

ALERT

# FCC Equal Opportunities Rule May Apply to Talk Shows, Media Bureau Says in Guidance to Broadcasters

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On January 21, 2026, the Federal Communications Commission's Media Bureau issued a Public Notice warning television broadcasters that news interviews with political candidates conducted "on a program that is motivated by partisan purposes" are not exempted from the FCC's equal opportunities rule. While the Public Notice is styled as guidance about the applicability of the equal opportunities rule's *bona fide* news exemptions to broadcast television stations – particularly those airing late night and daytime talk shows – the guidance would also appear to apply equally to radio broadcasters.

## ***The FCC's Equal Opportunities Requirement***

Section 315 of the Communications Act and the Commission's corresponding rules provide that whenever a broadcast station allows a legally qualified candidate to appear on air in a positive manner, legally qualified candidates for the same public office must be given an equal opportunity to appear on air in a manner comparable to the first candidate. Stations are not required to notify opposing candidates of their equal opportunities rights; rather, notice is provided by placing information about the appearance (whether it's a paid candidate advertisement or a free "use" of the airwaves) in the station's online public inspection file. This information must be uploaded promptly as other candidates have only seven days to make their equal opportunities claims after the first candidate's triggering "use." The purpose of the equal opportunities rule, often referred to as the "equal time" rule, is to prevent broadcasters from unfairly providing more favorable access to a particular candidate or candidates.

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To increase news coverage of political campaign activity, Congress in 1959 adopted *bona fide* news exceptions to the equal time rule. The *bona fide* news exemptions apply to four categories of news coverage: *bona fide* newscasts, *bona fide* news interviews, *bona fide* news documentaries, and on-the-spot coverage of *bona fide* news events (including political conventions). Determining whether programming falls into one of these *bona fide* news exemptions is not an exact science, but over the years the FCC has issued decisions providing guidance on the contours of what may be considered a *bona fide* news exemption.

With regard to what constitutes a *bona fide* news interview, the FCC has focused on factors including: (1) whether the show is regularly scheduled; (2) whether the broadcaster or an independent producer controls the program; and (3) whether decisions regarding content, participants, and format "are based on newsworthiness, rather than partisan purposes, such as an intention to advance or harm an individual's candidacy." Importantly, although stations can ask the FCC for advance rulings on whether a particular program qualifies for one of the news-related exceptions to the equal opportunities rule, stations are not required to do so. As such, most broadcasters have relied on the FCC's precedent when determining the applicability of a particular news exemption.

For the *bona fide* news interview exception, a key precedent has been the Media Bureau's 2006 decision denying a complaint by Phil Angelides, the Democrat candidate for Governor of California, seeking equal time on "The Tonight Show with Jay Leno" following an appearance by Republican candidate Arnold Schwarzenegger. The central question in that case was whether interview segments on an entertainment program qualify for the *bona fide* news interview exception. The Bureau concluded that "the news interview segments of 'The Tonight Show with Jay Leno' qualify for the *bona fide* news interview exemption ... and that news interviews conducted on that program are exempt from equal opportunities." This followed a prior full Commission decision finding that portions of the daytime talk show "Donahue" qualified as *bona fide* news interviews, and staff decisions making similar findings for the "Sally Jessy Raphael Show," "Jerry Springer," "Politically Incorrect," and Howard Stern's radio program. A related decision found that "Entertainment Tonight" qualified as a *bona fide* newscast.

### **FCC's New Guidance and Commissioner Reaction**

In the Public Notice, the Media Bureau now advises that the 2006 decision should not be interpreted as meaning that the interview portions of *all* similar entertainment programs – whether late night or daytime – fall within the *bona fide* news interview exception. Rather, the Bureau emphasizes that the 2006 decision, as well as all other prior decisions concerning the news-related exceptions, are limited to the specific facts of the program at issue. With that in mind, the Public Notice notes that the FCC "has not been presented with any evidence that the interview portion of any late night or daytime television talk show program on air presently would qualify for the *bona fide* news exemption" and emphasizes that "a program that is motivated by partisan purposes ... would not be entitled to an exemption under longstanding FCC precedent."

In view of this, the Public Notice encourages broadcast stations and television shows to file petitions for declaratory rulings "to obtain formal assurance that the equal opportunities requirement does not apply (in whole or in part)" to a particular program. The Public Notice also reminds broadcast station licensees of their

obligation to promptly place all required equal opportunity filings in their online public inspection files in accordance with Commission rules and precedent.

Following publication of the Media Bureau's Public Notice, FCC Chairman Brendan Carr posted on X that "[f]or years, legacy TV networks assumed that their late night & daytime talk shows qualify as 'bona fide news' programs – even when motivated by purely partisan political purposes. Today, the FCC reminded them of their obligation to provide all candidates with equal opportunities." Pushing back, Commissioner Anna Gomez issued a statement describing the Public Notice as "an escalation in this FCC's ongoing campaign to censor and control speech." Emphasizing that the Media Bureau's guidance "does not change the law," Commissioner Gomez encouraged broadcasters not to "feel pressured to water down, sanitize, or avoid critical coverage out of fear of regulatory retaliation."

#### ***Practical Effects to Broadcasters Arising from the FCC's Guidance***

The Public Notice leaves unanswered several questions that could significantly impact broadcasters, including whether the guidance is truly limited to television stations, as the opening paragraph indicates, or if it applies equally to radio. More significantly, the Public Notice is silent as to the factors or metrics that may be considered for determining whether a program is "motivated by partisan purposes."

Finally, broadcasters are reminded that while the late night and daytime talk shows that are the focus of the Public Notice are produced and distributed by networks and syndicators, compliance with the equal opportunities rule falls on the local stations. As such, local stations are ultimately responsible for including information in their online public inspection files about candidate appearances that do not qualify for one of the exemptions and may need to provide equal time to opposing candidates if the program suppliers fail to do so.

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Wiley's Media Practice is monitoring how the Public Notice may impact broadcast stations and has extensive experience counseling broadcasters on FCC compliance and advocating for their interests before the Commission. If you have any questions, please contact one of the attorneys listed on this alert or the Wiley attorney who routinely handles your FCC matters.