

## SUSPENSION OF SECTION 315 OF THE COMMUNICATIONS ACT OF 1934 FOR 1960 PRESIDENTIAL CAMPAIGN

JUNE 8, 1960.—Ordered to be printed

Mr. PASTORE, from the Committee on Interstate and Foreign  
Commerce, submitted the following

### R E P O R T

together with

### MINORITY VIEWS

[To accompany S.J. Res. 207]

The Committee on Interstate and Foreign Commerce, report favorably an original Senate joint resolution to suspend for the 1960 campaign the equal opportunity requirements of section 315 of the Communications Act of 1934 for nominees for the offices of President and Vice President, and recommend that the joint resolution do pass.

The joint resolution as herewith reported reads as follows:

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That that part of section 315(a) of the Communications Act of 1934, as amended, which requires any licensee of a broadcast station who permits any person who is a legally qualified candidate for any public office to use a broadcasting station to afford equal opportunities to all other such candidates for that office in the use of such broadcasting station, is suspended for the period of the 1960 presidential and vice presidential campaign with respect to nominees for the offices of President and Vice President of the United States. Nothing in the foregoing shall be construed as relieving broadcasters from the obligation imposed upon them under this Act to operate in the public interest.*

(2) The Federal Communications Commission shall make a report to the Congress, not later than March 1, 1961, with respect to the effect of the provisions of this joint resolution and any recommendations the Commission may have for amendments to the Communications Act of 1934 as a result of experience under the provisions of this joint resolution.

## PURPOSE OF LEGISLATION

This legislation is designed to suspend for the period of the 1960 presidential and vice-presidential campaign with respect to the nominees for the office of President and Vice President of the United States a part of section 315(a) of the Communications Act of 1934, as amended. That is the part which requires a licensee of a broadcast station who permits any legally qualified candidate for a public office to use a broadcasting station to afford equal opportunities to all other candidates for that office in the use of the broadcasting station.

This joint resolution would also provide that the Federal Communications Commission shall make a report to the Congress not later than March 1, 1961, with respect to the provisions of this joint resolution and any recommendations the Commissioner may have for amendments to the Communications Act of 1934 as the result of experience under the provisions of the legislation.

## BACKGROUND

Section 315 of the Communications Act, as amended, presently provides that if a licensee permits a legally qualified candidate for public office to use his broadcast station, he shall afford equal opportunities to all other such candidates for that office. It provides further that the appearance by a legally qualified candidate on any—

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

shall not be deemed to be use of a broadcasting station within the meaning of section 315(a) of the Communications Act of 1934. The aforementioned exceptions were adopted last year following the restrictive equal time policy enunciated by the Federal Communications Commission in the so-called *Lar Daly* case.

Last year's amendments to the Communications Act were the first major modifications of the equal opportunity provisions since the adoption of the Radio Act in 1927. Not enough time has elapsed for a full evaluation of this amendment. However, this liberalization should lead to a fuller and more meaningful news coverage of the actions and appearances of legally qualified candidates. Your committee recognizes that the changes of the last session have not been perfect. It was a cautious move into an uncharted area but sound, commonsense administration on the part of the Federal Communications Commission is essential to avoid the obstacles that may lead to abuse.

One of the proposals pending before the committee at the time action was taken in adopting the various exemptions now part of section 315 was the proposal which would liberalize section 315 so as to afford the broadcaster greater freedom in making time available for the presidential and vice presidential candidates of the major parties.

Because of the pressure of time and other reasons the committee did not think it wise to take up this specific proposal. For years broad-

casters have been criticized for failure to make adequate time available for the major political candidates, particularly the vice presidential and presidential candidates. The broadcasters' response has been consistent and direct and to the effect that under section 315 of the Communications Act, if a station provides time for any presidential candidate, it is compelled to make available equivalent time to every other candidate for the same office.

In 1952 it was contended there were 18 parties with presidential candidates who qualified in one or more States. The Communications Act, specifically section 315, precluded giving free time to the Republican or Democratic presidential candidates either for discussions, debates, or any other reason, without providing the same amount of time for each of the presidential candidates of each of the other 16 parties. The enormous amount of time that this would require stifled the broadcasters' efforts to present or encourage the presentation of the major political candidates on radio and television during the campaign.

#### NEED FOR LEGISLATION

Broadcasting and in particular television today is the most powerful medium of communications available to candidates for public office. No one disputes the powerful role television can play in the political life of the Nation.

Radio and television are effective instruments of disseminating information to great numbers of people. Television, in particular, because of its saturation of American homes and its unique combination of sight and sound is a tremendously effective influence in public affairs.

Today 45 million families, or 88 percent of all homes, have television receivers. Add to that 130 million radio receivers, and it is easy to see how dependent the public is upon these media for its information. Individual television programs attract audiences numbering 20 million or more and at the peak of nighttime viewing, almost 70 million people are watching television. Your committee recognizes that TV has become an integral part of political campaigning and it is one of the most important sources of information for the voters about the candidates. It has an unusual potential to sharpen the public interest in and knowledge of political life whether it be on the National, State, or local level.

In public affairs, television is an increasingly important medium since it alone can bring both the image and voice of the political candidate, reflecting his personality as he gives expression to his policy and his program. In these days, when leadership in the highest elective office involves the gravest decisions, every means must be taken to bring to as many people as possible the views of the candidates. Only then is the voter in a position to form an intelligent opinion as to whom to select to lead the Nation in this critical period. The viewer becomes familiar with the living image of the presidential candidate—how he looks, what he believes, what is his idea of America's future and its place in the world, and how he will exercise the power of the Presidency.

Through television the presidential and vice presidential candidates can sit down with the 45 million families. Time should be made available to discuss the issues and afford the candidates an opportunity to communicate directly with the people.

## INTRODUCTION OF S. 3171

The need for fuller use of the broadcast facilities as a means for a continuing great "debate" between presidential candidates has been frequently discussed. Interest in this proposal has been increasing as the November 1960 presidential election draws closer. On May 10, 1960, the chairman of this committee, Senator Warren G. Magnuson, and Senator A. S. Mike Monroney introduced S. 3171 which was cosponsored by 22 Senators. This bill would require each TV broadcast station and each TV network to make available without charge the use of its facilities to qualified candidates for the office of President of the United States. To qualify under this legislation the candidate must be the nominee of a political party whose candidate for President in the preceding election was supported by not fewer than 4 percent of the total popular vote cast. Only the nominee of the Republican and Democratic Parties would qualify under this formula in the 1960 presidential election. If a third party candidate polls 4 percent of the total popular vote cast in the 1960 election, its candidate in the 1964 election would then be eligible for the free use of facilities provided in the bill.

Under the terms of the legislation each eligible candidate would be entitled to 1 hour of time a week for the 8-week period beginning September 1 preceding the election. Thus, in 1960, a total of 2 hours per week would be available, 1 hour for the use of the Democratic candidate, and 1 hour for the use of the Republican candidate. The time was required to be made available in prime viewing hours and to be scheduled in programs of 1 hour each equally divided between the two candidates.

One of the announced intentions of the sponsors of this legislation would require that the time being made available under the legislation be so arranged as to afford the public an opportunity to view the major presidential and vice presidential candidates on programs televised "back to back." In this fashion, the public would have a chance immediately to compare the candidates, their views, and their personalities.

The committee realized that if the public was to receive for the campaign of 1960 the benefits of this legislation, immediate action was necessary. Full and complete hearings were scheduled and held on May 16, 17, and 19, 1960. During that period witnesses representing every phase of the problem were heard. The views of the interested Government agencies were received and made part of the record. Numerous statements and communications were received from the general public and outstanding leaders in the business, political, broadcasting, and education field, reflecting their views on the proposed legislation.

In addition, conferences were held with various authorities in and out of Government who had an intimate day-by-day knowledge of applying the provisions of section 315, who knew the practical problems involved, and who were the most competent persons available on the question as to the need for and the impact of legislation in this field.

## HEARINGS

The statements and testimony offered to your committee revealed very little disagreement about the need, the importance, and the urgency of making time available over broadcast facilities for the major presidential and vice presidential candidates. The basic disagreement arose as to the method of accomplishing this objective. Should it be required by legislation as outlined in S. 3171, or should the broadcaster be permitted to do it on a voluntary basis?

Each of the representatives of the three major networks who appeared before the committee proposed free time in prime evening hours for the major presidential and vice presidential candidates. For instance, Dr. Frank Stanton, president of Columbia Broadcasting System, proposed an hour of evening time each week for debate and discussion by major presidential candidates so television could "play a more effective role in contributing to an informed and accurate democracy."

David Adams, vice president of National Broadcasting Corp., also made an offer for NBC. Oliver Treyz, president of the American Broadcasting Co. made one for his organization.

However, the offers were contingent on an amendment of section 315 that would relieve the broadcasters from being compelled to make equal time available for nominees for the offices of President and Vice President of any party. At the same time, they flatly opposed the legislation that compelled broadcasters to provide free time. So did a number of other prominent people who submitted statements. Throughout the hearings and in the statements received by the committee one thought stood out. This thought was that if the objective could be achieved on a voluntary basis, such a plan should be tried. On the other hand, many persons were skeptical about the effectiveness of any voluntary plan because of the complexity of the problem. Who would police it? What format would be used? These were but a few questions that arose concerning any voluntary plan.

Your committee has no desire to force legislation in a field where it is not needed. It is only when the overwhelming public interest is involved as in this case that the idea of legislation is even entertained. In a free enterprise system competition and minimum government regulation should be the controlling force. Government should not intercede unless there is a compelling public need to require its action.

The committee was impressed by the sincere desire of the broadcasters to meet their obligations of public service in the national political arena provided this obligation was voluntary.

Your committee, therefore, has adopted this original joint resolution which would suspend section 315(a), the equal time provision, for the period of the 1960 presidential and vice-presidential campaigns with respect to nominees for the office of President and Vice President of the United States. This suspension is to terminate the day of the 1960 president and vice president election and applies only to the legally qualified candidates after they have been duly nominated by their respective parties.

In suspending section 315(a) full discretion is being given to the broadcaster. He is being afforded full opportunity to demonstrate by fact and act what he has contended he was unable to do because of the restrictions contained in section 315. He is being offered this chance to show how he will meet his public service obligation during the 1960 presidential and vice-presidential campaign and the committee will have an opportunity to evaluate his performance in the next Congress.

The committee is not unmindful that the suspension of section 315(a), even though it is limited to the 1960 presidential and vice presidential candidates, offers a temptation as well as an opportunity for a broadcaster to push his favorite candidate. That is a danger. The committee clearly recognizes this to be a definite danger but feels that the plea to permit the broadcaster to offer a voluntary plan to achieve the objective of S. 3171 is so great that it warrants the risk. An informed public is indispensable for the continuance of an alert and knowledgeable democratic society. The public benefits are so great that they outweigh the risk that may result from the favoritism that may be shown by some partisan broadcaster.

In any event, the committee is alert and has a special watchdog subcommittee headed by the able Senator from Texas, Mr. Ralph Yarborough, which will keep a careful eye on the use of broadcasting facilities for political purposes during the 1960 campaign. Fear has also been expressed that the adoption of this legislation would tend to weaken the present requirements of fair treatment of public issues. The committee desires to make it crystal clear that in recommending this legislation it does not diminish or affect in any way the FCC policy or existing law which holds that a licensee's statutory obligation to serve the public interest is to include the broad encompassing duty of providing a fair, cross-section of opinion in the station's coverage of public affairs and matters of public controversy. This standard of fairness applies to political broadcasts not coming within the coverage of section 315, such as speeches by spokesmen for candidates as distinguished from candidates themselves. In fact, the committee has endeavored to point this up by inserting the following language in the resolution:

Nothing in the foregoing shall be construed as relieving broadcasters from the obligation imposed upon them under this Act to operate in the public interest.

Of course, the prohibition against censorship as presently contained in section 315 would remain intact as it applies to the presidential and vice presidential candidate who appears on any program made available as a result of the suspension provided by this joint resolution. This legislation does not affect that provision.

The committee desires to make it abundantly clear that in recommending this legislation suspending section 315(a) for the 1960 presidential and vice presidential campaign it is not to be construed that it has rejected the principle of S. 3171. It senses that there is a general agreement that the voluntary approach is more desirable, and that the broadcasters should be given the opportunity as they requested to test the plan voluntarily. If the broadcasters fail to measure up to their responsibility in this limited field or attempt to abuse the discretion herein granted, the committee serves notice that it will proceed to consider legislation similar to S. 3171 in the next Congress.

It should be noted that in the legislation herein reported the Federal Communications Commission is being directed to make a report to the Congress not later than March 1, 1961, with respect to the operation of the provisions of this joint resolution and any recommendations the Commission may have for amendments to the Communications Act as a result of the experience under the provisions of the legislation.

During the hearings a number of questions were raised about the constitutionality of S. 3171. Suggestions were made that the mandatory nature of a bill which required broadcasters to make certain time available to presidential and vice-presidential candidates would be in conflict with the Constitution of the United States. In view of the action taken by the committee in recommending the suspension of section 315 there is no need to discuss these points.

However, the committee desires to make it clear that the airwaves, the radio spectrum that is subject to FCC jurisdiction and which is assigned to broadcasters for use on a licensed basis, belong to the people. The licenses issued by the FCC to use such frequencies are conditioned on the fact that they be used in the public interest. All such licenses are limited to a specific period—usually 3 years—and under the terms of the law the FCC must weigh the performance of such licensee to determine whether he has operated in the public interest before it renews the license. The contribution made by the broadcasters in this area is one of the factors that should be weighed by the Commission at renewal time. The committee will have more to say on this subject in the event legislation similar to S. 3171 is to be considered in the next Congress.

#### CONCLUSION

The legislation reported herein would be a temporary suspension of section 315(a) only insofar as the presidential and vice-presidential candidates are concerned in the 1960 campaign. The suspension is limited to the candidates after they have been nominated by their respective parties.

Section 315 remains untouched insofar as any other candidates for other elective offices are concerned. The proposed legislation will afford the licensees complete freedom to exercise their judgment in developing a program and time for presidential and vice-presidential candidates.

Sufficient flexibility is being afforded the broadcaster to put to test his ingenuity. He cannot, in the event of difficulties encountered later, state that he has been restricted or limited by legislation. He has asked for this opportunity to develop a voluntary plan and it is being granted.

In adopting this course of action as recommended by this legislation, the committee was aware of the opportunity it affords a broadcaster to favor a candidate. This is a risk that the committee feels is outweighed by the substantial benefits the public will receive through the full use of this dynamic medium in presidential political campaigns on a voluntary basis. The committee has faith in the maturity of our networks and broadcasters and their recognition to discharge their obligation in the public interest. The committee accepts the broadcasters' offer in good faith and is hopeful that the challenge being set forth is successfully met.

The committee feels that the proposals contained in this legislation are in the public interest and worth the risk being taken because the suspension is of a temporary nature and a voluntary action is always preferable to Government action.

The committee feels that the proposal set forth herein is workable and fair. However, time is of the essence and action must be expedited. The public should benefit from this proposal.

CHANGES IN EXISTING LAW

There are no changes in existing law.

## INDIVIDUAL VIEWS OF SENATOR YARBOROUGH

I do not agree with all the views expressed in the majority report. In my opinion, the resolution, as reported, does not contain sufficient safeguards to insure fairness and impartiality of treatment to the candidates.

RALPH W. YARBOROUGH.

