



4. **Discussion.** Section 315(a) of the Act provides that, if a licensee allows a legally qualified candidate for public office to “use” a broadcast station, it must afford equal opportunities to other such candidates for that office.<sup>5</sup> Section 315(a) also states, however, that appearances by legally qualified candidates on four categories of *bona fide* news programming, including *bona fide* news interviews (Section 315(a)(2)), are exempt from equal opportunities requirements.

5. Congress qualified all four categories of exempt news programming with the term “*bona fide*,” which “was intended to emphasize Congress’ intent that the program be of genuine news value and not be designed to serve the political advantage of any particular candidacy.”<sup>6</sup> In deciding that “Entertainment Tonight” qualified as a *bona fide* newscast, the Mass Media Bureau stated that its “role is not to decide, by some qualitative analysis, whether one kind of news story is more *bona fide* than another.” It further stated that, “[s]o long as the program characteristics set out by Congress are met, [its] role is properly limited to determining whether a broadcaster was reasonable in deciding that a program fits within an exemption.”<sup>7</sup>

6. The Commission considers the following factors when determining whether a program qualifies as a “*bona fide* news interview”: (1) whether the program is regularly scheduled; (2) whether the broadcaster or an independent producer controls the program; and (3) whether the broadcaster’s or independent producer’s decisions on format, content, and participants are based on newsworthiness rather than on an intention to advance or harm an individual’s candidacy.<sup>8</sup>

7. Based on the record before us, we conclude that the news interview segments of “Anderson” qualify for the *bona fide* news interview exemption under Section 315(a)(2) because they are regularly scheduled; their producers control them; and the producers’ decisions on format, content, and participants are based on newsworthiness and not on an intention to advance or harm an individual’s candidacy. In addition, we have no evidence of bad faith or unreasonableness on the part of ANE. Therefore, appearances by candidates on the aforementioned news interview segments are exempt from the equal opportunities requirements of Section 315(a).

8. We note that, even when the Commission declares that an independently produced program, or portions thereof, qualify for a news exemption under Section 315, individual “licensees must still make a determination to air individual programs in the exercise of their *bona fide* news judgment.”<sup>9</sup> Accordingly, the licensees of the stations on which “Anderson” airs remain ultimately responsible for the

---

<sup>5</sup> A “use” is defined as any identifiable, positive appearance (including by voice or picture) of a candidate lasting four seconds or more that is not exempt pursuant to Sections 73.1941 (a)(1) through (a)(4) of the Commission’s Rules, 47 C.F.R. § 73.1941(a)(1)-(4). See 47 C.F.R. § 73.1941(b).

<sup>6</sup> *In re Request of Oliver Productions, Inc. For Declaratory Ruling*, 4 FCC Rcd 5953, 5953 (1989), citing *In re Petitions of Henry Geller*, 95 FCC 2d 1236, 1246 (1983), *aff’d sub nom., League of Women Voters Education Fund v. FCC*, 731 F.2d 995 (D.C. Cir. 1984).

<sup>7</sup> *Paramount Pictures Corp.*, 3 FCC Rcd 245, 245-46 (MMB 1988). See *Rev. Donald L. Lanier*, 37 FCC 2d 952 (B/c Bur. 1972) (granting newscast exemption to a program dealing entirely with current religious news).

<sup>8</sup> See *Re Request of ABC, Inc. for Declaratory Ruling*, 15 FCC Rcd 1355, 1358 (MMB 1999).

<sup>9</sup> *Request for Independently Produced News Interviews*, 7 FCC Rcd 4681, 4685 (1981).

determination to air a particular news interview segment and should not do so for the political advantage of a candidate for public office.<sup>10</sup>

9. Accordingly, ANE's request for declaratory ruling IS GRANTED to the extent indicated herein.

FEDERAL COMMUNICATIONS COMMISSION

Robert L. Baker  
Assistant Chief  
Policy Division  
Media Bureau

---

<sup>10</sup> *Id.*