, Natural Law Party  
Norman J. Ornstein, Resident Scholar, American Enterprise Institute  
Andrew J. Schwartzman, Executive Director, Media Access Project  
John K. Andrews, Jr., Managing Director, TCI News  
Michael I. Meyerson, Professor, Univ. of Baltimore Law School  
William J. McCarter, President, WTFW(TV), Chicago, Illinois  
Kathleen Hall Jamieson, Dean, Annenberg School, University of Pennsylvania**