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POLITICAL BROADCASTS--REGULATE OR DEREGULATE?

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ABSTRACT

This report examines the various issues raised in consideration of whether the interests of the candidates, the electorate and the broadcasters are best served by repealing or modifying existing laws that regulate political broadcasts, or by leaving the law unchanged. Current applicable law, proposals for change in that law, and legal and constitutional issues are discussed. The regulation of presidential debates is covered in some detail to illustrate many of the issues involved.

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POLITICAL BROADCASTS--REGULATE OR DEREGULATE?

ISSUE

The issue central to this report is what contribution, if any, the Federal law can make to create and maintain the best environment for political broadcasts. "Best", that is, for the candidates, the electorate and the broadcasters. Should the Federal law now be left unchanged or amended with respect to either broadcasting controls or to the financing of political broadcasts and if so, how might this be done?

Since broadcast debates between presidential candidates are now a prime topic of interest, the regulation of such debates is discussed in some detail not only because it is a topic of interest itself, but also because it illustrates many of the issues raised in a consideration of regulation of political broadcasting generally.

The various players who are, or may be, involved in political broadcasts and whose interests may be affected by a Federal law include:

- ° the candidates
- ° the candidates' supporters
- ° the candidates' detractors
- ° political parties supporting candidates
- ° the broadcasters
- ° the voters--the public
- ° private organizations, profit or nonprofit, which might arrange political broadcasts
- ° corporations and other organizations which might provide funding for broadcasts
- ° lobbying and special interest groups which might sponsor broadcasts
- ° the Federal Communications Commission and the Federal Election Commission which might regulate aspects of financing of broadcasts
- ° the Congress which might consider new legislation with respect to political broadcasts

POLICY CONSIDERATIONS

What is the appropriate role of each of these players, and who is to define the roles? Is it in the public interest to leave the law and practice as it is, or would the public interest be better served by repealing or modifying the existing laws that regulate political broadcasting such as Section 315 of the Federal Communications Act, the so-called "equal time" requirement?

IMPORTANCE OF POLITICAL BROADCASTS

Political broadcasts offer an opportunity for the public to make a more informed judgment about the candidates in addition to providing material for interpretation by the media, as in the case of candidate debates. Network TV covers election events with a national outlook, rather than the more limited community focus of local TV and newspapers, and broadens the scope of information the electorate receives about candidates and issues. 1/ Some believe that television provides the forum in which presidential elections are now decided; that the outcome of presidential primaries and general elections is determined largely by network television coverage. 2/

Others place radio, not TV, as the most influential news and information medium. 3/

1/ Rubin, Richard L., Mass Media and Presidential Selection, PS Fall 1983. pp. 684-686.

2/ Barrow, Roscoe L., The Presidential Debates Of 1976: Toward A Two Party System, 46 Cincinnati L. Rev. 123, 133 (1977) and material cited therein.

3/ Riggerbach, Jeff, No One Has The Right To Free Television Time, USA Today, October 3, 1983. p. 10A.

Many see the influence of television as a dominant factor in the presidential nomination process. There has been an increase in the number of presidential primaries, the importance of caucuses and the number of primary voters in the past decade and this has led to a new election-based political arena. Although initially the initiative for expanding presidential primaries came from candidates challenging entrenched politicians, once TV journalists grasped the professional opportunities offered by expanded primary politics, they were quick to press for a massive expansion of a process economically and journalistically advantageous to the medium. 4/

In the last presidential election, the debates in New Hampshire prior to that State's 1980 primaries are thought to have had a critical influence in contributing to President Reagan's ultimate success in getting the nomination. 5/

WHY RECONSIDER FEDERAL LAW REGULATING POLITICAL BROADCASTS AT THIS TIME?

In addition to the traditional reasons for regarding TV coverage as important, other elements which contribute to the present heightened interest in political broadcasts include such factors as increasing candidate pressure for TV exposure and the concomitant financial expenditures, the changes in the Federal Communications Commission's interpretation of requirements of the law which regulates broadcast debates, and sentiment to deregulate broadcasting.

4/ Rubin, supra, at pp. 684-685; Patterson, Thomas E., The Mass Media Election--How Americans Choose Their President, New York, Praeger Publishers, 1980. pp. 43-53.

5/ Van Gelder, Biz, Presidential Debates: A Case Study Of The Federal Election Commission's Regulation Of Candidate Appearances, 29 Emory Law Journal 339 (1980).

THE GENERAL OBJECTIVES OF THE FEDERAL COMMUNICATIONS ACT WITH RESPECT TO POLITICAL BROADCASTS

The general objectives of the Federal Communications Act with respect to regulation of political broadcasts are to--

- ° prevent broadcasting stations and cable television systems operators from discriminating between competing legally qualified candidates; 6/
- ° insure that legally qualified candidates are allowed to speak freely on the air without censorship by broadcasters or cable operators; 7/
- ° guarantee to legally qualified candidates rates that are as favorable as those offered by broadcasters and cable operators to their most favored advertisers; 8/
- ° make sure that legally qualified candidates for Federal elective office are given or sold reasonable amounts of time for their campaigns. 9/

EQUAL OPPORTUNITIES (EQUAL TIME)

The equal opportunities requirements are intended to prevent broadcasters from discriminating between candidates. "Equal time" is a colloquial term, a substitute for "equal opportunities" which appears in the Communications Act.

Section 315 of the Federal Communications Act requires that once a broadcast licensee affords one candidate for public elective office an opportunity to use his facilities, he must afford all other candidates for the same office equal opportunities to use his facilities. 10/ The equal opportunities requirement applies to both commercial TV and to cablecast programming. 11/

6/ 47 U.S.C. §315(a).

7/ Id.

8/ 47 U.S.C. §315(b).

9/ 47 U.S.C. §312(a)(7).

10/ 47 U.S.C. §315(a).

11/ 47 U.S.C. §315(c)(1).

Usually any participation of a candidate in a broadcast triggers the equal opportunities requirements, but the law excepts the appearance of legally qualified candidates in bona fide newscasts, news interviews, and news documentaries from equal opportunities requirements. 12/ There is no similar explicit exception in the law for debates between candidates for public elective office, although the FCC has administratively ruled that debates come under the news exemption. However, there may be some ambiguity in deciding when debates qualify as "bona fide" newscasts or other news events. A more detailed account of the application of the Equal Opportunities requirements for candidate debates appears later in this report.

FAIRNESS DOCTRINE

The "Fairness Doctrine" requires that a broadcaster provide a reasonable opportunity (but not necessarily equal time) for the presentation of conflicting views on controversial public issues. Broadcasters must operate in the public interest and cover public issues, but are not specifically required to cover particular public issues. Once a broadcaster covers a particular public issue the Fairness Doctrine compels it to present a reasonably balanced coverage of that issue. 13/

There is no equivalent to the Fairness Doctrine applicable to the printed press. With respect to the print media, the editorial decision on what to print and the converse, what not to print, is considered to be beyond government control because of the First Amendment guarantees of free speech and press. However, the

12/ 47 U.S.C. §315(a).

13/ 47 U.S.C. §315(a); 47 C.F.R. §§73.1910-73.1940 (1982).

Supreme Court has upheld the FCC's "Fairness Doctrine", which impacts to some degree on the broadcast media's editorial freedom, as not violating constitutional standards. 14/

The rationale of the Supreme Court in upholding this limited regulation of broadcasting content is that the broadcast frequencies are limited and those granted licenses must act in the public interest. 15/

PERSONAL ATTACK RULE

The FCC Personal Attack Rule applies when, during the presentation of views on a controversial issue of public importance, an attack is made upon the honesty, character, integrity or like personal qualities of an individual or group. 16/

The Commission's Personal Attack Rule does not apply to attacks made by candidates or their campaign associates on other candidates or their associates, or to attacks on anyone else if made during a candidate's "use" of a station or cable system. Sometimes, however, attacks that do not come within this exemption are broadcast during political campaigns. Such a situation might arise during a broadcast paid for by persons or organizations completely independent of any candidate or candidate's associates in which a personal attack is made on a candidate.

14/ Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969).

15/ Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241 (1974) (striking down State law providing newspaper access similar to Federal Fairness Doctrine).

16/ 47 CFR §73.1920.

If someone broadcasts an attack against a candidate, the station need not invite the candidate to appear personally to answer the attack. After such an appearance, all other candidates for the same office would be entitled to equal opportunities under Section 315. Rather, a station can comply with the rule by allowing a spokesman for the candidate to respond. Personal attack rules do not apply to news broadcasts but do apply to station editorials. 17/

POLITICAL EDITORIAL RULE

A "political editorial" is a statement by or on behalf of the licensee of a broadcasting station or the operator of a cable system which endorses or opposes a candidate. It is not a statement by a commentator or another employee of a station, unless it is represented as the statement of the licensee or cable operator. However, if the president of a station broadcasts a statement or interview in which he endorses or opposes a candidate, it will be considered to fall within the Commission's political editorializing rule, even though it is not labeled an editorial.

The rule does not forbid broadcasting or cablecasting political editorials. However, a broadcaster of an editorial endorsing or opposing a candidate must offer a reasonable opportunity for the candidate or a spokesman of the affected candidate an opportunity to respond over the broadcaster's facilities. The station does not have to permit a candidate to respond personally, although usually the choice of a responding spokesman is up to the candidate. 18/

17/ U.S. Federal Communications Commission, The Law of Political Broadcasting And Cablecasting: A Political Primer, 1980. p.14.

18/ 47 CFR §73.1930; see U.S. Federal Communications Commission, The Law Of Political Broadcasting And Cablecasting: A Political Primer, 1980. pp. 13-14.

RATES CHARGED TO CANDIDATES

A TV station and cable TV station may not charge a candidate more for time than it would charge a regular commercial advertiser, and during the period 45 days before a primary and 60 days before a general election, the station may not charge the candidate more than its lowest unit charge for the same class and amount of time for the same period. 19/

ACCESS TO MEDIA

The FCC may revoke a stations's license for willful or repeated failure to allow reasonable access or to permit the purchase of reasonable amounts of time for the use of a candidate for Federal elective office to further his candidacy. 20/

CANDIDATE DEBATES

Political debates are an important subset of political broadcasting: important in themselves and important because they illustrate how equal opportunities, fairness and some other provisions of law affect the political process.

Public interest in debates between political candidates has been a traditional part of American elections which predates broadcast technology by many years. Debates may provide the electorate with its only opportunity to observe the candidates together discussing their positions on important issues.

However, debates between presidential candidates and the influence of TV in political campaigns are of recent origin, both having emerged in the 1960's. 21/ The televised debates between John F. Kennedy and Richard M. Nixon in 1960 were

19/ 47 U.S.C. §315(b).

20/ 47 U.S.C. §312(a)(7).

21/ Patterson, supra, at p. vii.

the first of the presidential debates. The famous Lincoln-Douglas debates in 1858 took place not during a presidential campaign, but when the two rivals were running for U.S. Senate. 22/

The Kennedy-Nixon debates in 1960, the debates between Jimmy Carter and Gerald R. Ford in 1976, and the 1980 debates between Reagan and Carter and between the Republican primary contenders are considered to have played critical roles in those campaigns. Some 101 million to 107 million persons watched at least one debate in 1960 and 122 million the 1976 debates, 23/ the exact figures depending on who did the estimating. 24/ And the League of Women Voters estimate 120 million Americans watched Jimmy Carter and Ronald Reagan debate. 25/ The arrangements of these debates have differed and changed to comply with broadcasting and campaign financing regulations.

The FCC has not always been consistent in its interpretation of what triggers equal opportunities obligations. Prior to 1959, the FCC held that an appearance of a political candidate in a newscast was not a "use". In 1958, the FCC changed its earlier position and, in the Lar Daly case, held that an appearance in a newscast of the Mayor of Chicago, who was then a candidate for reelection, greeting the President of Argentina at the local airport was a "use" entitling

22/ Kirkpatrick, Evron M., Presidential Candidates 'Debates': What Can We Learn From 1960? in The Past & Future Of Presidential Debates, Austin Ranney, ed. Washington, D.C., American Enterprise Institute for Public Policy Research. p. 6; Mitchell, Lee M., Background Paper in With the Nation Watching--Report of the Twentieth Century Fund Task Force on Televised Presidential Debates, Lexington, Massachusetts: Lexington Books, 1979. pp. 19-39.

23/ Sarnoff, Robert W., An NBC View, in The Great Debates, Sidney Kraus, ed., Indiana University Press, 1962, reprinted 1968. pp. 56-64.

24/ Stanton, Frank, A CBS View, in The Great Debates, supra, at p. 66; The Past And Future Of Presidential Debates, supra, at p. 1.

25/ The 1980 Presidential Debates: Behind The Scenes, League Of Women Voters Education Fund (1981). p.1.

another candidate, one Lar Daly, to equal time. Congress reacted to this interpretation by amending the law in 1959 to exempt from equal time requirements appearances by candidates in bona fide newscasts, news interviews, news documentaries, and on-the-spot coverage of news events. The legislative history of the 1959 amendment indicates that the question of whether political debates should also be exempted was considered and rejected by Congress. 26/

In 1960, Congress suspended Section 315 so far as it applied to the presidential election of 1960. 27/

In 1975, the FCC in the Aspen Institute case asserted that it was changing its interpretation of the equal opportunities requirements and that henceforth, a debate between candidates would be exempt from equal time requirements as a news event if it was sponsored by a nonbroadcast entity. 28/

In November 1983, the FCC again changed its interpretation of equal opportunities requirements and ruled that broadcasters themselves may sponsor candidate debates without triggering equal opportunities requirements. 29/ The League of Women Voters Education Fund filed an appeal in Federal Court seeking to reverse the FCC ruling and asked the court to expedite the ruling in light of the approaching 1984 elections. The court agreed to expedite its consideration

26/ Barrow, supra., at pp. 125-132, and references cited.

27/ S.J. Res. 407, 86th Congress, 2d Sess. (1960).

28/ Aspen Institute Program on Communications and Society, 55 FCC 2d 697 (1975), aff'd sub nom. Chisholm v. FCC, 538 F.2d 349 (D.C. Cir.) cert. denied, 429 U.S. 890 (1976).

29/ In re petitions of Henry Geller and the National Association of Broadcasters and the Radio-Television News Directors Association, 48 Fed. Reg. 53166 (Nov. 25, 1983), 54 RR2d 1246 (1983), appeal docketed sub nom. League of Women Voters Education Fund v. FCC No. 83-2194 (D.C. Cir. November 18, 1983).

and a decision is expected by April. The League contends that the FCC ruling is in conflict with the language of Section 315, is contrary to the intent of Congress and that the FCC failed to present justification for this drastic departure from longstanding FCC interpretation. 30/

The 1983 interpretation is too recent to provide an indication as to how the media will utilize its new authority. The expectation is that the exemption of televised debates from equal opportunities requirements may result in a change from past practices in the sponsorship of debates and the financing of the debates. In the last two presidential elections, the League of Women Voters and a few local newspapers took the lead role in arranging most candidate debates. As a result of the reinterpretation, broadcasters may be expected to play a lead role in sponsoring and arranging future debates. Some news reports have suggested that there are now so many competing to sponsor presidential debates this fall that it may diminish the opportunities for debates between major candidates. 31/

How should the Federal law define what is a "nonpartisan" debate and to what extent, and under what conditions, if any, should corporations and labor organizations be allowed to finance debates between political candidates?

30/ See fn. 29 and Dorothy S. Ridings, The Debates Debate, National Voter, vol. 33, Winter, 1984. pp. 24-26.

31/ Washington Post, February 9, 1984, p. A7, citing spokesman for Twentieth Century Fund.

Who should decide such matters as:

- ° which candidates are to debate--the two major party candidates only, or the major party candidates joined by minor party and independent candidates?
- ° if candidates other than the two major party candidates are to debate, what criteria are to be used to determine which of the minor party and independent candidates should participate?
- ° how often, when and where, and in what setting are the candidates to debate?
- ° what is an appropriate format for the debate, should candidates deliver prepared speeches, or question each other, or answer questions from the audience, and if there is to be an audience, of whom is the audience to consist?
- ° who is to bear the cost of the debate, the candidates, political parties, corporations, labor unions, PACs, special interest groups, the U.S. Treasury?

RELATED DEVELOPMENTS

In related developments, the FCC, in working towards its goal to eliminate much of the regulation of the broadcasting industry, has made known its intention to eliminate both the personal attack and political editorial rules and there is some sentiment to repeal the Fairness Doctrine as well.

The FCC has also signaled its intention to eliminate its rule limiting the number of radio and television stations a company may own in one region. This is of concern to some because, if adopted, there may be the potential of fostering the growth of media conglomerates at the expense of encouraging new entrants in the marketplace and minority ownership. (The FCC proposal would not change the FCC rules that prevent broadcasters from purchasing radio and television stations in the same city or operating two AM, two FM or two TV stations reaching the same audience.)

The argument for the FCC proposal is that broadcasters may improve their program offerings if they can operate more efficiently by owning more properties in one area. It is also asserted that competition in the industry has been

increased because of the availability of cable TV and other non-broadcast video services as well as because of the increasing number of broadcast outlets. The number of radio stations in the United States has increased by 18.9% and the number of television stations by 36.7% since 1977 when the regional concentration rule was adopted.

The FCC's action is in response to a request from the National Association of Broadcasters that it eliminate the rule, 32/ but others are concerned that if the rules as to ownership are relaxed, a concentration of control will facilitate the potential for political abuses on the part of the broadcasters.

BROADCAST INDUSTRY SELF-REGULATION

If the FCC were to cease to play a role in ensuring candidates a fair amount of broadcast exposure, there does not presently appear to be an organization or industry group which might monitor political broadcasts to evaluate fair access. In January, 1983, the National Association of Broadcasters disbanded its Radio and Television Code Boards thereby ending the broadcasting industry's organized self-regulation of some aspects of broadcast practice. The Radio Code Board had been in operation nearly as long as commercial radio. Commentators indicate that the disbanding of the Code Boards was related to an antitrust case, brought by the U.S. Justice Department, which resulted in a consent decree prohibiting the National Association of Broadcasters from requiring or suggesting member adherence to advertising standards limiting broadcast commercials. The disbanding of the Boards appears to have gone far beyond what was required by the consent decree. 33/

32/ Saddler, Jeanne, FCC May End Regional Limit On Broadcasters--Rule Bars Buying a Third TV Station in Area; Move Opposed by One Member, Wall Street Journal, January 13, 1984, p. 10.

33/ Jassem, Harvey C., An Examination of Self-Regulation of Broadcasting, 5 Communications and the Law 51 (1983).

What effect, if any, the cessation of a self-regulating code will have on political broadcasting, particularly at a time when the Federal Government is reducing its role in broadcast regulation, is a matter of conjecture. However, the convergence of the events described above makes those who favor some degree of Federal regulation of political broadcasts apprehensive lest, in the future, broadcast facilities may not be made available to candidates on a fair and reasonable basis.

All these events, plus some dissatisfaction with the conduct of presidential debates in recent elections, contribute to increased interest in the possibility that Congress might wish to take a new look at the Federal law with a view toward deciding if more statutory structure or guidance is indicated. Newton Minow, a former chairman of the Federal Communications Commission, in presenting the findings of a study group sponsored by the Twentieth Century Fund, is quoted by the press as saying that in a matter of such vital importance as presidential debates, it is astonishing how casual, how disorganized, how unplanned these debates have occurred. ^{34/} The study group's recommendations are discussed in more detail later in this report.

FINANCING DEBATES

In addition to the application of the Communications Act's equal opportunities, Fairness Doctrine, and the like to candidate debates, other questions surface with respect to the application of certain provisions of the Federal Election Campaign Act of 1971 to the financing of candidate debates. The Federal Election Campaign Act of 1971 prohibits corporate and labor union contributions made in connection with Federal elections.

^{34/} New York Times, November 23, 1983, p. A24; see also for a discussion of the difficulties in arriving at a suitable format for the debates, in The Great Debates, supra, Seltz & Yoakam, Production Diary of the Debates, at pp. 73-126; Siepmann, Were They Great?, at pp. 132-141; Auer, The Counterfeit Debates, supra, at pp. 142-150.

Unlike the FCC, the Federal Election Commission views candidate debates staged by media organizations as generally not within the news exemption. The result of the Federal Election Commission interpretation is that funding of the debates is not excluded from the definitions of contribution and expenditure for this reason. 35/ But such funding may be excluded from the definitions of contribution and expenditure under Federal Election Commission regulations if the funds are used to defray costs incurred in staging nonpartisan candidate debates. 36/

The Federal Election Commission regulations identify certain nonpartisan tax exempt organizations and broadcasters, bona fide newspapers and other periodical publications as appropriate to stage such nonpartisan debates. And the regulations provide that a corporation or labor organization may donate funds to nonprofit-nonpartisan organizations to stage nonpartisan candidate debates held in accordance with the regulations. 37/

The nonpartisan nature of a debate, then, becomes the key to whether funds used to defray costs of staging candidate debates are an expenditure.

The Federal Election Commission regulations state that the structure of such debates is left to the discretion of the staging organization, provided that (1) such debates include at least two candidates, and (2) they do not promote or advance one candidate over another. 38/ The number of candidate debate participants needed to meet nonpartisan requirements can vary with circumstances. It may take more than two to demonstrate that those invited do not favor one candidate over another. Before its Geller decision, the FCC's interpretation of the equal opportunities requirement provided a factor further ensuring the nonpartisanship

35/ 2 U.S.C. §431(9)(B)(i); 11 CFR §100.7(b)(2).

36/ 11 CFR §§100.7(b)(21), 100.8(b)(23).

37/ 11 CFR §§110.13, 114.4(e).

38/ 11 CFR §110.13(b).

of candidate debates staged by broadcasters. For that reason, at the time of the Geller petitions, the Federal Election Commission submitted comments pointing out that a change in the FCC interpretation of Section 315 might require reconsideration of Federal Election Commission candidate debate rules.

On January 12, 1984, the Federal Election Commission reviewed its regulations relative to financing candidate debates in the light of the recent FCC Geller decision. It decided to retain its present interpretation that debates staged by media organizations are outside the news exemption and constitute an expenditure under 2 U.S.C. §431(9)(B)(i), rather than follow the FCC's opinion in the Geller order. 39/

The change in the Federal Communications Commission's position on equal time requirements for broadcast debates may result in a reexamination by the Congress of whether and under what circumstances it is legal for corporations, including media organizations, and labor unions to defray the cost of candidate broadcasts.

CONSTITUTIONAL ISSUES

The decision concerning whether, and how, the Federal Government should regulate or deregulate political broadcasts, involves a consideration not only of competing interests but also of complex legal and constitutional issues. For example, how are First Amendment guarantees of free speech and press and right to political association to be balanced between the various persons or organizations who wish to play a role in political broadcasts and whose interests may be conflicting? Also, as in many other aspects of campaign regulation, questions arise as to how to treat competing candidates fairly so that the law does not unduly favor candidates of the two major political parties, at the expense of minor party and independent candidates.

39/ Federal Election Commission, Minutes of an Open Meeting, Thursday, January 12, 1984, p.3.

Any new Federal Government action in the area of political broadcasts might be based upon the already established ability to regulate electronic media due to scarcity of transmission medium and the fundamental concept that an informed electorate is necessary to the democratic process. 40/

Currently the Federal law treats the broadcast media differently than the print media. Right of access to the print media, right to reply to editorials, and the like, are not, and cannot be, mandated by law because such requirements would be contrary to the First Amendment protection against government regulation of free speech and press. 41/

The Supreme Court, however, has upheld the power of Congress to legislate such constraints of radio/TV broadcasters.

The rationale of regulation of broadcasting by the Federal Government is based on the practical consideration that good reception cannot be guaranteed unless radio signals are regulated; without regulation, the signals would interfere with each other and the quality of the transmission would be unacceptable. Since Congress found it necessary to limit who may broadcast, those who are granted licenses to broadcast are required by law to serve the public interest. 42/

The Supreme Court has held that the FCC's Fairness Doctrine which requires broadcasters to allocate reasonable time to the broadcast of controversial issues of public importance and to present various sides of such issues does not violate the First Amendment rights of the broadcasters. The Court held that it is the right of the viewers and listeners, not the right of the broadcasters, which is paramount. 43/

40/ Emerson, Thomas I., Colonial Intentions and Current Realities of the First Amendment, 125 U. Pa. L. Rev. 737 (1977).

41/ Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241 (1974).

42/ Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969).

43/ Id., at 386-390.

Additional regulation of political broadcasts could, therefore, be based upon extension of this confirmed argument.

On the other hand, in opposition to additional regulation of political broadcasts, some question the constitutionality of applying equal time requirements to electronic media, and to cable transmission. They contend that the technology of cable challenges the rationale of scarcity as a justification for content regulation. Cable television does not occupy the radio spectrum; instead its signals are transmitted through cables strung along public utility poles or laid underground. For this reason, some contend that governmental regulation to prevent signal interference is unnecessary. Cable television can offer many more channels than traditional broadcast television. 44/

Others, however, assert that the potential of interference which might be caused by so many communications satellites operating at similar radio frequencies might bring cable TV, which uses satellites exclusively to carry its programming, to the same scarcity of resources situation as prevails for radio signals. Whether such an assertion is supported by the facts is unclear. 45/

If one assumes that technological change eliminates scarcity as a justification for broadcast regulation, argument could be made for reinterpreting the First Amendment to provide for emergence as well as the protection of expression. Some see a need for a new balancing of the competing First Amendment interests of suppliers and receivers of information, for promotion of diversity in the changing economic and social environment of mass media. 46/

44/ Koppel, supra, at 517-519.

45/ See O'Toole, Thomas, Communications Satellites Overcrowded, Washington Post, February 1, 1984, p. H2; Satellite Week, Fallow Transponders Reach New Plateau; Glut Likely to Grow Worse, January 23, 1984, p. 1.

46/ See Barron, Jerome A., Access to the Press--A New First Amendment Right, 80 Harv. L. Rev. 1641 (1967); Lively, Don, Affirmative Action and A Free Press: Policies and Problems in Promoting the First Amendment, 11 Pac. L.J. 65 (1979); Note, The Right to Know in First Amendment Analysis, 57 Tex. L. Rev. 505 (1979).

Another avenue for additional Federal regulation of presidential debates might be amendment of the Presidential Election Campaign Fund Act. For example, the Supreme Court, in Buckley v. Valeo, sustained Federal financing to avoid corrupting influences and create a fair campaign environment. Since that funding goes in large part to media expenses, as noted by the Court, perhaps it could be expanded to include broadcast of debates among qualified presidential candidates, major party, minor party and independent. Qualification might be based upon a formula similar to that of the present funding, or one with different percentages of voter support or a minimum amount of support as reflected in State ballot access requirements. 47/

While the potential constituency of all presidential candidates is the same, namely the votes of the nation, and all presidential candidates face much the same problems of carrying their message to the voters, congressional constituencies are different. Differences exist not only among the candidates of different States but also among House candidates within the same State. Therefore, variations in geography, population density and media costs must be added to the considerations in any political broadcast legislation which includes congressional candidates.

Whatever form enhancement of the environment for political broadcast might take, particular care must be taken to protect the rights of minor party and independent candidates, to assure some equality of access to the marketplace of political expression. Concern for such rights is intrinsic to the equal time requirement. While public policy may not be served by encouraging splinter party or frivolous candidacies, deregulation or repeal of those regulations currently in place are seen by some as a danger to access to the electorate by third party and independent candidates.

47/ See Gottlieb, Stephen E., The Role of Law in the Broadcast of Political Debate, 37 Fed. B. J. 1, 13-14 (1978).

With respect to the rights of minor party and independent candidates, the Supreme Court has upheld the Federal law which provides public financing of presidential candidates despite the fact that minor party candidates are treated differently in the law than are major party candidates. 48/

However, it may be argued that the use of broadcasting facilities presents sufficiently different policy issues than does the right to public funds so that somewhat different constitutional principles may govern.

The Supreme Court has recognized the rights of minor parties in a variety of circumstances 49/ and has said that all political ideas cannot and should not be channeled into the programs of our two major parties. History has amply proved the virtue of political activity by minority, dissent groups, who in innumerable times have been in the vanguard of democratic thought and whose programs were ultimately accepted. Mere unorthodoxy or dissent from the prevailing mores is not to be condemned; indeed, the absence of such voices could be seen as a symptom of grave illness in our society. 50/

PROPOSALS TO AMEND LAW

Some of the proposals to amend the law are discussed below. The proposals have been grouped into eight general categories as follows: Category #1--Deregulate All Or Most Aspects of Programming of Radio Stations; Category #2--Repeal Entirely Or To A Limited Degree Equal Opportunities Requirements; Category #3--Provide In Law For Treatment Of Third Party And Independent Candidates; Category #4--Provide In Law For Sponsorship Of Debates; Category #5--Tighten Provisions Prohibiting Foreign Ownership Of TV Or Cable Systems; Category #6--Amend Federal Election

48/ Buckley v. Valeo, 424 U.S. 1 (1976).

49/ Williams v. Rhodes, 393 U.S. 23 (1968); Anderson v. Celebrezze, U.S. 103 S. Ct. 1564, 75 L. Ed.2d 547 (1983).

50/ Sweezy v. New Hampshire, 354 U.S. 234, 250-251 (1957).

Campaign Act Provisions Applicable To Financing Debates; Category #7--Special Provisions for Candidate Access To Broadcast Media; and Category #8--Miscellaneous Proposals.

Category #1. Deregulate All Or Most Aspects Of Programming Of Radio Stations

S. 55 introduced by Senator Goldwater on January 26, 1983, provides for deregulation of the radio broadcasting industry and establishes a renewal procedure for both radio and TV licensees. The bill was reported by the Senate Committee on Commerce, Science, and Transportation (without written report) with amendments on February 15, 1983 and passed the Senate, amended, on February 17, 1983. 51/ The bill was referred to the House Committee on Energy and Commerce on February 22, 1983.

Other bills with similar objectives on which no further action has been taken to date include H.R. 2370, introduced by Mr. Swift on March 24, 1983 and referred to the House Energy and Commerce Committee. Among the many provisions of this bill is a provision that would explicitly exempt candidate debates from equal opportunities requirements. 52/

See also H.R. 2382, introduced by Mr. Tauke on March 24, 1983; H.R. 2873, introduced by Mr. Luken on May 3, 1983.

Category #2. Repeal Entirely Or To A Limited Degree Equal Opportunities Requirements

Proposal: Repeal The Equal Opportunities And Fairness Doctrines And Eliminate The Lowest Unit Charge For Political Advertising

Provisions of this type are in S. 1917, Freedom Of Expression Act, introduced by Senator Packwood on October 3, 1983.

The purpose of the bill is to prohibit the FCC from regulating the content of any electronic communications, including cable and satellite transmissions. The objective is to accord to the broadcast media the same treatment in the Federal law as is accorded to the print media.

51/ 129 Cong. Rec. S1289-S1293 (Feb. 17, 1983, daily ed.).

52/ For remarks of Mr. Swift, discussing bill, see 129 Cong. Rec. E1369-E1371.

Those who support legislation of this kind believe that content regulation infringes on the electronic media's First Amendment rights, chills editorial discretion, and causes self-censorship and that elimination of FCC rules would improve the public's access to information.

On introducing his bill, Senator Packwood said that his goals are important to the print media as it becomes intertwined with electronic communications through new technologies such as teletext. Senator Packwood contends that print protections may be lost in an environment where regulation of editorial content is permissible. 53/

S. 22 introduced by Senator Proxmire on January 26, 1983, provides that the term "public interest, convenience, and necessity" shall not be construed to require broadcasters to provide time to any person for the expression of any viewpoint. It repeals the authority of the FCC to revoke a station license or construction permit for willful or repeated failure of a station to grant or sell broadcast time to a candidate for Federal office. The bill also repeals the equal opportunities requirement and the prohibition against editorializing and support of political candidates by noncommercial educational broadcasting stations.

Proposal: Adopt A Three-step Phase-out Of Existing Requirement

Robert S. Koppel proposes a comprehensive approach to regulating electoral communications and suggests three steps to achieve minimum government intervention, diversity, access and fairness.

53/ See remarks of Senator Packwood, 129 Cong. Rec. S13475-S13476 (October 3, 1983, daily ed.). Hearings were held on S. 1917 on January 30, February 1 and 8, 1984.

First Step--Retain the equal time doctrine and reasonable access rule for broadcast television and deregulate, or leave unregulated, all other media (including cable television). Impairment of broadcaster journalistic discretion is counterbalanced by maintenance of a viable electoral system, particularly in areas with few media outlets. Unregulated media, electronic and print, undeterred by the equal time requirement, would be free to meet public demand for additional political programming and regulators could observe whether deregulation can achieve relative fairness in the presentation of all candidates.

Second Step--When cable subscription exceeds sixty-five or seventy percent of American households, the second step would drop the reasonable access rule from broadcast television, impose an access channel requirement on cable television, and leave other media unregulated. Access regulation of cable television, however, may be unconstitutional; in which case, it would be deleted. Although, the access requirement could be unnecessary if cable operators made access available on their own initiative to avoid regulation.

Third Step--Finally, when experience demonstrates that adequate access to widely-watched media is available for all political candidates and the unregulated media maintain at least a semblance of balance and fairness in their coverage of political candidates, then all mass communications technologies would be deregulated. 54/

Proposal: Do Not Repeal Fairness Doctrine Or Reasonable Access Provisions

Among those who believe that the fairness doctrine and reasonable access rules should be retained are the 1979 Twentieth Century Fund Task Force. 55/

54/ Koppel, Robert S., The Applicability of the Equal Time Doctrine and the Reasonable Access Rule to Elections in the New Media Era, 20 Harv. J. on Legis. 499, 536-539 (1983).

55/ With The Nation Watching--Report of the Twentieth Century Fund Task Force on Televised Presidential Debates, Lexington, Massachusetts, Lexington Books, 1979, at p. 14, note 4, hereinafter referred to as the 1979 Report of the Twentieth Century Fund Task Force.

Category #3. Provide In Law For Treatment Of Third Party And Independent Candidates

Many commentators share the views expressed in the report of the 1979 Twentieth Century Task Force that accommodating major candidates who are not representatives of the nation's two major parties presents the single most difficult issue in determining who is to participate in presidential debates and to what extent. 56/

Twentieth Century Task Force in 1979 concluded that if significant third-party candidates emerge, they should be invited to participate in presidential debates. The problem is to recognize the claims of significant contenders while not giving added encouragement to the splinter or marginal or single-issue candidates who proliferate in presidential election years. 57/

Proposal: Amend Equal Opportunities (Equal Time) Requirements With Respect To Candidate Eligibility And Amount Of Time By Establishing Eligibility And Amount Of TV Time By Using A Formula

There are proposals to determine the amount of time a candidate would be entitled to by using a formula similar to that used to determine the amount of public financing which major and minor presidential candidates are entitled to in a general election.

In the existing Federal law, for purposes of the Presidential Election Campaign Fund, a "major party" is defined as one whose candidate for President in the preceding election received 25% or more of the popular vote. 58/ A "minor party" is defined as one whose candidate in the last election received 5% or more of the

56/ 1979 Report of the Twentieth Century Fund Task Force on Televised Presidential Debates, supra, at p. 9.

57/ Id., at pp. 9-10.

58/ 26 U.S.C. §9002(6).

popular vote 59/ and a "new party" is defined as a party which is neither a "major" nor "minor" party. 60/

The system of public funding of presidential candidates provides that candidates of the two major parties are entitled to equal amounts of public funds; candidates of minor parties to amounts based on the ratio of the vote received by each minor party's candidate in the preceding election to the average vote received by the major party candidates; and if a new party's candidate receives at least 5% or more of the vote in the present election, post-election funds are given on the ratio formula for minor party candidates.

Those who support the use of a formula concept usually recommend that there be a floor, some minimum figure of registered party membership, before a claim to equal time is honored, and then only on a basis of representation proportional to the membership of other parties. They view basing the right to equal opportunities on a formula as more desirable than total repeal of Section 315. Such repeal, they believe goes too fast and too far because the equities involved are complex and total repeal would throw the baby out with the bath water. 61/

Another formula, similar to the differential formula used in the presidential public funding law, requires substantially lower threshold percentages compared to the public financing formula as follows:

	<u>Public Financing</u>	<u>Broadcast Access</u>
Major Party	25% of popular vote	3% of popular vote
Minor Party	5% " " "	1% " " "
New Party	5% " " " post-election funding	1.5% qualified voters signatures on petitions qualifies as "major" .5% qualifies as "minor"
Independent Candidates	No specific provisions	Same as new party above

59/ 26 U.S.C. §9002(7)

60/ 26 U.S.C. §9002(8).

61/ Siepmann, Charles A., Were They 'Great'? in The Great Debates, supra, at pp. 138-141.

While critics may argue that these percentages are too low, the author of the plan says that they are compatible with the history of major and minor parties and would not qualify an unmanageable number of candidates.

Since 1900, only six third party presidential candidates have received 3 percent or more of the popular vote, only twelve have polled more than 1 percent but less than 3 percent. 62/

Under this plan, the allocation of time between major, minor and new party candidates would be as follows--

If broadcaster granted time to a major party candidate, it would be required to grant equal time to other major candidates and half as much to minor candidates.

If broadcaster granted time to a minor party candidate, it would be required to grant equal time to other minor candidates and half as much to major candidates.

Broadcaster could grant time to candidate who was neither major nor minor without having to grant time to major and minor candidates. 63/

62/ Barrow, supra, at 145; see also Equalizing Candidates' Opportunities for Expression, 51 Geo. Wash. L. Rev. 113, 123 (1982).

63/ Barrow, supra, at pp. 145-147; see also Herbert E. Alexander, Money In Politics, Washington, Public Affairs Press, 1972. pp. 273-274; Newton N. Minow, former chairman FCC, in Voters' Time, New York, Twentieth Century Fund, 1971. pp. 20-27.

Category #4. Provide In Law For Sponsorship Of Debates

Proposal: Amend Sec. 315, Equal Opportunities (Equal Time) Requirements To Provide That Presidential Debates Have Nonpartisan - Nonprofit Sponsorship

Among those who recommend having an organization like the League of Women Voters sponsor debates was the 1979 Twentieth Century Fund Task Force on Televised Presidential Debates. 64/ Arguments for this proposal include the confidence candidates and the public would have in the fairness of debates arising from a lack of self-interest, or conflict of interest, and from a demonstrated desire to perform a public service.

Arguments against the proposal include concerns that nonpartisan groups frequently experience difficulty in raising the necessary funding for the debates. Also some of these groups offer mixed credentials and may not inspire public trust. 65/

Proposal: Amend Sec. 315 To Provide That Presidential Debates May Be Sponsored By Television Networks

This proposal would reinforce the recent FCC ruling by an explicit statutory provision.

The arguments in favor of the proposal include the experience of the networks who have hosted debates in the past, have the necessary technical expertise, and have adequate financial resources.

64/ 1979 Report of the Twentieth Century Fund Task Force, supra, at p. 12.

65/ Swerdlow, Joel L., Beyond Debate--A Paper on Televised Presidential Debates, New York, Twentieth Century Fund, 1984. pp. 56-59.

Arguments against include concern with the concentration of political broadcasting in the networks that might result and possible conflict of interest with the networks' economic interests. 66/

Proposal: Amend Sec. 315 To Provide Bipartisan Political Party Sponsorship

Those who favor this proposal contend that political parties are in many ways the logical entities to sponsor debates. Top party officials are democratically selected and can be held accountable to the public. The parties could easily solicit commitments from their own nominees, have necessary resources and are expert at political communication. 67/

Those opposed contend that as a practical matter parties are unlikely to impose their will on presidential candidates; that the Federal Election Campaign Act of 1971 limits on party expenditures in behalf of nominees might have to be amended. 68/ And such an arrangement would not provide for third party and independent candidates.

Proposal: Amend Equal Opportunities (Equal Time) Requirements To Specify In Law Who Is To Set Rules For Debates

A variation of this proposal is that a committee composed of the chairmen of the Republican and Democratic Parties and the League of Women Voters be established to set the rules for the debate. 69/

66/ Id., at pp. 48-52.

67/ Washington Post, February 9, 1984, p.A7 quoting Newton Minow, a former chairman of the FCC and a prominent Democrat.

68/ 1979 Twentieth Century Fund Task Force, supra, at pp. 53-54.

69/ New York Times, November 23, 1983, p. A24.

Proposal: Establish A Federal Debate Commission

Those who favor this proposal assert that continuity in planning and executing debates is essential and that insurmountable problems will cripple any nonpartisan group that attempts to sponsor debates.

The proposal is that a commission be chartered by Congress and include representatives from an extensive cross-section of society and be funded with public money.

Those who have reservations contend that it would create another bureaucracy unable to resist political pressures and that it may not be proper role for government interference. 70/

Proposal: Provide For Sponsorship Of Debates By U.S. Senate Or House Of Representatives As An Institution Or By Party Caucuses Of Either House

Some view the sponsorship by Members of Congress as desirable as providing continuity and high levels of public trust.

Others might view this role for Congress and Members as inappropriate and inconsistent with their mission to legislate in the public interest. 71/

Category #5. Tighten Provisions Prohibiting Foreign Ownership Of TV Or Cable Systems

Proposal: Amend The Law To Prohibit Television Or Cable Television Systems Which Are Owned By Foreign Entities From Sponsoring Debates Between Candidates For Public Office

At least two bills, S. 2282 introduced by Mr. Goldwater and H.R. 4840 introduced by Mr. Gore and others, both introduced February 9, 1984, would limit ownership of national television networks not otherwise subject to Section 310 of the Communications Act of 1934 (which prohibits granting station licenses to

70/ Karayn, James, The Case For Permanent Presidential Debates in Past & Future Of Presidential Debates, supra, at pp. 155-168; Beyond Debate, supra, at pp. 54-55.

71/ Beyond Debate, supra, at pp. 55-56.

aliens and foreign governments) and of certain large cable television systems by foreign entities or aliens. The implications of foreign ownership of broadcasting and cable stations would appear to inject additional elements to be considered in determining who should sponsor debates. 72/

Category #6. Amend Federal Election Campaign Act Provisions Applicable To Financing Debates

Proposal: Provide In Law For Financing Of Debates

If policy decision is that private groups should sponsor debates, the law should be amended to explicitly permit or prohibit solicitation of funding from corporate, labor union and foundation sources. 73/

Category #7. Special Provisions For Candidate Access To Broadcast Media

Proposal: Provide Access To Broadcast Media To Offset Broadcasts Paid For By Independent Expenditures

Provisions of this type are included in S. 151, introduced by Senator Proxmire on January 26, 1983 (see remarks of Mr. Proxmire, 129 Cong. Rec. S653-S654, January 26, 1983, daily ed.).

A different approach with the same objective is taken in H.R. 4428, a comprehensive bill introduced by Messrs. Obey et al. on November 16, 1983. The main thrust of H.R. 4428 is to emphasize and enhance individual contributions to candidates through the device of providing additional credits against Federal personal income tax for certain political contributions.

72/ See remarks of Mr. Goldwater, 130 Cong. Rec. S1228-S1229 (February 9, 1984, daily ed.).

73/ 1979 Report of the Twentieth Century Fund Task Force, supra, at p. 11.

H.R. 4428 requires a broadcasting station which permits any individual, political committee or other person (other than a candidate or candidate's authorized committee or political party) to purchase time on a broadcasting station to support a candidate, or to criticize the views, position, action or qualifications of a candidate, to provide to any candidate whose views, positions, actions or qualifications were criticized, or to any opponent of the candidate supported, the opportunity to use the same amount of time, during the same period of day, without charge.

Provisions of this type are found also in S. 1346, introduced by Mr. Bentsen on May 23, 1983 (see remarks of Mr. Bentsen, 129 Cong. Rec. S7267, May 23, 1983, daily ed.) and H.R. 2959, introduced by Mr. Hamilton on May 10, 1983 (see remarks of Mr. Hamilton, 129 Cong. Rec. H2781-2783, May 10, 1983, daily ed.).

Proposal: Provide Public Financing For Some Or All Political Advertising

Provisions of this type are in H.R. 1893, introduced by Mr. Jacobs on March 3, 1983.

H.R. 1893 provides public financing for advertising and related expenses in general elections campaigns for U.S. House of Representatives and prohibits contributions by multicandidate political committees to candidates who accept such financing.

Amount of public funds depends on medium, 90 minutes TV time, 135 minutes radio time, 126 column inches newspaper space, or pay costs for telephone banks if part of TV or radio. Each radio and TV appearance is to be at least 5 minutes long, each newspaper advertisement no less than 10 column inches.

Proposal: Postpone Federal Communications Commission's Proposal To Eliminate Personal Attack And Political Editorial Rules

H.R. 4324 was introduced on November 8, 1983, by Messrs. Swift and 30 co-sponsors including Mr. Dingell, Chairman of the House Energy and Commerce Committee, and Mr. Wirth, Chairman of the Telecommunications Subcommittee.

The proposal would prevent the FCC from modifying or eliminating the FCC personal attack and political editorial rules before December 31, 1984. After that date, the FCC could move once Congress has been notified.

Congress would then have 120 legislative days to block action before FCC rules could take effect.

The FCC proposed eliminating these rules in May, 1983 in response to NAB petition. 74/

Similar, but not identical, provision is found in H.R. 4573, introduced by Mr. Wirth on November 18, 1983. Mr. Wirth's bill also provides for free response by supporters of a candidate to paid broadcast messages when a candidate's view or qualifications are criticized.

Proposal: Instead Of "Debates" Give 90 Minutes Of TV Time To Each Candidate

Some propose that instead of a debate formula, it would be more useful to give each candidate 90 minutes of TV time to present a program of his own with the people he would have in his administration. This, they believe, would be more meaningful to the voters. 75/

74/ Communications Daily, Thursday, November 17, 1983, pp. 5-6.

75/ Shales, Tom, Ringside At The Democrats' Family Feud--Going For The Main Chance At The Main Event, Washington Post, January 16, 1984, p. B1, quoting Tony Schwartz.

Proposal: Require Broadcasters To Provide Free Time

Campaign media consultant Robert Squier suggests that broadcasting stations be required to provide free time equally and fairly to all duly authorized candidates for public office as a means to cut down on costly campaigns. 76/

Category #8. Miscellaneous Proposals

Proposal: Expand The Public Forum Of The Presidential Election Contest

Supporters argue that broadcasters should be encouraged to develop a greater variety of programs to inform citizens about the presidency, the candidates and the political process. 77/

Proposal: Specify In The Law The Number Of Debates

Proponents contend there should be a series of 4 debates including one between Vice Presidential contenders as in 1976. The number of debates should be limited so that candidates will be forced to use other means of campaigning on and off the air. 78/

Proposal: Specify The Format To Be Used

Proponents believe that the topics to be discussed should be precisely defined by the independent organizers. 79/

76/ Bonafede, Dom, Costly Campaigns: Consultants Cash In As Candidates Spend What They Must, National Journal, April 16, 1983. pp. 789-792 at p. 792.

77/ 1979 Report of the Twentieth Century Fund Task Force, supra, at pp. 6, 12.

78/ Seldrs, Gilbert, The Future of National Debates in The Great Debates, supra, at p. 168.

79/ New York Times, November 23, 1983, p. A24.

Proposal: Prohibit Broadcast Licensees From Refusing To Sell Advertising Time For Paid Editorials

Provisions of this type are in H.R. 4012, introduced by Mr. Livingston on September 28, 1983. Mr. Livingston's measure would allow broadcasters to carry a paid editorial without also having to seek out and air contrasting viewpoint. Bill is intended to prohibit stations from summarily turning down all requests for editorial commercials, does not limit broadcaster's ability to exercise discretion in length, number and rates for such ads. Violators could be subject to fine up to \$10,000 or up to 5 years imprisonment. Bill has been referred to House Telecommunications Subcommittee.

Proposal: Amend The Communications Act Of 1934 To Clarify That The Statutory Right Of Candidates To Have Access To Broadcasting Station Facilities Does Not Exempt Any Candidate From Criminal Law Provisions Regarding Broadcasting Of Obscene Matter

Provisions of this type are in S. 2241, introduced by Mr. Denton on February 1, 1984 (see remarks of Mr. Denton, 130 Cong. Rec. S682-S683, February 1, 1984 and remarks of Mr. Thurmond, re. S. 2241, 130 Cong. Rec. S738, February 2, 1984) and H.R. 4699, introduced by Mr. Jacobs on January 31, 1984.

A related bill, S. 2168, introduced by Mr. Denton on November 18, 1983, provides that licensee shall be under no obligation to broadcast any material which is in violation of any criminal law.

Proposal: Prohibit Political Ads In Last 30 Days Of Campaign

Robert Squier, campaign media consultant, is said to favor a plan to suspend paid political advertising in the last 30 days of a campaign. The bulk of political advertising goes into paid media at the end of a campaign, this would take a third of the money out of the process. 80/

SUMMARY

Some of the more significant factors to be considered in evaluating the need for legislative action with respect to broadcast candidate debates are--

The Difference In Approach Taken By Federal Communications Commission From That Taken By The Federal Election Commission With Respect To Political Debates

The Federal Communications Commission does not distinguish between partisan and nonpartisan debates regardless of who sponsors the debates. On the other hand, the Federal Election Commission regulations governing the financing of candidate debates distinguish between partisan and nonpartisan debates for purposes of the application of the prohibition in the Federal Election Campaign Act against use of corporate and labor union funds for partisan political purposes in Federal elections and for purposes of determining contribution limits when other entities finance debates. The two different approaches may result in ambiguities which impede the success of the debates and which Congress may wish to address.

The Sometimes Conflicting Rights And Burdens On Broadcasters Vis-A-Vis The Rights And Burdens On The Candidates

On the one hand, there is interest in deregulation of all media access and rate regulation for candidates to relieve the broadcasters. On the other hand, there is interest in continuing the existing law to ensure fairness to the candidates. Section 315 equal opportunities provisions are designed to insure fair play in party politics, but many believe that they apply crude and unworkable rules to secure it. A middle ground may be to modify equal opportunities requirements by use of a formula which would have a descending scale of time that broadcasters could be required to make available to candidates depending on the candidate's viability. Supporters of this approach might argue that it would lessen burden on broadcasters while at the same time ensure some fair opportunity for TV exposure for all categories of candidates.

APPENDIX A

1984 DEBATES

At the time this report was prepared, the major debates, or similar events which involve joint appearances by candidates on TV (not everyone regards most of the formats as "debates"), between presidential candidates scheduled in 1984 are as follows:

- ° January 15, 1984--sponsored by the House Democratic Caucus, aired nationally by the Public Broadcasting Service, originating from Dartmouth College, Hanover, New Hampshire. The participants included all 8 of the major Democrats seeking the nomination of the Democratic party, in alphabetical order, Reubin Askew, Alan Cranston, John Glenn, Gary Hart, Ernest Hollings, Jesse Jackson, George McGovern, Walter F. Mondale. The event was chaired by ABC news correspondent Ted Koppel and Phil Donahue, talk show host. Because of the format, the event was considered to be not quite a debate and not quite a "free-for-all".
- ° January 31, 1984--sponsored by the Boston Globe and the Institute of Politics of the John F. Kennedy School of Government at Harvard University, a 90-minute program locally televised, originating from Cambridge, Massachusetts. 7 of the 8 major Democratic contenders participated (Reubin Askew did not participate).
- ° January 21, 1984--sponsored by coalition of Iowa farmers, aired nationally, originating from Iowa State University, Ames, Iowa, on public television. 6 of the 8 leading Democrats participated (Messers Glenn and Jackson did not attend.) The debate focused on agricultural issues.
- ° February 3, 1984--sponsored by Women in Politics 1984, a 90 minute program originating from Emmanuel College, Boston, Massachusetts, on WBZ-TV, the Boston affiliate of the National Broadcasting Company. 6 of 8 major Democratic contenders accepted invitation (Askew and Cranston declined). Debate focused on issues of particular importance to women. Moderator was Liz Walker, co-anchor of WBZ-TV "Eyewitness News".
- ° February 11, 1984--sponsored by the Des Moines Register, to be shown on Saturday evening at 9 EST by the Public Broadcasting Service, originating from Des Moines, Iowa. All 8 Democratic major candidates participated. The event was chaired by James Risser, Washington Bureau Chief of the Register.
- ° February 23, 1984--sponsored by the League of Women Voters originating from St. Anslem's College, Manchester, New Hampshire. All 8 of the major Democratic candidates participated. The debate was moderated by ABC news correspondent Barbara Walters.

- ° March 11, 1984--sponsored by the League of Women Voters, to originate from Atlanta, Georgia.
- ° April 5, 1984--sponsored by the League of Women Voters, to originate from Pittsburgh, Pennsylvania.
- ° May 2, 1984--sponsored by the League of Women Voters, to originate from Dallas/Fort Worth, Texas. 1/

The League of Women Voters is reported to be negotiating for four presidential candidate debates and one vice presidential candidate debate to be held after the nominating conventions this summer. 2/

No mention was found in the public press of any of the commercial TV networks making plans to stage debates on their own in 1984, although there may have been some unreported discussion of such plans. As mentioned earlier in this report, under a recent ruling of the Federal Communications Commission in November, 1983, the networks are now permitted to sponsor such debates. It has been reported that the growing competition to sponsor presidential debates this fall may diminish the opportunities for debates between the two major party candidates. 3/

1/ New York Times, November 14, 1983, p. B5; Smith, Sally Bedell, Democrats Plan A Debate In Iowa--Public TV to Broadcast Event in Prime Time on February 11, New York Times, January 18, 1974, p. A15; Conconi, Chuck, Personalities, Washington Post, January 19, 1984, p. D3; Peterson, Bill, Hart, Askew Attack Mondale--Candidates' Farm Forum Evolves Into Trade-Policy Fight, Washington Post, January 22, 1984, p. A3; Robbins, William, Specific Views On Farm Aid Sought From Six Democrats, New York Times, January 21, 1984, p. 7; Clendinen, Dudley, Debate Will Put Democrats To Test, New York Times, January 15, 1984, p. 22; Raines, Howell, TV Debates, the Great Campaign Equalizers, New York Times, January 27, 1984, p. A16; Balz, Dan, Seven Democrats Focus Their Debate Attention on President Reagan, Washington Post, February 1, 1984, p. A4; Nemy, Enid, Democrats' Forum on Women's Issues, New York Times, February 3, 1984, p. B6; Broder, David S., and Bill Peterson, Other Hopefuls Attack Mondale In Iowa Debate, Washington Post, February 12, 1984, p. A1; Balz, Dan, and Milton Coleman, Democratic Hopefuls Present Best Faces, Washington Post, February 24, 1984, p. A1.

2/ Concini, Chuck, Personalities, Washington Post, January 19, 1984, p. D3.

3/ Washington Post, February 9, 1984, p. A7.