

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

In re Request of)
)
JOYNER MANAGEMENT SERVICES, INC.)
)
For Declaratory Ruling)
)

STAFF RULING

Adopted: August 26, 1996

Released: August 26, 1996

By the Chief, Mass Media Bureau:

1. The Commission has before it a request for a declaratory ruling filed on March 8, 1996, by Joyner Management Services, Inc. ("Joyner Management") seeking a Commission determination that the "Tom Joyner Radio Program" is a *bona fide* news interview program, 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)).

2. Joyner Management states that it owns and produces the "Tom Joyner Radio Program" and that the syndicated program has aired regularly on radio station WPTF(AM), Raleigh, North Carolina, and several other radio stations in North Carolina since October 1994. Joyner Management also asserts that the "Tom Joyner Radio Program" is a weekday, interview-style radio show that features a broad variety of local, state, and region-wide public figures, covering newsworthy issues of public importance.

3. Joyner Management maintains that the "Tom Joyner Radio Program" is moderated by Tom Joyner and that the editorial control of the program rests solely with Tom Joyner's good faith journalistic judgment and not by an intention to advance the candidacy of any particular candidate. Joyner Management further states that selection of interviewees is guided by newsworthiness of the persons to be interviewed or the topics they will discuss.

DISCUSSION

4. Section 315(a) of the Communications Act provides that if a licensee permits a legally qualified candidate for public office to use a broadcast station, it must afford equal opportunities to other such candidates for that office. In 1959, Congress amended the equal opportunities provisions of Section 315 to exempt appearances by legally qualified candidates on the following news programs:

- (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) . . .

47 U.S.C. § 315(a)(1)-(4).

5. The Commission considers the following factors when determining whether an independently produced program qualifies as a "*bona fide* news interview": (1) whether the program is regularly scheduled; (2) whether the broadcaster or independent producer controls the program; and (3) whether the broadcaster or independent producer's decisions on format, content, and participants are based on newsworthiness rather than on an intention to advance an individual's candidacy. See Request for Declaratory Ruling on Independently Produced News Interviews, 7 FCC Rcd 4681 (1992). Furthermore, whenever a news exemption is sought for an independently produced program, individual "licensees must still make a determination to air individual programs in the exercise of their *bona fide* news judgment." Declaratory Ruling, 7 FCC Rcd at 4685. Accordingly, the licensee of WPTF and other licensees which carry the "Tom Joyner Radio Program" remain ultimately responsible for a determination to air a particular program and should not do so for the political advantage of any candidate for public office. Id.

6. Based on the information contained in Joyner Management's request, it appears that the "Tom Joyner Radio Program" is a *bona fide* news interview program and is therefore exempt from equal opportunities under Section 315(a)(2). The "Tom Joyner Radio Program" has been regularly scheduled for over one-and-a-half years. Joyner Management represents that it retains editorial control over the program's topics through Tom Joyner's good faith exercise of journalistic judgment. In addition, Joyner Management represents that interviewees are selected on the basis of newsworthiness and not by an intention to advance the candidacy of any particular candidate. Finally, we have no evidence that any licensee will carry the program for any reason other than its newsworthiness.

7. In view of the foregoing considerations and based on the information before the Commission, we believe that to the extent that Joyner Management regularly schedules and produces for broadcast *bona fide* news interviews on the "Tom Joyner Radio Program," the program is exempt from the equal opportunities provision of Section 315(a) of the Communications Act. Accordingly, Joyner Management's request IS GRANTED.

8. Staff action is taken pursuant to delegated authority.

FEDERAL COMMUNICATIONS COMMISSION

**Roy J. Stewart,
Chief, Mass Media Bureau**