

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

In re Request of

CAPITOL RADIO NETWORKS

For Declaratory Ruling

STAFF RULING

Adopted: April 11, 1996

Released: April 18, 1996

By the Chief, Complaints and Political Programming Branch:

1. The Commission has before it a request for a declaratory ruling filed on March 1, 1996, by Capitol Radio Networks (CRN) seeking a Commission determination that its program "Capitol Ideas" 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. CRN is an independent news network that provides news and informational programming to radio stations in the state of North Carolina. CRN states that "Capitol Ideas" is a monthly radio call-in show that features the Governor of North Carolina and provides callers throughout the state an opportunity to speak with the Governor about issues of concern to them. Because the Governor has become a legally qualified candidate for re-election to that office, CRN filed the instant request. CRN maintains that "Capitol Ideas" has aired regularly since February 1993 and that it plans to continue production and broadcast of the program regardless of the outcome of the 1996 gubernatorial election.

3. CRN states that "Capitol Ideas" is moderated by CRN's news anchor, Matt Willoughby. CRN contends that Willoughby controls the program by introducing callers and intervening in the discussion when, in his judgment, such action is appropriate. CRN maintains that topics discussed during the show arise from those raised by the callers and from those questions Willoughby has planned in advance. CRN asserts that because no questions from any source are given to the Governor in advance, responses cannot be scripted. Moreover, CRN asserts that because the program is broadcast live, neither the Governor nor his staff have any ability to control the material which is broadcast.

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 Section 315 to exempt from equal opportunities 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. Section 315(a)(1)-(4). In determining whether a program qualifies as a "bona fide news interview," the Commission considers the following factors: (1) whether it 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 an individual's candidacy. See *Request for Declaratory Ruling on Independently Produced News Interviews*, 7 FCC Rcd 4681 (1992). Furthermore, as the Commission stated therein, 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." *Id.* at 4685.

5. Based on the information contained in CRN's request, it appears that "Capitol Ideas" is a bona fide news interview program, and is, therefore, exempt from equal opportunities under Section 315(a)(2). "Capitol Ideas" has been regularly scheduled for three years. In addition, CRN represents that it retains control over the program's topics through the moderator's participation. For instance, Willoughby, employing his news judgment, intervenes in the discussion when he believes such action is appropriate. Moreover, according to CRN, the spontaneous nature of the program precludes the Governor from having any control over the questions which are asked or the subjects that are addressed. Furthermore, it appears that the topics are selected based upon the caller's interests and concerns, rather than any particular agenda of the Governor.

6. The factual situation presented in CRN's request appears similar to a news interview exemption previously granted by the Commission in *Hon. Michael V. DiSalle*, 40 FCC 348 (1962). Therein, the Commission found a regularly scheduled broadcast program in which a Governor answered questions in his office posed by newsmen from participating stations to be exempt from Section 315(a). The Commission noted that the questions were not prescreened, nor were the answers edited, and determined that the program did not appear to be designed to further the Governor's candidacy.

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

8. Staff action is taken pursuant to delegated authority.

FEDERAL COMMUNICATIONS COMMISSION

Norman Goldstein
Chief, Complaints and
Political Programming Branch
Enforcement Division
Mass Media Bureau