

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

In the Matter of)
)
HEARST TELEVISION INC.)
)
For Declaratory Ruling Regarding the Program)
"Matter of Fact with Fernando Espuelas")

DECLARATORY RULING

Adopted: June 29, 2016

Released: June 30, 2016

By the Assistant Chief, Policy Division, Media Bureau:

1. In this Order, we grant, to the extent indicated herein, a Request for Declaratory Ruling ("Request") filed on April 15, 2016 by Hearst Television Inc. ("Hearst"), co-producer along with Fernando Espuelas of the program "Matter of Fact with Fernando Espuelas" ("Matter of Fact"). In its Request, Hearst asks the Commission to declare that "Matter of Fact" is exempt from the equal opportunities provision of Section 315 of the Communications of 1934, as amended ("Act"), because it qualifies as a *bona fide* news interview program under Section 315(a)(2) of the Act. For the reasons set forth below, we conclude that portions of the program "Matter of Fact" qualify as *bona fide* news interviews under Section 315(a)(2), and, therefore, appearances by legally qualified candidates during those interviews are exempt from equal opportunities.

2. Hearst describes "Matter of Fact" as a regularly scheduled, half-hour weekly program that is presently carried by 26 television stations licensed to wholly owned subsidiaries of Hearst and 45 non-Hearst-owned stations.¹ Hearst states that, in cooperation with Sony Pictures Television, it is seeking to place "Matter of Fact" in syndication on additional non-Hearst-owned stations around the country.² Hearst states that "Matter of Fact" is hosted by Fernando Espuelas, an acclaimed political commentator, author, national radio host, and entrepreneur.³ According to Hearst, "Matter of Fact" is a program that "seeks to put political information in context by explaining issues in a down-to-earth and relevant manner that is inclusive of younger, more diverse audiences."⁴ Each episode consists of five or six segments that address current political and socioeconomic issues, most often in the form of interviews and dialogues with guests or occasionally in the form of commentaries by Mr. Espuelas.⁵ Past episodes have featured presidential candidates, political leaders, and advocates for various issues.⁶

3. Hearst argues that "Matter of Fact" satisfies all of the criteria for exemption as a *bona fide* news interview program. It asserts that "Matter of Fact" is a regularly scheduled program that is

¹ Request at 1.

² Request at footnote 1.

³ Request at 3.

⁴ Request at 2.

⁵ Request at 2.

⁶ Request at 2.

broadcast on a particular day and time that varies for each station that carries the program.⁷ Hearst also maintains that the format, content, and production of “Matter of Fact” remain entirely within the control of Hearst and Mr. Espuelas. According to Hearst, the program is shot “primarily at the Newseum and produced at Hearst’s Washington, DC, news bureau by two Hearst executive producers, one Hearst senior producer, and Mr. Espuelas”⁸ The group collaborates on the topics to be covered in each week’s episode and on the questions that will be presented to interviewees.⁹ Hearst maintains that “[e]very stage of program production – from content to format to guest selection, shooting, editing, and delivery – are entirely within the control of Hearst. No candidate has input into the format content or production of ‘Matter of Fact.’”¹⁰ Hearst also asserts that topics are selected and guests are invited to appear on the basis of their newsworthiness, and not for the purpose of advocating for or against any candidate or position.¹¹

4. Section 315(a) 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.¹² However, Section 315(a) also states that appearances by legally qualified candidates in four categories of *bona fide* news programming are exempt from equal opportunities requirements. Among the four categories of exempt news programming are *bona fide* news interviews.¹³

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.”¹⁴ In deciding that “Entertainment Tonight” qualified as a *bona fide* newscast, the Mass Media Bureau (predecessor to the 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.”¹⁵ Rather, “[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.”¹⁶

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

⁷ Request at 10.

⁸ Request at 10.

⁹ Request at 11.

¹⁰ Request at 11.

¹¹ Request at 12.

¹² 47 U.S.C. § 315(a). 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 Section 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).

¹³ 47 U.S.C. § 315(a)(2).

¹⁴ *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).

¹⁵ *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).

¹⁶ *Id.*

than on an intention to advance or harm an individual's candidacy.¹⁷

7. Based on the record before us, we conclude that the news interview segments of "Matter of Fact" 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 Hearst. Therefore, appearances by candidates on the aforementioned news interview segments are exempt from the equal opportunities requirements of Section 315(a).

8. Accordingly, Hearst's Request for Declaratory Ruling IS GRANTED to the extent indicated herein.

FEDERAL COMMUNICATIONS COMMISSION

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¹⁷ See *In Re Request of ANE Productions, Inc. for Declaratory Ruling*, 26 FCC Rcd. 16148, 16149 (MB 2011); *In Re Request of ABC, Inc. for Declaratory Ruling*, 15 FCC Rcd 1355, 1358 (MMB 1999).