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FCC Affirms “News Interview” Exemption from Equal Opportunities

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To: Broadcast Clients
From: Peter Gutmann

The Commission has affirmed that certain segments of entertainment programs may qualify as bona fide news interviews, and thus would be exempt from the equal time provisions of the Commission’s political broadcasting rules. The decision provides a timely reminder of this policy, which encourages broadcasters to include candidate interviews in programming that meets Commission qualifications.

The decision rejected a claim by Phil Angelides, the Democratic candidate for Governor of California, for entitlement to an equal opportunity triggered by the appearance of Arnold Schwarzenegger, the Republican incumbent, on the Tonight Show with Jay Leno. The Commission extended a line of decisions to rule that while the Tonight Show as a whole could not be considered a *bona fide* news interview (one of the program categories that is exempt from equal time requirements), the segment upon which Schwarzenegger appeared met Commission criteria.

When enacting the news interview exemption in 1959, Congress established three criteria – the program must be regularly scheduled; the content, format and participants must be determined by the licensee; and candidates must be scheduled in the exercise of genuine news judgment and not for a candidate’s political advantage. During the next 25 years, the Commission exempted only entire programs with traditional question and answer formats such as “Meet the Press” and “Face the Nation” (both of which Congress had specifically cited as acceptable examples). Indeed, in 1960 the Commission rejected an exemption for the Jack Paar variety show.

Noting that Congressional intent had been to increase news coverage of the political process, beginning in 1984 the Commission significantly broadened the scope of the news interview exemption by finding that certain segments of the “Donahue” show met the criteria and would be considered exempt, even though the program as a whole did not qualify. To encourage further programming innovation, the Commission has since found that segments of the Jerry Springer, Politically Incorrect and Howard Stern programs, among others, all qualify as genuine news interviews.

The Commission applied similar reasoning to its finding that the Schwarzenegger interview on the Tonight Show met the criteria for exemption from equal opportunities. The Angelides campaign had argued that few legally qualified candidates had appeared in the past,

that Schwarzenegger's appearance had no newsworthy purpose, that Leno lacked serious journalistic credentials, and that he and Schwarzenegger were personal friends. In rejecting these contentions, the Commission noted that its role was limited to determining whether the Congressional criteria had been met and that, since Schwarzenegger discussed his views on several current issues, it would not second-guess NBC's judgment that his appearance was newsworthy. The Commission further dismissed as sheer speculation allegations as to the producers' motive to promote the Schwarzenegger campaign. Even so, it clouded the analysis somewhat by noting that, even aside from his political service and aspirations, Schwarzenegger was an appealing celebrity. The Commission further noted that a lack of journalistic credentials had never been a prerequisite to a finding that a host conducted a *bona fide* news interview.

It is clear from the latest decision that the Commission is willing to substantially defer to broadcasters' judgments as to the newsworthiness of candidate appearances on segments of programs they control. Nonetheless, in an area as sensitive as broadcast content, legality and appearances often diverge. Thus, many broadcasters will be hesitant to risk the adverse publicity that could follow from limiting exposure to only one of the major candidates, even on a program that qualifies as being exempt from the requirement of equal opportunities.

If you have any questions concerning the impact of this or other political broadcasting policies upon your own programming plans as the 2006 elections enter their final stretch, please be sure to let us know.

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