

1968: a year of controversy?

Equal-time and fairness-doctrine applications
to political campaigning promise to give FCC

a hectic year; Senator McCarthy is first complainer

The FCC is moving into the new and politically crucial year of 1968 involved in a couple of lively controversies concerning regulation of political broadcasting. It is defending itself against a charge that it was "contemptuous" in its handling of a demand for equal time filed in behalf of the only avowed candidate for the Democratic presidential nomination. The commission said the trouble stems from a staff member's effort to "be helpful."

And it has taken the *New York Times's* James Reston to task for his interpretation of the fairness doctrine. In his Dec. 22, 1967, column, Mr. Reston wrote the rules are "impractical and unworkable if not unconstitutional." The commission said his column contained a number of errors and misconceptions.

The controversies were touched off by an equal-time request filed in behalf of Senator Eugene McCarthy (D-Minn.) following a one-hour *Conversation with the President*, featuring President Johnson, two weeks ago on the ABC, CBS and NBC networks (BROADCASTING, Dec. 25, 1967). The networks denied the request and Blair Clark, the senator's campaign manager, promptly turned to the commission with a demand that it order the networks to grant the senator time, or at least to hold a hearing on the request.

Crossed Messages ■ The complaint was wired to the commission on Friday (Dec. 22). On the following Tuesday Senator McCarthy accused the commission of "contemptuous" handling of the matter. This was a reference to Mr. Clark's receipt that day of reprints of FCC public notices on "The Use of Broadcasting Facilities by Candidates for Public Office" and "Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance." He apparently had taken the reprints, mailed without a covering letter, as a rejection of the complaint.

"Any request to a congressman about broadcast law and policies from a private citizen would be treated, I hope, with more seriousness by the FCC, not to mention the alacrity with which the FCC normally responds to requests from commercial broadcasters," he said, in a telegram to FCC Chairman Rosel H. Hyde. Mr. Clark once headed CBS News.

But Chairman Hyde, in a reply telegram on Wednesday, said that the reprints had been sent before the complaint from Mr. Clark was received. He said a staff member had sent the material as soon as the commission received copies of Mr. Clark's requests to the networks. The staffer, he added, was trying to be "helpful."



Mr. McCarthy

Commission sources pointed out that Mr. Clark's telegram, although sent Friday, was not received on the commission's teletype machine until Saturday at 1:18 p.m., when the offices were closed. Commission officials acted on the complaint on Tuesday (Dec. 26), the next working day, by dispatching letters to the networks asking them to comment on the complaint, and notifying Mr. Clark of that action and stating that it would act after receiving the replies. The networks were given 10 days to respond.

This is normal commission procedure.

Commission Comment ■ The commission's comment on Mr. Reston's column was not normal procedure. Observers could not remember another case in which the commission took public issue with a criticism like Mr. Reston's. And the response, issued through the Office of Information, was made available to reporters shortly after 1 p.m. Friday—about as early as staff attorneys could act after reading the column, drafting a response and having it duplicated.

The column noted with satisfaction the fact that the fairness doctrine's personal-attack rules are being tested in the courts, "not because the principle of the personal-attack doctrine is wrong but because the rule was obviously written by some lawyer who didn't understand the meaning of words or the practical operations of either broadcasters or politicians."

The FCC announcement said the rule does take into account those "practical operations." It said the main error in the column is assertion that the personal-attack rules permit any poli-

tician to demand free time to reply to anything he considers an attack by another politician or even a news commentator. The rule doesn't apply when the attack is made by a candidate, his spokesman or others associated with him in the campaign against other candidates or their associates, the announcement noted.

And, in the interests of broadcasters, the announcement said, bona-fide newscasts and on-the-spot coverage of a bona-fide news event are exempted from the personal-attack rule. Nor does an attack occur "just because someone is mentioned or his views on some subject are vigorously disputed," the announcement added.

Nervous Reaction? ■ Some observers saw the commission statement as a kind of nervous reaction to a nationally known columnist's criticism that might generate a widespread attack on the commission's regulation of political broadcasting. But a commission spokesman said the announcement was simply an effort to "set the record straight." Mr. Reston, he said, was "dead wrong, and we thought we should point it out."

The discussion in the column and the statement of the personal-attack rule were related to one aspect of the McCarthy complaint. Besides asking for time under the equal-time law, Mr. Clark said that the President's reference in the *Conversation* to a close political working relationship between Senator McCarthy and Senator Robert F. Kennedy (D-N. Y.)—he had talked of a "Kennedy-McCarthy movement"—was "inaccurate" and constituted a "personal attack" on the Minnesotan which he was entitled to answer. Mr. Clark also said the President's comments on the Vietnam war opened the networks to requests for time for reply under the general provisions of the fairness doctrine.

The networks, in rejecting the request for time, all held that the equal-time law doesn't apply since the President is not a legally qualified candidate for re-election. They all noted that he had not announced his candidacy; CBS added that the President, during the program, explicitly stated that he had not decided whether to seek re-election. Senator McCarthy has announced plans to enter five state primaries.

No Attack ■ The networks also said

they didn't agree with Mr. Clark that the President's remarks could be construed as a personal attack on Senator McCarthy. They noted that the commission has held that the personal-attack rule applies only when an attack is made on the "honesty, character, and integrity or like qualities" of a person—an interpretation reiterated in the commission statement issued in response to Mr. Reston's column.

And each of the networks pointed out that it has given time to Senator McCarthy, among others, for an airing of all sides of the controversy over the Vietnam war. The senator on Wednesday taped a *Capitol Cloakroom* interview, for broadcast on CBS Radio, and he is scheduled to appear on *Issues and Answers*, over ABC's television and radio networks, on Jan. 7.

In his *Capitol Cloakroom* appearance, during which he discussed his candidacy for the Democratic presidential nomination and the situation in Southeast Asia, Senator McCarthy touched briefly on his dispute with the commission and the networks. He warned that the commission "is in for some rather careful examination along the course of this campaign, and beyond."

He also indicated that the networks' action in giving time to the Republican leadership in the Senate and House—Senator Everett M. Dirksen (Ill.) and Representative Gerald Ford (Mich.)—to respond to President Johnson's Dec. 12 speech in Miami was a factor in his complaint. He said he regarded the equal-time law as a bad one he would be willing to eliminate. But since it is on the books, he said, and since the networks "went out of their way to give the Republicans equal time after the Miami speech, I think that their position in denying it to me is one of clear contradiction."

Different Issue ■ Spokesmen for the networks said last week that the *Conversation*, in which the references to Senator McCarthy was relatively brief, did not raise the same kind of issues raised by the President's televised speech before the AFL-CIO convention on Dec. 12. They said the President had made a substantial and direct attack on the Republicans in Congress that, the networks felt, the party's leadership should, in fairness, be given a chance to rebut (BROADCASTING, Dec. 18, 1967).

However, they did not concede that the obligation was a legal one. A CBS spokesman said the network simply felt the issue of the Republican's role in Congress was one that should be discussed further.

Senator McCarthy, in the CBS broadcast, appeared to throw away the grounds for the personal-attack aspect of the complaint against the networks.

BROADCASTING, January 1, 1968

When is a candidate legally qualified?

When is a person a candidate for public office? Or, put another way, when is a candidate not a candidate? This question lies at the heart of the equal-time demand that Senator Eugene McCarthy (D-Minn.) has made of the networks as a result of the hour they gave President Johnson in *Conversation with the President*.

The FCC, when confronted by equal-time disputes, prefers to rely on judicial determinations to resolve the question. If none are available, it requests rulings of the appropriate state officials.

Not infrequently, the rulings thus obtained come as a surprise to the candidate who is seeking time as a counter to the time that had been given to the person he assumed was his opponent in a particular contest. Such was the case with Phil H. McAlmond, a Portland, Ore., businessman who is seeking the Democratic nomination for U. S. senator.

Last July he complained to the commission because of the refusal

of KGW-TV Portland to grant him time equal to the two hours it had devoted in June to a one-hour documentary (repeated once) on Senator Wayne Morse (D-Ore.), whose term expires this year. The station turned him down, saying Senator Morse was not yet a candidate—that in fact the primary election was a year off; Mr. McAlmond, who had already filed for the nomination, said that Senator Morse was making speeches and otherwise behaving like a candidate and was indeed qualified to be one (BROADCASTING, July 31, 1967).

The commission through its staff, however, rejected the complaint on the basis of a ruling of Oregon Attorney General Robert Y. Thornton that the senator was not "a legally qualified candidate." In Oregon, it seems, a legally qualified candidate is one "who has taken the statutory steps to formalize his candidacy and may also possibly include one who is actively waging a contest for 'write-in' votes in a campaign."

He said his principal reason for requesting equal time was the President's discussion of the Vietnam war. "I'm not really worried about defending myself against the charges that there's a Kennedy-McCarthy coalition, or conspiracy, or whatever you want to call it, or maneuvering," he said. "That was almost irrelevant."

And Mr. Clark's complaint to the commission does concentrate on the equal-time question. He said: "To pretend that President Johnson is not a candidate for re-election is to deny a fact which every American child knows." It would, he added, "be most dangerous for our democracy" for the networks to deny the President's opponent access to their facilities.

Program notes . . .

Correspondents' review ■ Eight NBC News correspondents will review events of 1967 and project those of 1968 in an NBC News special, *Projection '68—One Crisis Leads to Another*, on NBC-TV Friday, Jan. 12, (10-11 p.m. EST). The program will originate in Dallas at Southern Methodist University. Chet Huntley will be moderator; correspondents will be Pauline Frederick, Ray Scherer, Kenneth Bernstein, Jack Paxton, Alvin Rosenfeld, Garrick Utley, Bill Matney, and Elie Abel.

Two additions ■ Mark Century Corp., New York, radio programming service,

is introducing two new station identification packages, "Intimates" and "Mark 21." "Intimates" has a contemporary sound with a broad programming base; "Mark 21" has a big band sound.

Specials feature correspondents ■ On Jan. 2 and Jan. 9 CBS News correspondents will conduct one-hour broadcasts on CBS-TV and CBS Radio (10-11 p.m. EST). The first, a discussion of "America and the World" originating from New York, includes Eric Sevareid as moderator, Charles Collingwood, Richard C. Hottelet, Bernard Kalb, Marvin Kalb and Winston Burdett. The second report, "The Nation," originating from Washington, has Walter Cronkite as moderator, with Roger Mudd, Dan Rather, Eric Sevareid, Daniel Schorr and Mike Wallace.

Three-timer ■ *The Julie Andrews Show*, with guests Gene Kelly and The New Christy Minstrels, will be shown for the third time on NBC-TV Wednesday, April 17 (9-10 p.m. EST). The American Gas Association, through Lennen & Newell, both New York, again will be the sponsor. The special first appeared in 1965, and was repeated in 1966.

'Mac' on ABC-TV ■ QM Productions reports that *Mac*, a one-hour color TV series, has been bought by ABC-TV for the 1968-69 season. The series deals with a private investigator in San Francisco who limits his cases to the unusual and the bizarre.