In the

Supreme Court of the United States

CBS, INC.,	)	
	)	
Petitioners,	)	
	)	
v.	)	No. 80-207
	)	
FEDERAL COMMUNICATIONS COMMISSION ET AL.; and	)	
	)	
AMERICAN BROADCASTING COMPANIES INC.,	)	
	)	
Petitioners,	)	
	)	
v.	)	No. 80-213
	)	
FEDERAL COMMUNICATIONS COMMISSION ET AL.; and	)	
	)	
NATIONAL BROADCASTING COMPANY,	)	
	)	
Petitioners,	)	
	)	
v.	)	No. 80-214
	)	
FEDERAL COMMUNICATIONS COMMISSION ET AL.,	)	

Washington, D.C.
March 3, 1981

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FEDERAL COMMUNICATIONS COMMISSION ET AL.,	:	

Washington, D.C.

Tuesday, March 3, 1981

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:08 o'clock a.m.

APPEARANCES:

FLOYD ABRAMS, ESQ., Cahill Gordon & Reindel, 80 Pine Street, New York, New York 10005; on behalf of Petitioner National Broadcasting Company, Inc.

STEPHEN M. SHAPIRO, ESQ., Assistant to the Solicitor General, Department of Justice, Washington, D.C. 20530; on behalf of the Respondents, The Federal Communications Commission and The United States

C O N T E N T S

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We'll hear arguments first this morning in CBS v. The Federal Communications Commission and the related cases. Mr. Abrams, you may proceed whenever you are ready.

ORAL ARGUMENT OF FLOYD ABRAMS, ESQ.,

ON BEHALF OF THE PETITIONERS

MR. ABRAMS: Mr. Chief Justice and may it please the Court:

This consolidated case comes to this Court on writs of certiorari to the U.S. Court of Appeals for the District of Columbia. It involves a decision of that court affirming two 4 to 3 rulings of the Federal Communications Commission that ABC, CBS and NBC violated Section 312(a)(7) of the Federal Communications Act by declining to sell one half hour of prime time on their networks to the Carter-Mondale Committee during a specified four-day period, during the first week in December of 1979 -- a time 11 months before the national election, 8 months before the Democratic National Convention, almost three months before the first primary, and over a month and a half before the first official contest of any sort in which there was voter participation -- the Iowa caucus. I wish to emphasize that this was not an application for time in Iowa, with respect to the Iowa caucus -- which was, as I've said, about a month and a half

away; this was for time from the national networks to be broadcast on those national networks around the nation. And it is the failure of the networks to sell the precise time sought at the time it was sought that the Commission has found in the statute's language, unreasonable; even though CBS, for example, immediately offered to sell two five-minute periods of time during the time-periods that it was sought, and ABC offered to sell time in the first week of January of 1980.

The facts of the case are easily stated and, I think, not disputed. In October 1979, letters were written on behalf of the Carter-Mondale campaign to each of the three networks, seeking to purchase a half hour of time during specified time-periods in the first week of December. It was said in these letters that the needs of the Carter-Mondale campaign were such that the time was required to kick off the campaign. Each of the networks declined to sell precisely the time that was requested, on the evenings that they were sought. Each made a submission, first to the Carter-Mondale campaign by way of response, and then to the Commission. When a complaint was filed there, setting forth their reasons, as I said -- CBS made an immediate offer to sell two five-minute periods of time; ABC advised that it would sell time in early 1980 and prior to the time the Commission ruled, offered to sell time in the first week of

January, 1980. NBC initially declined to sell the half-hour at the time that it was sought, and when a half hour was sought in early January, NBC offered to sell it at that time.

The length of time before the election and the amount of potential requests for equal opportunities under Section 315 of the Federal Communications Act, and other requests for time were cited separately by each of the networks in their responses. ABC and NBC pointed, for example, to the fact that they had not sold national network time in the 1976 election until March and April of that election year. CBS pointed to the fact that it had already received requests from the Connally campaign on September 14th and the Reagan campaign on September 21.

QUESTION: The statute involved here was not in effect in 1976, was it?

MR. ABRAMS: It was in effect in 1976, it never resulted in any litigation.

QUESTION: But it was in effect at the time that the --

MR. ABRAMS: Yes. It was passed in 1972.

QUESTION: Passed in --

MR. ABRAMS: Seventy-two, the Federal Election Campaign Act. On its face, this statute, which is Section 312(a)(7) is one of 7 subsections of Section 312(a) of

the Federal Communications Act, setting forth acts that can lead to license revocation. The list is simple, of course I won't read it, but it includes such things as the making of false statements on the application for a license, the violation of cease and desist orders of the Commission, the willful or repeated failures to operate substantially as set forth in the license and the like.

None of these imposed any new, substantive obligations. All of them imposed the risk of sanctions upon the networks or of the stations involved, broadcast stations, it was said if there was violation. Our section, the one at issue today as adopted in the Federal Election Campaign Act prohibits the following: willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time of time for the use of a broadcast station by a legally qualified candidate for federal elective office on behalf of his candidacy.

If the Court please, it is now the position of the Commission that the plain meaning of those words leads inexorably to the conclusion that ABC, say, which offered to sell time in January 1980 rather than December 1979, is in plain violation of the statute. We maintain that that is not so --

QUESTION: Mr. Abrams, do you deny that the Commission could take that into consideration at the time

the station's license comes up for renewal?

MR. ABRAMS: We think that it was proper to take into account a charge by a complainant at the time the charge is made, Justice Rehnquist, the violation of Section 312(a)(7).

QUESTION: The same way any of the other conditions for license renewal could be considered?

MR. ABRAMS: It's an appropriate thing to be considered then; the fashion in which the Commission has handled it is the fashion akin to the way its handled fairness doctrine complaints, which is to say, on a case by case approach, which we think is an entirely proper way to approach it, we do not object to the fact that when a complaint is made with respect to Section 312(a)(7), the Commission makes a ruling then as to whether the complaint is justified or not.

But I agree that if someone believes at license renewal time that there is a violation of any portion of Section 312(a), that's an appropriate thing to be considered by the Commission.

QUESTION: Well what did the Court of Appeals grant the Commission here? Or affirm the Commission's doing here that was different from that?

MR. ABRAMS: Our objection to what the Court of Appeals affirmed had nothing to do with the propriety of

a complaint being filed. Our objection is that we believe the Court of Appeals and the Commission applied the wrong standard in making its decision as to whether the networks acted reasonably. So we don't come to you to say that a candidate may not file a complaint in front of the Commission alleging violation of what he says are the terms of the Federal Communications Act. He may, and indeed that was true long before Section 312(a)(7) was in the books; that was true under the public interest standard as well, because if one thing I think is common ground between us here, it is that at least since this Court's decision in WDAY and really long before, it has been clear that broadcasters have been obliged under the public interest standard to sell some time to candidates and that it would be a violation of their public interest requirements if they refused to do so.

Now there was a different standard applied under the public interest standard and that's one of the reasons that I'm here today. But there was never any question but that a candidate could file a complaint in front of the Commission and indeed candidates did file complaints in front of the Commission long before Section 312(a)(7) existed and that the Commission would rule on the propriety of the conduct of the station involved.

QUESTION: Mr. Abrams, how is the -- I take it that it is possible for a network to violate 312(a)(7) by

certain kinds of conduct even within your construction of it?

MR. ABRAMS: Yes, Mr. Justice --

QUESTION: How would the Commission go about remedying that, you say there would be a complaint and then adjudication?

MR. ABRAMS: A complaint would be filed, there would be an adjudication --

QUESTION: And what would the Commission do then?

MR. ABRAMS: As a practical matter, the Commission would have to do no more than it did here, to make a ruling that the network had acted, or that the language of the statute --

QUESTION: Issue a declaratory judgment?

MR. ABRAMS: It is, as it were, a declaration --

QUESTION: It has no authority to issue a cease and desist order or to order you to do anything, does it?

MR. ABRAMS: It has the power, under 312(a)(7) only to revoke. It --

QUESTION: I wonder, is that what a complaint says when it is filed with the Commission, the network has violated 312(a)(7) and therefore you should revoke its license? Is that what it says?

MR. ABRAMS: No sir. What the Carter-Mondale campaign said was that you should tell the network to sell

the time on one of the evenings that we are requesting it and that is, in effect, precisely what the Commission did. Now if that had not been stayed by the Court of Appeals as it was and by the judicial process as it was, and if the networks had violated that direction at the very least they would have acted at considerable peril, surely with respect to license renewal time, having violated a direct command of the commission with respect to what their obligation was. And that's the same way the Fairness Doctrine worked -- the Fairness Doctrine --

QUESTION: Do you think -- I take it that right on its face, that the Commission did violate -- if the network did violate the 312(a)(7) and it was sustained in Court, and as final judgment the Commissioner actually could revoke the license without waiting for license renewal time.

MR. ABRAMS: If there were a willful or repeated failure within the meaning of the statute --

QUESTION: Right, right.

MR. ABRAMS: -- we would, I take it, be arguing it was of course not willful nor repeated nor existing --

QUESTION: I understand, I understand that.

MR. ABRAMS: But what the statutory language provides is that if that occurs that this is an allowable sanction. And I don't quarrel with the fact that --

QUESTION: So really all the Commission does is issue a declaratory judgment --

MR. ABRAMS: Yes, and the network -- the station understands --

QUESTION: And then the network has to decide what it's supposedly going to do about it.

MR. ABRAMS: Well it doesn't have an awful lot of choice, Mr. Justice.

QUESTION: Oh exactly.

QUESTION: Mr. Abrams, is it conceivable that over a period there would be a number of complaints, two, three or four, by the candidates or committees, on which the Commission would give no relief but then at the renewal stage, under United Church of Christ, among other things, examine whether there was a pattern of favoring one kind of a candidate, or one candidate or one party and take that into account in the renewal proceedings?

MR. ABRAMS: It's appropriate at the renewal proceedings for the Commission to take into account the conduct of the broadcaster, including to be sure --

QUESTION: For the entire three-year period?

MR. ABRAMS: -- compliance -- yes sir, -- it's compliance with its public interest obligation. And one of the reasons I can say, easily, why the networks and the stations much prefer, under the Fairness Doctrine and

under this system, the idea of case by case adjudication is that it is to say the least, an uncomfortable sense to be met for the first time at license renewal time with a series of charges to the effect that there's a violation of the public interest standard or some other obligations. But I can't tell you, if somebody comes in and makes a sufficient showing of failure to abide by the public interest obligations of the station, that that's an improper thing for the Commission to consider; it is indeed a proper thing for the Commission to consider. But so far as possible, it's best to do this on a case by case basis. For one thing, it allows case by case curing of the problems if indeed stations are found to have violated any obligations.

In a Fairness context, for example, it allows the station to do something about that which it has been accused of not serving the public about.

QUESTION: But I gather, Mr. Abrams, you do agree that if there's a violation of 312(a)(7) that the Commission finds and the only sanctions it may impose are immediate revocation or wait until license renewal time. Are there any other sanctions the Commission can -- impose?

MR. ABRAMS: I don't know of any other sanctions which the Commission can impose, I think it fair to say as a practical matter, as I suggested to Mr. Justice White,

that the conclusion by the Commission of a violation of Section 312(a)(7) which is affirmed by the Courts or not appealed to the Courts, would have more than a little effect on the conduct of the station involved.

QUESTION: Well if the Commission, at the end of its declaratory judgment it says we find that you have violated the section but we don't propose now to revoke your license, we'll just take it into account at some time -- I take it there's never been any question that you can get review in the Court of Appeals of that declaratory judgment?

MR. ABRAMS: There's never been any question about it, no sir.

QUESTION: And the Commission doesn't claim any authority to go further and -- or -- require you at a particular point to sell time? Or does it?

MR. ABRAMS: I think you'd do best to ask that question to my friend on my right. The Commission to my knowledge has not taken that position -- what it did do in this case, for example, Mr. Justice Rehnquist, was to direct the networks to inform the Commission how it intended to comply with Section 312(a)(7) given the conclusion of the Commission that there has been a failure to comply by not selling the time on the nights which it was --

QUESTION: But I take it that would depend on

whether Carter-Mondale still wanted the time at the time you were now required to give it to them.

MR. ABRAMS: It would depend, in this case, indeed it did depend, Mr. Justice Brennan, because they withdrew their request in light of the Iranian crisis, made a new request for time which was granted by in fact, all of the networks.

QUESTION: But the case is still a live case because, I take it, you think the Commission has -- it maintains its view and that you will be in trouble with them again?

MR. ABRAMS: It is live in that sense, it is live in the Southern Pacific sense, it is live in -- for another reason, and that is that the Commission takes the position in this very case with respect to these very networks that there is "continuing legal and practical effect of their ruling, without regard to the fact that they have not imposed any sanctions" --

QUESTION: Well, as long as they are still ahead at license renewal time the rule is there, isn't it?

MR. ABRAMS: Yes, well it is always there and of course, as I said first, it is a recurrent controversy and indeed it is a peculiarly recurring controversy in the context of election campaigns. And as the Court suggested just last week in the Wisconsin Primary case, that's even

a more special situation, in which parties have to have some way to get to Court to have a resolution either prior to election or after election, to find out what the rules of the game are.

QUESTION: The statute, of course, talks about individual stations --

MR. ABRAMS: Yes.

QUESTION: -- and the parties in this case are networks, not individual stations. Now I -- I think the networks do own a limited number of individual stations --

MR. ABRAMS: Mr. Justice Stewart, we argued that below, we took the position below that Section 312(a)(7) does not apply to the networks because it says what it says.

QUESTION: Yes, right.

MR. ABRAMS: And indeed, because in the ordinary case it wouldn't make sense for it to apply to the networks. Our example earlier is a useful one. The Commission held and the Court of Appeals affirmed the proposition that it did apply to networks. We have not pressed that point here, but --

QUESTION: You haven't -- that isn't one of your points raised?

MR. ABRAMS: No sir, it is not.

QUESTION: But still with all this discussion with my brothers about the sanctions to be imposed, the

statute is very clear, it has no reference whatsoever to networks, except insofar as they may be the owners of individual stations, and I know they are, a limited number.

MR. ABRAMS: That is correct, and that was the view that we took, as I've indicated -- we did not press that point in this Court.

QUESTION: The networks' license could never be revoked.

MR. ABRAMS: The networks don't have licenses.

QUESTION: Yes.

MR. ABRAMS: Yes. And that's -- that was one of the things again, that we urged below, and I begin to be sorry we didn't raise here perhaps.

QUESTION: Do the networks have an obligation to obey the Fairness Doctrine?

MR. ABRAMS: The networks have been held by Commission practice -- yes sir, to be obliged to obey the Fairness Doctrine. And I believe the networks --

QUESTION: Do you question that?

MR. ABRAMS: No sir.

QUESTION: Well, individual stations do, and most, many individual stations are affiliated with one network or another.

MR. ABRAMS: Yes.

QUESTION: Are the statutory provisions related

to the Fairness Doctrine that apply to the networks as opposed to licensees?

MR. ABRAMS: There are no distinct statutory provisions. The only Fairness Doctrine requirement is in Section 315, it is not couched in the same language as this, but the Fairness Doctrine has been -- has arisen in a variety of cases and controversies before the Commission. Some bought by the networks after they had lost in the Commission itself, and we have not taken the position and do not take the position that it cannot apply to the networks in that sense.

QUESTION: What happens, Mr. Abrams, as a practical matter, between the network and the affiliated stations? If the networks said, yes, we'll give you the hour but the particular station said, no, we won't carry it; are they free to do that?

MR. ABRAMS: Yes sir. Networks have no power to require affiliated stations to carry it and can do nothing and would do nothing to require the affiliates to carry --

QUESTION: If half of the affiliates declined to carry it, I suppose that would have something to do with the cost of the time, wouldn't it?

MR. ABRAMS: No, the cost of the time would be arranged beforehand-- would have to do of course with the

effect of the broadcast -- but the time of this sort would be paid -- the amount would be paid to the network itself, because the time would be purchased from the network itself. But there's absolutely nothing the network can do, to require, for example, that these advertisements -- if they were -- if the networks have to carry them, be shown in Iowa. And one of the things that we said from the start to the Commission was -- and to the Carter campaign -- was, that if what you're thinking about is the Iowa Caucus, which is what's coming up close, why don't you go to the Iowa stations and seek to buy time.

And it has always been our view that a very different kind of reasonableness standards would govern a request brought 47 days before the Iowa Caucus in Iowa, than would occur eight months before the Democratic National Convention when a nationwide broadcast is sought.

I would like to turn briefly to the nature of the statute as we see it. And to start out, by saying this, I think it is common ground here that unless the statute significantly changed the public interest standard as it previously existed, we would not be here today and the broadcasters would have prevailed at the Commission level. I think my friends on my right would agree to that, it is based on the case law, a correct proposition. And so it seems to me that the first issue for consideration by the

Court is whether Section 312(a)(7) in fact changed the pre-existing case law, and to the extent that it is asserted by the Commission. We urge upon you, among other things, the fact that this issue has to a considerable degree at least, been before this Court before. In 1973, in the CBS v. DNC case, this Court had occasion to analyze the nature of broadcast regulation and to go through, at considerable length, the fact that Congress had, in the Court's terms, time and again rejected systems of mandatory access. The Court in the course of demonstrating that Congress had rejected such systems time and again, cited to this statute and referred to it as a codification of prior practice.

The Court had the benefit at that time of a brief amicus curiae filed by the United States and the FCC, urging precisely that position upon it. We believe what the Court said then, and I want to emphasize that it is not just the footnote which refers to Section 312(a)(7) -- that we rely upon here, but the text and the theme of the Court's opinion there that we rely upon. The Court had before it then the brief of the FCC, it had before it the statute and the statute was then brand new. We believe what the Court said in '73 in DNC, about this issue was correct notwithstanding that has now been characterized by the Commission as a decision which did not have the benefit of an interpretation by the agency with the obligation of enforcing

it, even though there was a brief by that very agency before it, and notwithstanding the fact that Judge Bazelon for the Court of Appeals said that the Court had strayed far from what was before it and had treated the issue in a cursory fashion. I do not believe that is a fair statement and I urge upon the Court the conclusions reached on it before.

We believe the intent of Section 312(a)(7) is clear and that it may be found in the single piece of legislative history that one and all agree is the most important piece and that is the report of the Senate Commerce Committee which put this into the bill for the first time. And they could not have made clearer that what Congress was concerned about was that in the context of the passage of the Federal Election Campaign Act of 1971, which limited campaign expenditures by all forms of media, which was enacting a lowest unit charge provision, that Congress wanted to make sure that there would be no diminution in the language of the Senate report in the amount of coverage by broadcasters. The broadcasters would not then say we don't have to carry political advertisements. That was the purpose of the bill, was to codify the pre-existing obligation of that sort and it was to codify it and do more, it was to add a sanction in Section 312(a)(7), and that is precisely what it did.

What the Commission's decision does is, we believe, entirely inconsistent, not only with the notion of codification, but with the theory of broadcast regulation and of political neutrality of the Commission, as we have known it in this country. At the heart of the Commission's decision is the notion that this is a kind of candidates' entitlement bill, that this is legislation which leads, as a first question to what does the candidate want and how can we give it to him. What the Commission has done is to say that one issue which previously had always been decided as part of the reasonableness standard applied in the context of public interest cases, that is the question of when to start selling time is not a factor at all; that that is a legal objective fact and that the Commission will tell us hereafter when a campaign is "in full swing". They have thus taken out of the equation which used to govern the whole notion of reasonableness any ability of the broadcasters to factor in when, except to say, we will tell you when the campaign is in full swing and once it is in full swing then your legal obligations attach and then we will apply a kind of equation of which the single most important element is the candidate's needs.

It is the position of the Commission that we, networks, and then they, the Commission, no less, are to

get involved in the question of what the candidate wants, and to some extent at least, why he wants it. Now the Commission has tried, in the latter stages of this case, to retreat from that and to say that you can take the candidates' needs as expressed by them. But the problem is that the opinion of the Commission and the opinion of Judge Bazelon below make very clear that what we are then allowed to say, what we are almost obliged to say as networks, is something like this: a candidate says he wants two hours to do a program on foreign policy, to express his views. We are then to look and see if he can do that, a foreign policy speech, in something less than two hours and we are supposed to get back to the candidate, make a judgment, get back to the Commission, have a federal agency no less, rule on the question of our reasonableness in telling that candidate that two hours is longer than he needs to make a speech.

I wish to refer the Court to one of the cases cited in our brief, the Ed Clark case, a recent opinion after the promulgation of the Carter-Mondale case, where NBC -- from my personal knowledge -- was put in the position where a third-party candidate for the Libertarian party was saying I want 25-minute segments and NBC, trying to comply with this new ruling which we come to you today to seek to get reversed, was put in the position of saying

we think 5 five-minute segments, plus a series of shorter segments, 30-second segments, et cetera, can accomplish your stated ends of greater voter identification and raising money. We never should have been in that position; the Commission surely should never have been put in the position of judging the reasonableness, and in that case, it said NBC was reasonable in saying that back to Ed Clark. That imports the Commission into the political process in a way it has never been before and we think that it raises the most significant constitutional questions as well.

If I may, I would like to reserve what little time I have left for rebuttal, Mr. Chief Justice.

MR. CHIEF JUSTICE BURGER: Very well. Mr. Shapiro.

ORAL ARGUMENT OF STEPHEN M. SHAPIRO, ESQ.,

ON BEHALF OF THE RESPONDENTS

MR. SHAPIRO: Thank you, Mr. Chief Justice, and may it please the Court:

The government's submission in this case has two principal parts. First, we contend that Section 312(a)(7) imposed a new obligation on broadcasters to afford reasonable access to individual candidates for federal elective office. Second, we contend that the Commission properly found that Petitioners failed to afford reasonable access on the facts of this particular case. I'd like to take up each of these points in turn.

QUESTION: Mr. Shapiro, may I ask you first, why did the Commission go after the networks rather than stations, since networks aren't licensed?

MR. SHAPIRO: The networks are the sole owners and operators of five licensed television stations in the biggest television markets in the country. They are broadcast stations, the Commission has always viewed them as such prior to the enactment of this statute, and it continues to view them as broadcast stations that do own licensed television stations. So --

QUESTION: It would be only the licenses of those particular stations that would be subject to revocation?

MR. SHAPIRO: Only the licenses of those stations could be revoked; the Commission has not yet determined whether cease and desist orders, in addition to revocation, could supplement its remedies in this area. That's a possibility as well.

QUESTION: Nor has it been determined whether if it did use cease and desist orders, whether the statute would authorize it.

MR. SHAPIRO: That's correct. The Commission hasn't passed on the available arsenal of remedies, because it has not yet had occasion to impose sanctions on any station in the last eight years. The question of remedy hasn't arisen yet.

QUESTION: At some time, Mr. Shapiro, as you develop this discussion of the new obligation, as you call it, would you suggest hypothetically what would be the situation if some of the committees -- and we read in the paper that there are activities already developing right in Washington for 1984 -- if some of these committees made requests now for 15 minutes or 30 minutes, for May or July of this year, or a year from now -- in other words, at what point is the Commission authorized to say when the campaign begins?

MR. SHAPIRO: At these early stages, I'm quite sure that the Commission would conclude that the Presidential campaign for 1984 is not yet in full swing. It looks to a complex of factors; the nearness of the primaries and the conventions and caucuses in the several states, the number of candidates who have announced their intention to seek the presidency, the existence of nationwide campaign activities and campaign organizations -- it looks to a whole series of such factors.

QUESTION: By the statute there has to be a legally qualified candidate, whatever that means.

MR. SHAPIRO: That's correct.

QUESTION: There is none now, for 1984.

MR. SHAPIRO: That's quite true. To be legally qualified, the candidate has to have, to be on the ballot

in ten different states for the forthcoming primaries and to have announced his intention to seek the presidency, so at this early stage you wouldn't even have a legally qualified candidate.

QUESTION: That's why I emphasized hypothetically. When does this begin after he is a qualified candidate, after someone is a qualified candidate, and what is the specific source of authority in the statute for the Commission to fix that date?

MR. SHAPIRO: The source of authority in the Commission's view, is in the statutory requirement that reasonable access be afforded. And the Commission interprets the term "reasonable access" to have a time component as well as an amount component. And it of course has explicit statutory authority to prescribe conditions that give effect to other provisions in the statute. We quoted that provision in our brief. It does have authority to interpret provisions such as the reasonable access provision.

QUESTION: Do you think the statute would authorize the Commission to, at some point in the process, just to announce that the campaign has now begun, without purporting to sit in review of a network's judgment as to when the campaign has begun?

MR. SHAPIRO: We believe that it would have that authority, but it hasn't purported to proceed on that basis.

It waits for complaints to be filed and then determines if the campaign is in full swing, if it's found to be in full swing it then considers whether or not the denial of air time has been reasonable.

QUESTION: Of course this statute applies not only to Presidential elections, but to any federal elective office, doesn't it?

MR. SHAPIRO: That's right. That's quite true.

QUESTION: Congressional races and Senatorial races?

MR. SHAPIRO: That's right. Yes, Your Honor.

QUESTION: Any problems arisen under it in connection with such races yet?

MR. SHAPIRO: The statute has worked remarkably well, even with respect to these races for a seat in Congress. Principally because the parties negotiate, resolve these questions on their own; there have only been 37 rulings under the statute in the last eight years. And considering the fact that there have been 2500 races for federal elective office in that period and there are almost 10,000 broadcasters are subject to this provision -- that's a remarkably small number of interventions in the particular cases.

QUESTION: Aren't the economic factors a natural damper on these early requests?

MR. SHAPIRO: That's quite true, Your Honor. The cost of this segment of time was $186,000 on CBS. There's a natural pressure not to make early requests or to make unduly large requests for time. Quite expensive.

QUESTION: Mr. Shapiro, how many of these 37 rulings were before this ruling and how many after it?

MR. SHAPIRO: In our brief in opposition we note that eight of them have come afterwards and all of those were in favor of the broadcaster, save one; the rest of them preceded the Carter-Mondale ruling here.

QUESTION: At the time of the Carter-Mondale ruling, was that the ticket on the ballot in ten states?

MR. SHAPIRO: Yes. They made that demonstration before the Commission, that they had substantial bona fide campaign activities in ten or more states; that's an alternative in addition to being on the ballot. And I believe that's the route they use to show bona fide candidacy, was existence of substantial campaigning in ten different states.

QUESTION: That's their definition of a legally qualified candidate?

MR. SHAPIRO: That's one component. There are three requirements that are set forth in the Commission's regulations. And one of them is, a specified amount of activity in ten different states, or placement on the primary

ballot in ten different states.

QUESTION: Is there anything to prevent a network from selling time next week to a 1984 candidate?

MR. SHAPIRO: If it chooses to do so, it's perfectly free to negotiate and that's the --

QUESTION: If he has $186,000 for a half hour?

MR. SHAPIRO: That's right. Parties are always free to strike whatever bargain they wish to, and that's the Commission's expectation in this area: that its guidelines and rules will facilitate private negotiations and minimize the need for the government to get into the process.

QUESTION: Well, I take it you're going to tell us how (a)(7) changes the law?

MR. SHAPIRO: Yes, Your Honor. The networks, of course, argue that this Section imposed no new duty, that it simply codified the previously existing public interest standard.

QUESTION: And do you agree that if it hadn't imposed a new duty, the Commission's order in this case would have been infirm?

MR. SHAPIRO: Well that's quite true. Under the old public interest policy, no individual candidate had a right of affirmative access. He could not obtain any relief from the Commission no matter how many times he was denied access. It guaranteed no reasonable access or

indeed, any access, to the individual candidate. It required only some political programming during the three-year term of the license. The broadcaster was at liberty to pick and choose among the campaigns and decide which were the most important and which it would sell time to, and which it would not sell time to. For example, the broadcaster could determine that the campaign for governor in a particular year was more important than the campaign for a seat in the House of Representatives, and withhold time from all of the candidates in the Congressional race. One need only compare this amorphous obligation with the very specific obligation imposed by the new statute to see that Congress was embarking on a new course.

Under this statute, 312(a)(7), Congress has empowered the Commission to impose sanctions based on a broadcaster's repeated or willful failure to sell reasonable amounts of air time to an individual federal candidate. The words chosen by Congress focus in squarely on the individual: a legally qualified candidate must be afforded the specific use of a broadcast station to advocate his candidacy. Under the statute, the broadcaster exposes himself to the ultimate sanction of license revocation if he unreasonably withholds air time on two or more occasions, or if he does this willfully on even one occasion. In short, as the Commission and the Court of Appeals both agreed,

this statute extends its protection to the individual federal candidate, a kind of protection that was wholly unknown under the predecessor public interest standard.

In this connection the Court may reasonably ask why, if Congress really meant to codify the public interest standard why didn't it refer to the elements of the public interest standard? Why didn't it say that the broadcasters should review state and federal campaigns, should pick out the most important ones, should give air time to some of them and withhold air time from the others. These elements of the public interest policy are simply not the elements prescribed by Congress in 312(a)(7).

And the legislative history of this provision far from contradicting its plain meaning, strongly supports the literal interpretation that the Commission has given. Section 312(a)(7) was a central part of Title I of the Federal Election Campaign Act. Title I, according to the Senate Commerce Committee, had two and only two purposes: it's first purpose was to give candidates, and I quote, "greater access to the media, so that they may better explain their stand on the issues and thereby more fully and completely inform the voters." It's second purpose was to halt the spiraling cost of campaigning. Now Section 312(a)(7) doesn't have any direct relationship to the goal of containing campaign costs, but it does have a direct

bearing on the goal of better informing the electorate, by focusing in on the individual candidate it goes beyond the old public interest standard and affords "greater access to the media". Congress' intent is also reflected in its contemporaneous amendment of another closely related statutory provision.

Before 1972, Section 315 of the Act contained a proviso which stated flatly that there was no duty to give an individual candidate affirmative access. The proviso read as follows: "no obligation is imposed on any licensee to allow the use of its station by any such candidate". But when Congress enacted Section 312(a)(7) it recognized that this unqualified statement was no longer correct; it was necessary for Congress to make what it called conforming amendment, to bring Section 315 into harmony with the newly enacted 312(a)(7).

As amended, Section 315 now provides no obligation is imposed under this subsection on any licensee to allow the use of its station by any such candidate.

QUESTION: And did that come out of the Conference Committee?

MR. SHAPIRO: That came out of the Conference Committee, that's correct, Your Honor. And it was necessary for Congress to qualify its statement that there was no duty to give affirmative access to individual candidates

and to make it quite clear that that statement applied only under Section 315, precisely because the newly enacted Section 312(a)(7) does obligate broadcasters to afford affirmative access to individual candidates.

QUESTION: Well even if you are right in everything you've said so far, the duty is only to allow reasonable access or to permit purchase of reasonable amounts of time, and somebody has to decide what that means.

MR. SHAPIRO: That's correct, and Congress delegated the enforcement role to the Commission. And it gave the Commission power to secure compliance by the broadcasters. It never would have done this if it believed that the networks and the broadcasters would have unlimited discretion to withhold air time --

QUESTION: Well, but do they have discretion to decide what's reasonable? That's the -- not unlimited discretion.

MR. SHAPIRO: They -- if their discretion exceeds the bounds of reasoning --

QUESTION: I mean, the word "reasonable" must mean something, doesn't it? It doesn't mean absolute, it means something less than that.

MR. SHAPIRO: It does indeed -- and the final arbiter in a case of disagreement is the Commission, because --

QUESTION: Well that's the -- wasn't that one of the issues and an important issue in this case?

MR. SHAPIRO: I don't see how the language could be interpreted to say that the final arbiter of reasonableness is the regulated broadcaster, because the Commission has the power to revoke its license if it behaves in an unreasonable way.

QUESTION: But the initial decision is the network, is that right?

MR. SHAPIRO: That's correct, that's correct.

QUESTION: Then what is the -- is there any indication of what is the scope of review of the Commission? Is it like the clearly erroneous Rule 52 or anything like that?

MR. SHAPIRO: It's quite similar, Your Honor, to the kind of review that a Court of Appeals would extend to an administrative decision, to see if the relevant factors had been considered and whether there has been an abuse of discretions --

QUESTION: Then it comes to the Commission with a presumption of regularity and correctness, does it not?

MR. SHAPIRO: The Commission is disposed to agree with the broadcaster in a close case; it's made that quite clear, that it will defer to discretion unless there is a clear abuse.

QUESTION: Surely there's a -- I know court, not agencies, get away with all sorts of things. There's a range of conduct that would be within their power?

MR. SHAPIRO: That's true.

QUESTION: And it wouldn't be just one thing, it could be -- I suppose, a network might reasonably decide that within -- on any day within three or four months that a campaign had begun.

MR. SHAPIRO: In this case the --

QUESTION: And any one of them would be reasonable.

MR. SHAPIRO: In this case --

QUESTION: Even if the Commission thought that it would have preferred the decision to be somewhere else.

MR. SHAPIRO: That's true. If the Commission regarded the factual issues in a particular case as close, it would defer to the broadcaster. But in this case the finding of violation rested on what the Commission regarded as a legal error, that is, that these networks applied blanket rules in dealing with the candidate. That is, they would not receive the individual request and analyze it in its own particularized context.

QUESTION: Do you think that the networks would be entitled to take into account in the total equation, what Congress and the federal election law and other ways has shown a concern about the mounting costs of campaigns and the

length of campaigns, does that fit into the equation along with a judgment as to whether the public -- there's enough public interest, say?

MR. SHAPIRO: In our view, Congress did not intend that the networks deny or cut back requests for air time from candidates on the view that this was too costly or that it was contributing to mounting campaign costs. And one reason --

QUESTION: Congress doesn't deal with these problems in logic-tight compartments, does it? That over in the elections law they are saying we are trying to shorten campaigns and cut the costs down, but over in this other area then totally ignore that.

MR. SHAPIRO: One reason for not allowing the networks to engage in that kind of inquiry is that there is no basis for asserting that granting air time to candidates is going to increase costs. This is the most cost effective means of communication. If the Court were to compare the $186,000 price tag on this half hour to the cost of stuffing envelopes --

QUESTION: Then you're quarreling with the Court's opinion in CBS v. Democratic National Committee. That was only 45 seconds -- spots, that were involved in that case.

MR. SHAPIRO: We quite agree with the decision there. In that case, the vice in the access scheme was that

it had no Congressional sanction, whereas in this case Congress has prescribed a specific access scheme for a narrowly defined class of candidates, federal candidates for office.

In the DNC case of course, the Court of Appeals had constructed an access scheme virtually out of whole cloth, there was no basis in statute or in prior Commission precedent. And in fact, the statute contained a provision -- Section 3(h) that militated against the access scheme that the Court evolved on an ad hoc basis.

QUESTION: Well Mr. Shapiro, you think the Commission in this case, in deciding there had been a violation, asked the question was it reasonable for the networks to decide that the campaign hadn't begun?

MR. SHAPIRO: The Commission takes the position that in that area it will make its own judgment about whether the campaign is --

QUESTION: So you -- I thought just a while ago you talked -- I thought you agreed a moment ago that the Commission should -- it should determine whether the networks judgment about when the campaign had begun was reasonable.

MR. SHAPIRO: That is an area where the Commission has said there is lesser discretion in deciding when the campaign begins, it said it will listen to the positions

of the networks -- and the candidates, and make its own judgment.

QUESTION: Well yes, but -- doesn't it nevertheless have to conclude that the network made an unreasonable decision?

MR. SHAPIRO: Yes, and it did just that, in light of an abundance of evidence showing that the campaign was in full swing in November --

QUESTION: Well, but it does that in a sense that we're describing -- we're just going to decide for ourselves when it begins, as a matter of objective fact, and if the network chose a different date it was just wrong.

MR. SHAPIRO: If the evidence is against the network, that's correct. And here it was clearly against the networks because the campaign activities were in full swing by anybody's definition except these networks. If the Court looks at --

QUESTION: Was that bottom line, was it bottom line then, or was it that the networks had acted unreasonably?

MR. SHAPIRO: Acted unreasonably in concluding that the campaign wasn't in full swing.

QUESTION: Mr. Shapiro, was the so-called conforming amendment to Section 315 contained in the same statute at large as the 312(a)(7)?

MR. SHAPIRO: Yes, Your Honor it was. And it was

a sentence or two removed from 312(a)(7).

The Commission might have interpreted the statute to require the offer of fixed quantities of time under a particular time schedule to try to mitigate some of the complexities that we're talking about, under highly specific rules. And it sought the views of the networks on this kind of a proposal in 1978. The networks vehemently opposed this kind of an approach, urging the Commission to continue to proceed on a case-by-case basis analyzing the reasonableness of their conduct on an ad hoc basis, or a case-by-case basis.

In its comments to the Commission at that time, NBC stressed the importance of individual treatment. It stated in its brief, a copy of which I have lodged with the Court yesterday, and I quote, "different candidates have different campaign strategies. One will concentrate on 30-minute programs of prime time, another may want 10-second spots during fringe programming. A third will seek exposure around news and public affairs programming. We believe it would be most difficult for the Commission to promulgate any rule that could take all of these diverse strategies and campaign needs into account."

The Commission essentially agreed with that assessment. It concluded that it would be best to adopt general guidelines under Congress' rule of reason, to facilitate individual negotiations. And to minimize the

need for governmental intervention. One of the guidelines of course, is that broadcasters need not extend any access even if the federal candidate is legally qualified, unless the campaign is fully underway as evidenced by objective facts that we've been discussing. The second guideline is that once the campaign begins, broadcasters may not enforce across the board or blanket policies in rejecting requests for time. They must be willing to negotiate and attempt to accomodate --

QUESTION: If you could just stop there for a moment, Mr. Shapiro. Why is a blanket rule -- say we don't want anything for two weeks or three weeks, necessarily arbitrary? It seems to me there is a certain element of reasonableness in saying even though the campaign has begun, we think in terms of interest and orderly programming, and not getting too many obligations too soon, we'd rather wait till -- for 30 days.

Why is it necessarily unreasonable --

MR. SHAPIRO: I can't state it any better than NBC did in the passage that I just quoted. The different campaign strategies that the candidates pursue are vitally important to communicating their own message, and to adopt a simple rule that only five-minute spots will be allowed or you won't allow access in the month of December, that can interfere fundamentally with the strategy of a particular

candidate.

QUESTION: Well it may not give the man the strategy he wants but does it necessarily violate either the requirement of reasonable amounts of time or reasonable access?

MR. SHAPIRO: Well --

QUESTION: Those are the two requirements that the networks must meet.

MR. SHAPIRO: It's the Commission's duty to interpret the reasonable access standard and in its view --

QUESTION: Well, you would agree it doesn't necessarily violate the reasonable amount of time requirement?

MR. SHAPIRO: No. It's the reasonable access requirement --

QUESTION: Reasonable access. And the reasonable access must always reflect what the candidate wants?

MR. SHAPIRO: Balanced against the legitimate concerns of the broadcasters. The Commission has concluded that there really are two interests here that have to be weighed; reasonableness looks both ways, to the candidate and to the broadcaster --

QUESTION: Well as I understand your point earlier, it didn't look both ways, it said there's kind of a flat ban against flat bans.

MR. SHAPIRO: It said that it is improper not to weigh the needs of the particular candidate and the particular case, but you also must weigh the legitimate concerns of the broadcaster in the same balancing process; that is, multiplicity of candidates or program disruption. And this is the kind of accomodation of both of the interests that the Commission believes best strikes the balance of reasonableness under the statute.

QUESTION: But after weighing those, it did come up with at least one per se rule, and that is that any broadcaster's blanket refusal to sell any time to any qualified candidate, even after the campaign had begun during a certain period was, per se, unreasonable.

MR. SHAPIRO: That's correct. It's necessary to weigh --

QUESTION: A broadcaster might say this is the Christmas season and we have our own programming and we don't want to accept anything until after the first of the year.

MR. SHAPIRO: That's correct. It's necessary to weigh the individual request.

QUESTION: But there is no, ever, after the weighing process was over they came up with this per se rule, didn't they? The Commission did.

MR. SHAPIRO: Well no, the per se rule means that

you have to engage in an individual ad hoc way, and --

QUESTION: Right. And therefore that no blanket ban is constantly reasonable?

MR. SHAPIRO: Is permissible -- that's -- that is correct. And the networks expend a great deal of time attacking this guidelines but I would submit that they have not demonstrated that this approach is patently irrational or that it conflicts with any provision of the Communications Act.

QUESTION: Well that's turning the thing upside down, isn't it? It's a reasonable -- the networks have to give reasonable access and they, in the first instance decide what's reasonable?

MR. SHAPIRO: And the Commission reviews that to see if it really is within the bounds of discretion and one of the standards that it has prescribed to make the process conform in its view with the statutory requirement is that no blanket rules may be prescribed. And the question for a reveiwing court is whether it's patently irrational, arbitrary or capricious for the Commission to adopt this approach, and we submit that it isn't.

QUESTION: So that, I take it then, you seriously contend that Congress intended that the Commission play a very central role, as a broker, in political campaigns in deciding access to television?

MR. SHAPIRO: That's precisely the role Congress has given the Commission, to sit as umpire in cases of disagreement over reasonable access issues --

QUESTION: And in deciding what the needs of candidates are and --

MR. SHAPIRO: Not deciding what their needs are.

QUESTION: Well, you just said they had to -- they must take account of what the candidate's style is, of what their approach is and what their needs are.

MR. SHAPIRO: The Commission's only review --

QUESTION: That the Commission, if it disagrees --

MR. SHAPIRO: -- with respect to that issue --

QUESTION: -- with the -- I take it, from what you say, that if the Commission disagrees with the networks' judgment about what the needs of the candidate are, they haven't given him reasonable access?

MR. SHAPIRO: No sir. It's only role in reviewing is to determine if the -- if the networks have considered the request on an individual basis, and if so, if they have weighed it against the factors that the Commission has specified as counterveiling factors -- if the networks have done that, they are home free. There's no violation.

QUESTION: Mr. Shapiro, in the Court of Appeals opinion 4(a) of the Appendix, the Court of Appeals says that -- describing the Commission proceeding, it ordered the

networks to comply with the requirements of the Act. Now what would have been the sanction had the networks not have complied with the orders of --

MR. SHAPIRO: The sanction that's expressly prescribed is revocation of broadcast license, and each of these networks is a licensee of five VHF television stations. The Commission staff believes that in addition to revocation there is a cease and desist remedy, cease and desist order that's available, but that hasn't been litigated.

QUESTION: Well, could it, right then , revoke the license?

MR. SHAPIRO: The statute requires either repeated or willful misconduct. Now, if there had been no petition for appellate review and the Commission had entered the order that it did and the networks continued to withhold access, at that point, arguably you would have willful misconduct. But it requires either willfulness or repetitive misconduct.

QUESTION: Well doesn't a complaint have to allege a willful violation, even to energize the Commission? I mean, the statute says repeated or willful -- no question here, there wasn't any question about repeated refusal, was there?

MR. SHAPIRO: No. But it's essential that the

Commission adjudicate a specific complaint such as this to see if in the future there is in fact a pattern of repetition. That's why the Commission takes the first case.

QUESTION: You mean the Commission will take a case if a claimant says this hasn't been repeated yet, this is the initial instance and as far as I know, it isn't willful, they are in perfectly good faith, they just haven't interpreted -- you mean the Commission would get underway right then?

MR. SHAPIRO: It would determine if there was --

QUESTION: Not even a claim of willfulness?

MR. SHAPIRO: That's correct. It would determine if there was an unreasonable withholding, and then if there was a second such adjudication, that would lead to the imposition of sanctions under the statute. But it doesn't determine the first--

QUESTION: Can you adjudicate the very first -- suppose there's no claim of willfulness, and the Commission isn't looking for willfulness, the Commission will take on the very first refusal because it may be -- it will be repeated?

MR. SHAPIRO: Precisely. And the broadcasters have urged the Commission to do just that.

QUESTION: Well from what I've read and heard here today, I understand that the broadcaseters welcome

this position.

MR. SHAPIRO: They welcome this because it prevents a pattern of misconduct from turning into something that later would result in revocation. And that's precisely why they urged us to follow this approach.

QUESTION: Would you --

MR. SHAPIRO: And the Courts of Appeals have approved that approach.

QUESTION: Would you agree that the decision on the part of the network could be erroneous, but -- in a particular case, but still within the bounds of reasonableness? Or are they mutually exclusive?

MR. SHAPIRO: Well in -- the Commission has divided up the issues, on the question of whether the campaign has started it makes its own independent determination. But on the question whether the broadcaster has balanced the individual interest against the broadcaster's own countervailing interests, in this area, they will not intrude unless the decision is clearly erroneous, whether it's an abuse of discretion --

QUESTION: Where do you get the "clearly erroneous" in the statute? Clearly, now you're equating it something to Rule 52(a). Where do you get the clearly, the adjective?

MR. SHAPIRO: This is the Commission's interpretation of the reasonable access requirement and it was

intended to confer greater discretion on broadcasters than would otherwise exist if the Commission determined that de novo. I see that my time has expired, and I thank the Court.

MR. CHIEF JUSTICE BURGER: Very well. Do you have anything further, Mr. Abrams?

MR. ABRAMS: Just one moment, Your Honor.

ORAL REBUTTAL ARGUMENT OF FLOYD ABRAMS, ESQ.,

ON BEHALF OF THE PETITIONERS

MR. ABRAMS: I'd just like to point out to the Court if I may that the plain meaning of this statute has never been as plain to the Commission as it is today. They have issued reports in 1972, 1974, a primer in 1978, none of which talked about this being a candidate's needs statute. This matter of the Commission determining when as an objective matter the campaign began did not come to the Commission's mind until its second opinion in this case. In it's very first opinion they purported to say that the networks had acted unreasonably in deciding when the campaign began. It was not until page 124(a) of the appendix to the petition where the Commission, in its second opinion on rehearing, says in so many words that its determination was based on its own independent evaluation of the status of the campaign.

Mr. Shapiro refers to Title I and its purposes and I can do no more than to refer the Court to the briefs on

that. Title I of the statute said, in so many words, how media access was to be expanded, it did not include and the Commission's opinion says this, Section 312(a)(7) as one means by which that expansion would occur.

And finally, a word on blanket rule. I don't even understand why it is a blanket rule for ABC to say in December we think it's appropriate for us to start selling time in January. It is only by the Commission's process of detaching the issue of when from factors that the networks may consider and be judged on, in some reasonable way, and by getting that out of the equation entirely, that it makes it a blanket policy. That it's only that that makes it "unreasonable" because that's not a subject in which the networks have anything to say at all anymore.

QUESTION: Do you agree, Mr. Abrams, that they -- that this process of undertaking these cases where there is no claim of repeated violations, no claim of a willful violation; only a claim of an unreasonable one and go at it the very first time around?

MR. ABRAMS: Well, there's a claim, Mr. Justice White, and there was a cliam here of willful misconduct --

QUESTION: Yes, but there was never a claim --

MR. ABRAMS: -- the Commission --

QUESTION: Oh was there a claim of willful misconduct?

MR. ABRAMS: The Carter-Mondale campaign said that was so --

QUESTION: So you think --

MR. ABRAMS: -- and we think --

QUESTION: -- they ought to actually claim a -- a willful misconduct?

MR. ABRAMS: A claim was made, I don't think the Commission had any option but to rule on it at the time and in the way that they did.

QUESTION: But I gathered Mr. Shapiro indicated that they would undertake these adjudications even if there's no claim of -- either of repeated or willful misconduct?

MR. ABRAMS: My impression, Mr. Justice White, and I must say it is that, is that parties have come to characterize their claims in this area within the statutory language and so they say, at least when they file complaints, that it is willful or --

QUESTION: Willful in the sense -- surely they know what they are doing? Not unconscious.

MR. ABRAMS: In terms of the broadcasters, I mean the worst thing of all would be to be confronted with a situation where the only punishment is capital punishment, license revocation, and the first time it comes up is at the moment that your license is up for consideration.

QUESTION: Presumably if they moved to revoke the

license, there would be a hearing process, I take it?

MR. ABRAMS: I certainly trust so, Mr. Chief Justice.

QUESTION: Mr. Abrams, before you sit down, I'd like to ask you just one question if I may. Your position is that the amendment made no change in the statute, merely codified it, the pre-existing law. And Mr. Shapiro suggests that under pre-existing law, under the public interest standard you could have excluded entirely coverage for certain minor campaigns, for example, but that now you could not do that because of the legally qualified candidate language. How do you respond to that argument?

MR. ABRAMS: We don't believe that we could have refrained, under the public interest standard as it exists, from making any use time available, say, in this Presidential campaign or in this Presidential primary --

QUESTION: No, he's talking about other campaigns.

MR. ABRAMS: Oh, in other federal races like that? It -- this would be a different situation perhaps, if there was a lower federal category than races for Congress, but that is not the case. And it has always been our understanding that the public interest standard would not have permitted a flat policy on behalf of a broadcaster of declining to sell time totally to federal candidates. And so to that extent as well, we think it is a codification. Thank you, Mr. Chief Justice.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen. The case is submitted.

(Whereupon at 11:10 o'clock a.m. the case in the above matter was submitted.)

CERTIFICATE

North American Reporting hereby certifies that the attached pages represent an accurate transcript of electronic sound recording of the oral argument before the Supreme Court of the United States in the matter of:

No. 80-207, No. 80-213 and No. 80-214

CBS, INC., AMERICAN BROADCASTING COMPANIES, INC., AND NATIONAL BROADCASTING COMPANY,

v.

FEDERAL COMMUNICATIONS COMMISSION, ET AL.

and that these pages constitute the original transcript of the proceedings for the records of the Court.

BY: William J. Wilson