

does the Commission's decision, "You may speak but only on the prospective conditions that are laid down in our report." For my part, I would merely say to the licensee, "You may speak."⁷⁶

Since the 1949 Report, the policy of the FCC has been not only to permit, but to encourage, station editorializing. In the 1960 *Commission En Banc Programing Enquiry*⁷⁷ editorializing by licensees is listed as one of the "major elements usually necessary to meet the public interest needs and desires."

In effect, the 1949 *Editorializing Report* is a vindication of the views expressed by Senator Howell as he argued against Senator Dill's amendment which removed the statutory ban on discrimination in the discussion of "questions affecting the public."⁷⁸ Indeed, some of the language in the Editorializing Report is quite similar to that used by Senator Howell. While these statements of position are mutually consistent, it is worthy of note that Senator Howell's views were not actually embodied in the original legislation.

VIII. COMMUNICATIONS ACT AMENDMENTS OF 1959

The 1959 amendments added the last two sentences presently appearing in section 315(a). The first of these sentences excludes appearance by candidates on certain news programs from being considered a "use" of broadcast facilities such as would entitle competing candidates to equal time:

Appearance by a legally qualified candidate on any—

- (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),
- shall not be deemed to be a use of a broadcasting station within the meaning of this subsection.

The second sentence added to section 315(a) reads as follows:

Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

The proper construction to be placed on this last quoted language is still a matter of controversy. The effect of the two sentences added by the 1959 amendments is to commingle the separate concepts of equal time for candidates and fair treatment in discussing public issues.

A. EVENTS LEADING UP TO THE 1959 AMENDMENTS TO SECTION 315

The 1959 amendments were in response to the action of the FCC in the famous *Lar Daly* case.⁷⁹ Lar Daly, a colorful and perennial candidate for elective office in the State of Illinois, complained to the FCC that Station WBBM-TV in Chicago had allowed Chicago Mayor

⁷⁶ *Id.*, p. 1918-19.

⁷⁷ 20 R.R. 1901 (1960).

⁷⁸ See pp. 11-12, this memorandum.

⁷⁹ 18 R.R. 238 (1959).