

Statement of FCC Commissioner James H. Quello

In Re: Complaint of Carter-Mondale Presidential Committee

This complaint raises some very fundamental issues which I find particularly difficult to resolve. These issues are difficult because they require the FCC to make some very subjective judgments in the emotionally-charged atmosphere of a political campaign.

First, there is a technical question which arises out of the fact that Mr. Carter is not yet an announced candidate. It could be argued that the entire matter isn't properly before us since the request for time was not made "...by a legally qualified candidate for federal elective office on behalf of his candidacy."*/ Mr. Carter has made it clear that he intends to make a formal announcement prior to the proposed broadcast. Thus, I do not regard the lack of a formal announcement as decisionally significant under the circumstances.

On the substantive issue--whether the time requested constitutes "reasonable" access--Section 312(a)(7) provides no guidance to what is "reasonable." This matter is particularly difficult for me because I have urged--and I continue to urge--that the Congress strike Section 312(a)(7) from the statute. While I oppose it on First Amendment grounds, the matter before us also demonstrates some very practical reasons why we shouldn't be deciding matters of tactical significance to candidates. Whatever my personal philosophy might tell me about the wisdom of the statute, however, I am charged with the responsibility of enforcing it.

I can understand why the Congress elected to use the "reasonable access" language instead of something more precise. It's clear that presidential election campaigns have a dynamism all their own which does not encourage precise timetables or definitions.

My own background in broadcasting provides me with some insight into the motivations of the networks in refusing the request for time at this early stage of the campaign. First, the networks are in a very competitive struggle for ratings and politicians cannot compete with entertainment programming in drawing the largest audiences. Second, by providing access to one candidate, the networks expose themselves to the provision of Section 315 of the Communications Act which requires equal access to all opposing candidates.

*/ Section 312(a)(7), Communications Act of 1934 as amended.

Thus, the networks prefer to maintain greater control over their programming options by delaying the television campaign as long as possible.

Candidates, on the other hand, are anxious to get their messages across to the electorate early and often. Presidential campaigns tend to begin earlier than in the past. I suspect that the reason for this tends to be linked to the increasing number of primaries. A decade ago, there were 17 primary elections. In the year ahead, there will be 36. That fact, alone, changes the campaign timetable. The candidate's natural response is to seek more--and earlier--access to the electorate.

Since the Congress fashioned Section 312(a)(7) with a view toward ensuring that the public would be informed about candidates for federal office, I can only assume that it mandates greater, as opposed to lesser, access than would otherwise be available if the choice were left to broadcasters. As to when such access should become effective, I am particularly concerned that the networks have arrogated unto themselves the determination as to when a presidential campaign should commence. Obviously, neither the networks nor this Commission has any authority, expressed or implied, to determine unilaterally the appropriate time for commencement of a presidential campaign. For this reason, I find that NBC and ABC have failed to demonstrate the reasonableness of their respective conclusions that it is "too early" to commence a presidential campaign.

The CBS Television Network has made the judgment "...that the public interest does not require the preemption of extensive segments of its national program service for political broadcasts of half-hour duration." This judgment is predicated on the "unusually large number of candidates" seeking presidential nominations and the likelihood that many hours of programming will be disrupted if equal time provisions apply. While CBS asserts that the claim that there will be relatively limited demand for network half hours for presidential candidates is a claim of speculation, I find the same speculation in the assumption by CBS that half-hour time periods would be sought by many presidential candidates. CBS Television Network has not demonstrated a factual basis for its presumptions.

Under the circumstances, the three television networks have been unreasonable in their refusals to honor the requests of the Carter-Mondale Presidential Committee.