

Exhibit No. 3

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In re Request for Declaratory Ruling By Paramount Pictures Corporation, Cox Broadcasting Corporation, Taft Television Productions, and Television Program Enterprises n1

FEDERAL COMMUNICATIONS COMMISSION

3 FCC Rcd 245; 1988 FCC LEXIS 235; 64 Rad. Reg. 2d (P & F) 600

RELEASE-NUMBER: DA 88-2

January 20, 1988 Released; Adopted January 4, 1988

ACTION: [**1]

STAFF RULING

JUDGES:

By the Chief, Fairness/Political Programming Branch

OPINIONBY: GROSS

OPINION:

n1 Group 800, N.V., has been dissolved as a corporation and has been withdrawn as a party to this action.

[*245] 1. The Commission has before it a request for declaratory ruling, filed by Paramount Pictures Corporation on behalf of a joint venture composed of Paramount, Cox Broadcasting Corporation, Taft Television Productions and Television Programming Enterprises. The joint venture produces Entertainment Tonight (ET) and Entertainment This Week (ETW). It seeks a Commission declaration that appearances by legally qualified candidates on both programs be considered exempt from the "equal opportunities" requirement of Section 315 of the Communications Act, (47 U.S.C. Section 315), under the "bona fide newscast" exemption (47 U.S.C. Section 315(a)(1)).

2. Paramount explains that ET and ETW are respectively 30 and 60-minute programs "in a newscast format, incorporating news interviews, news documentaries, and on-the-spot coverage of entertainment industry news events." ET is aired daily, Monday through Friday, and ETW is an extended version of ET aired once on weekends. According to Paramount, in addition to its regular "up-to-the-minute [**2] coverage of late-breaking entertainment news," each program also typically involves investigative news and special reports involving the entertainment industry. Paramount notes that the producers, reporters and editors have news organization backgrounds and that in key respects the behind-the-scenes methodology is essentially the same as more traditional newscast programming. n1

n1 For example, Paramount explains that:

The credentialing of ET's news gathering staff is handled in the same manner as the credentialing of any other news organization. ET news reports are governed by the "double source" rule used throughout the journalism field, and an extensive research library is used to crosscheck every statement of fact contained in ET's reports.

3. Paramount asserts that the legislative history of the news exemptions and Commission rulings fully support its request. In particular, Paramount emphasizes Congress' intended goal to encourage increased news coverage of political activity when it moved to exempt various categories of bona fide news programming. Paramount also notes that Congress did not define what it meant by news, leaving to the Commission the task of more [**3] specifically implementing the generalized categories of exempt programs. In this vein, Paramount cites the Commission's 1984 *Donahue* decision for the proposition that unique and innovative approaches to news programming not necessarily available when Congress amended Section 315 may be treated as exempt. *Multimedia Entertainment, Inc.*, 56 RR 2d 143 (1984).

Paramount also cites the only instance in which the Commission granted an exemption to a newscast, *Rev. Donald L. Lanier*, 37 FCC 2d 952 (B. Bur. 1972), a program that dealt entirely with religious news. In Paramount's view, no controlling distinction can be made between various "news' specialties" such as entertainment and religion. Finally, Paramount concludes that the Commission should defer to the good faith news judgments of ET's and ETW's producers to decide the "value of particular news stories for this innovative entertainment news program series."

DISCUSSION

4. In 1959, Congress amended the Communications Act to exempt from the equal opportunities provision of Section 315 appearances by legally qualified candidates during four categories of bona fide **[**4]** news programming. n2 Congress took this action to encourage increased news coverage of political campaign activity. n3 Rather than define precisely what it meant by "news", Congress chose to leave the task of interpreting the scope of each exemption to the Commission. n4

n2 Section 315(a) of the Communications Act states, in pertinent part:

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.

n3 The legislative history emphasizes this intention:

[T]o enable what probably has become the most important medium of political information to give the news concerning political races to the greatest number of citizens, and to make it possible to cover the political news to the fullest degree.

105 Cong. Rec. 14451 (1959) (remarks of Sen. Holland); See also 106 Cong. Rec. 13424 (Pastore).

n4 As the United States Court of Appeals observed in *Chisholm v. FCC*, 538 F.2d 349, 366 (D.C. Cir 1976):

In creating a broad exemption to the equal time requirements in order to facilitate broadcast coverage of political news, Congress knowingly faced risks of political favoritism by broadcasters, and opted in favor of broader coverage and increased broadcaster discretion. Rather than enumerate specific exempt and non-exempt "uses", Congress opted in favor of legislative generality, preferring to assign that task to the Commission.

[5]**

5. Although the legislative history provides program characteristics for some of the specific exemptions, such as the "regularly scheduled" requirement for the "bona fide news interview" exemption. Congress did not state the characteristics that would qualify a program for the newscast exemption. Furthermore, as noted by Paramount, the Commission has ruled formally only once that a specific program warranted a newscast exemption. *Rev. Donald L. Lanier, supra*. In *Lanier*, the Broadcast Bureau granted the request of a religious programmer to exempt, as a bona fide newscast, a program called "The Church Today," which reported exclusively upon religious news events and stories. The Bureau stated simply that "'The Church Today' program appears to deal with current news regarding events in the field of religion and to fall within the category of a 'bona fide newscast.'" *Id.* In short, neither the legislative history nor Commission precedent provides much guidance with respect to the newscast exemption.

6. Congress has indicated that, as a general proposition, the essential common denominator of all of the exemptions is "bona fide news value." **[**6]** n5 In *Henry Geller*, 95 FCC 2d 1236 (1983), a case involving interpretation of the "on-the-spot coverage of a bona fide news event" exemption (Section 315(a)(4)), the Commission stated: "[T]he term 'bona fide' (which is used to qualify all of the Section 315 exemptions) was intended to emphasize Congress' intent

that the programs be of genuine news value and not be used to advance the candidacy of a particular individual." *Id. at 1243*. Congress did not note that bona fide news could be coverage of only certain substantive areas. From a practical standpoint, it would have been impossible for the Congress, just as it would be impossible for this Commission, to compile a list of subject matters beyond which no bona fide news story could be told. Reasonable persons may differ as to the importance or newsworthiness of any topic. Indeed, Commission determinations as to whether particular kinds of news are more or less bona fide would involve an unwarranted intrusiveness into program content and would be thus, at least suspect under the First Amendment. So long as the program characteristics set out by the Congress are met, [**7] our role is properly limited to determining whether a broadcaster was reasonable in deciding that a program fits within [**246] an exemption. Our role is not to decide, by some qualitative analysis, whether one kind of news story is more bona fide than another.

n5 Conference Rep. No. 1069, 86th Cong., 1st Sess. at 4 (1959); 105 Cong. Rec. 14442 (Pastore). *Id. at 16224* (Brown); *Id. at 17828* (Pastore); *Id. at 17777* (Scott).

7. The principal consideration then is whether the format of ET and ETW can be reasonably treated as bona fide newscasts. As explained above, such a determination should not be predicated on the subject matter reported on, but rather should be judged on a basis of whether the program reports news of some area of current events. In this regard, for example, the presentation of skits, dramatic readings, music, comedy, or other forms of pure entertainment would not meet the congressional intention. Our approach seeks to avoid any assessment of the relative merit of the subjects reported on by ET and ETW, and, instead, seeks to determine if these programs report about some area of current events, in a manner similar to more traditional newscasts.

8. There [**8] is no indication that either program does anything but report and air commentary concerning current events and stories related to various aspects of the entertainment industry. Paramount indicates that it produces ET and ETW utilizing the same methods and journalistic guidelines typical of traditional newscasting. We also note that, by comparison, the more familiar local and national newscast formats do include news of the entertainment industry, as well as other specialized areas such as business, sports, and religion. An appearance by a legally qualified candidate during these segments of a traditional newscast is as exempt as an appearance in those segments dealing with local, state, national or world events. We cannot properly distinguish those appearances from appearances of candidates during stories aired by ET or ETW.

9. Accordingly, we believe that, in light of the absence of bad faith or unreasonableness, appearances by legally qualified candidates during ET and ETW should be accorded the bona fide newscast exemption. By reaching this conclusion, we are furthering Congress' intent to enhance news coverage of the political arena. Any other result here would thwart [**9] that purpose and place the Commission in the inappropriate position of arbitrating the bona fides of news coverage based on content. This Commission possesses neither the expertise nor the desire to take that direction.

10. Staff action is taken here pursuant to delegated authority.

FEDERAL COMMUNICATIONS COMMISSION

Milton O. Gross, Chief

Fairness/Political Programming Branch

Enforcement Division

Mass Media Bureau