

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Request of)
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Infinity Broadcasting Operations Inc.)
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For Declaratory Ruling)
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DECLARATORY RULING

Adopted: September 9, 2003

Released: September 9, 2003

By the Chief, Media Bureau:

1. This refers to the request for declaratory ruling filed by Infinity Broadcasting Operations Inc. (“Infinity”), licensee of Station WXRK(FM), New York City, New York, asking the Commission to declare that the program “The Howard Stern Show,” which airs on Station WXRK(FM) and forty-four other stations nationwide, is a *bona fide* news interview program and therefore exempt from the equal opportunities requirements of Section 315(a) of the Communications Act of 1934, as amended (the “Act”), 47 U.S.C. § 315(a).¹

2. Section 315(a) of the Act provides that, if a licensee allows a legally qualified candidate for public office to use a broadcast station, it must afford equal opportunities to other such candidates for that office. Section 315(a) also states, however, that appearances by legally qualified candidates on certain categories of *bona fide* news programming, including *bona fide* news interviews, are exempt from equal opportunities. When adopting these exemptions in 1959, Congress indicated that, to qualify as a *bona fide* news interview program, the program must be regularly scheduled; the content, format, and participants must be determined by the licensee; and the determination must have been made by the station “in the exercise of its bona fide news judgment and not for the political advantage of the candidate for political office.”² Although Congress did not specifically define the term “news” when adopting these exemptions, the Commission has stated that “it is clear that in enacting the exemptions Congress envisioned increased news coverage of the political process. It would seem elemental that Congress contemplated interviews with elected officials and candidates for elected office as newsworthy subject matter.”³

¹ See 47 C.F.R. § 73.1941.

² 105 Cong. Rec. 17777 (1959).

³ *Request by Multimedia Entertainment, Inc. for Declaratory Ruling*, 56 R.R.2d 143, 147 (1984) (“Donahue”).

3. Initially, the Commission found only programs with traditional question and answer formats such as “Meet the Press” and “Face the Nation,” which were noted by Congress as examples of the kind of news interview programs in existence at the time the news exemptions were adopted, qualified as news interview programs. In 1984, in determining that *bona fide* news interview segments on the “Donahue” show were exempt from Section 315(a), the Commission recognized less conventional interview formats as being consistent with Congress’ intent in adopting the exemptions to increase news coverage of the political campaign process. The Commission stated that “it would be unsound to rule that a program involving a unique or innovative approach to interviewing its guests somehow lacks sufficient licensee control evident in traditional news interview programs like ‘Meet the Press’ or ‘Face the Nation’” and that “[t]o do so would discourage programming innovation by sending a signal to broadcasters that to be exempt an interview program should adhere only to the format of certain programs mentioned by Congress over 25 years ago.”⁴ The Commission also stated that “the fact that other ‘Donahue’ segments may not include discussions pertaining directly to the political arena, or even to current news events, would appear immaterial.”⁵ Since the *Donahue* decision, other news interview programs or segments thereof with unique and innovative format elements, such as the “Sally Jessy Raphael Show”, “Jerry Springer,” and “Politically Incorrect,”⁶ have qualified for the news interview exemption under Section 315(a).

4. Infinity states that the news interview segments of “The Howard Stern Show” satisfy the Commission’s requirements for exempt *bona fide* news interview programming because the program is regularly scheduled; Infinity, which broadcasts the program, has control over all aspects of the show; Infinity’s decisions on format, content, and participants are based on newsworthiness; and guests that happen to be political candidates are not selected to advance their candidacies.

5. Based on the record before us, we conclude that the news interview segments of “The Howard Stern Show” qualify for the *bona fide* news interview exemption under Section 315(a)(2), and that news interviews conducted on that program are exempt from the equal opportunities requirements of Section 315(a) of the Act. Although we take this action in response to Infinity’s request, we emphasize that licensees airing programs that meet the statutory news exemption, as clarified in our case law, need not seek formal declaration from the Commission that that such programs qualify as news exempt programming under Section 315(a).

6. Accordingly, Infinity’s request for declaratory ruling IS GRANTED to the extent indicated herein.

FEDERAL COMMUNICATIONS COMMISSION

W. Kenneth Ferree
Chief, Media Bureau

⁴ *Id.* at 146.

⁵ *Id.* at 148.

⁶ *Request of Multimedia Entertainment, Inc.*, 6 FCC Rcd 1798 (MMB 1991) (*Sally Jessy Raphael*); *Request of Multimedia Entertainment, Inc.*, 9 FCC Rcd 2811 (MMB 1994) (*Jerry Springer*); *Request of ABC, Inc.*, 15 FCC Rcd 1355 (MMB 1999) (*Politically Incorrect*). See *Request of Infinity Broadcasting Corporation of Illinois*, 12 FCC Rcd 773 (MMB 1997) (*Ed Vrdolyak and Ty Wansley*).