

PBS Standards

Candidate Appearances

Please note: This material is for informational purposes and does not constitute legal advice. Consult with counsel for any specific guidance on candidate appearances.

Equal Opportunities

Section 315 of the Communications Act is known as the equal opportunities requirement (commonly referred to as the "equal time" rule). The law provides that when a broadcast station allows any "legally qualified candidate"—whether for federal, state, or local office—to “use” its facilities, it must provide "equal opportunities" to all other legally qualified candidates for the same office. (Yes, that means [this requirement also applies to off-year state and local elections](#).) See the FAQ below to learn more.

What is considered ‘use’ under the law?

The FCC has explained that “use” consists of any broadcast that features a legally qualified candidate’s identifiable voice or image. When such a use occurs, the equal opportunity requirement can be triggered. This can occur even if the candidate never talks about his or her campaign; therefore, stations should be mindful of a candidate's on-air appearance in entertainment programs, such as dramas and comedies, sporting events, and televised feature films.

After such an appearance, other candidates must request equal time within seven days. Stations do not need to inform other candidates that they are entitled to equal time.

Stations should be especially mindful of actors or entertainers who decide to become political candidates. Older programs that feature these individuals (even if playing a role as a character) may give rise to equal opportunity obligations if rebroadcast at a time when the individual is running for office.

Some news and public affairs programs that feature a candidate’s voice or image may be exempt from the equal opportunity requirement, as explained in more detail below.

Also, a fleeting appearance by a candidate, generally less than four seconds, is not considered a use.

Who is considered a ‘legally qualified candidate’ under the law?

To be considered a “legally qualified candidate” by the FCC, a candidate must: (a) be eligible under law to hold the office; (b) publicly announce that he or she is a candidate; and (c) qualify for the ballot in the particular state or be eligible as a write-in candidate.

Candidates seeking the nomination for president or vice president of the United States are “legally qualified” in: (a) those states in which they or their proposed delegates have qualified for the primary or presidential preference ballot; or (b) those states in which they have made a substantial showing of being serious candidates for nomination. Such persons will be considered “legally qualified” in all states if they have qualified in ten or more states.

What is considered an ‘equal opportunity’ under the law?

Equal opportunity usually means that a station must make the same amount of time available to opposing candidates, but the term can mean more than just the same amount of time; a station might also be required to provide opposing candidates with time during a portion of the day when there is a comparable audience. A station does not need to provide opposing candidates with time during the same program.

For example, in November 2015 then-presidential candidate Donald Trump was the guest host of NBC’s *Saturday Night Live*. Trump appeared on the program for just over 12 minutes. After the broadcast, the campaigns of four rival Republican candidates were provided free, 12-minute prime-time slots on NBC-affiliated stations in Iowa, New Hampshire, and South Carolina during a subsequent weekend. The rival candidates were not, however, invited to host *Saturday Night Live*.

Are certain programs exempt from the equal opportunity requirement?

Yes. Section 315 of the Communications Act specifically exempts from the equal opportunity requirement appearances by legally qualified candidates in the following news programs:

- *Bona fide* newscasts, whether produced by the licensee or a third party, so long as the third-party production is not to promote a particular candidacy;
- Regularly scheduled and licensee-controlled *bona fide* news interviews;
- *Bona fide* news documentaries where the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentaries; and
- On-the-spot coverage of *bona fide* news events (e.g., political conventions and debates between candidates). Therefore, a broadcaster can cover news stories involving one candidate without having to include all other candidates.

The term *bona fide* means that the program’s format, nature, and content is based on the broadcaster’s good faith journalistic judgment—in other words, that the candidate’s appearance was not initiated or controlled by the candidate or designed to aid or advance the candidate.

Based on these exemptions, PBS considers the following programs exempt from equal time requirements:

- PBS NEWSHOUR
- PBS NEWSHOUR WEEKEND

- WASHINGTON WEEK
- AMANPOUR & COMPANY
- TO THE CONTRARY
- FIRING LINE

Other regularly-scheduled documentary programs are, in many cases, also exempt (FRONTLINE, for instance) but are usually considered on a case-by-case basis.

Stations should check with legal counsel and should not assume that a program is exempt or not from the equal opportunity requirement based on its format, title, marketing, etc., as any determination turns on the specific facts surrounding each candidate's appearance. For example, the FCC has applied these exemptions broadly over the years to cover candidate appearances on programs such as *Entertainment Tonight*, *TMZ*, *The Tonight Show*, and other programs that don't necessarily typify traditional news programming. The FCC also offers direct guidance on equal opportunity rules at www.fcc.gov/media/policy/political-programming, including contact information for stations to speak directly with the FCC's political programming staff.

What should I do if a candidate appears in a program that I'm producing for PBS?

Producers are contractually obligated to notify PBS (specifically Mishi Ebrahim (mmebrahim@pbs.org) and Wendy Llinas (wcllinas@pbs.org) in PBS Programming), of any candidates – whether for local, state or national office – appearing in programs that have national distribution.

Such notice should be provided as far in advance as possible, but not less than 21 days before final program delivery to PBS.

Producers also should notify PBS if they become aware of a person now running for office who appeared in a program previously delivered to PBS, which may be scheduled for a repeat feed.

Will PBS notify stations when candidates are scheduled to appear in national programs?

Yes. When PBS becomes aware of a candidate's appearance on a PBS program, we will notify affected stations (i.e., those whose contour map extends to the states or districts at issue) and advise them whether, in PBS's opinion, the appearance is exempt from equal opportunity requirements. Opinions may sometimes differ, and the final determination as to whether an appearance is exempt is always up to the station, with the advice of its own legal counsel if necessary. Additionally, stations should be mindful of any non-PBS programs that they receive over the interconnection system or from other sources.

What about the Fairness Doctrine? Is that related to the equal opportunities requirement?

No. The Fairness Doctrine, which is no longer in force, required stations to (1) provide coverage of controversial issues of public importance to the community; and (2) afford a reasonable opportunity for the presentation of opposing views on those issues. The FCC stopped enforcing the Fairness Doctrine in 1987 and formally removed the rule in 2011. Nevertheless, pursuant to the PBS Editorial Standards, PBS remains committed to distributing content that “expresses diverse perspectives and furthers the goal of a democratic society.

PBS does this by giving the public access to content on a range of issues so that they can participate in civic dialogue and make informed judgments about the significant issues of the day.”

No Endorsements or Paid Advertisements

Section 399 of the Communications Act and PBS membership requirements prohibit public television stations from supporting or opposing any candidate for political office. In addition, Section 399b(a)(3) of the Communications Act prohibits public television stations from broadcasting any paid advertisement intended to support or oppose any candidate for political office, regardless of whether the advertisement is funded by a for-profit or nonprofit entity.

These restrictions do *not* prohibit stations from offering time equally, free of charge, to all qualified candidates in certain federal, state, and/or local elections to broadcast messages in support of their candidacy, as some PBS member stations have done. (These messages are typically short, taped statements by the candidates themselves.) While these messages may provide an important public service to help inform local communities, stations should consult with FCC counsel when soliciting and presenting such messages to ensure compliance with the FCC’s equal opportunity requirement and to avoid viewer confusion. For example, a station might, depending on circumstances, choose to include airing such messages only if all candidates in a particular race accept the invitation to do so; airing messages from opposing candidates in a given race in a single block, back-to-back; and clearly communicating to viewers what they are watching (i.e., not paid advertisements or station endorsements) before, during, and/or after such messages are aired.

Reasonable Access

Under Section 312(a)(7) of the Communications Act, commercial broadcasters may have their licenses revoked if they fail to provide candidates in federal elections (i.e., elections for president, the House, and the Senate) “reasonable access” to use their facilities. *Public television stations are exempt by law from the reasonable access requirement.* Nevertheless, public television stations that voluntarily decide to provide airtime to candidates (or otherwise broadcast programs that include the voice or image of political candidates) may be subject to the FCC’s equal opportunity requirement.

Station-Sponsored Debates

The Supreme Court ruled in *Arkansas Educational Television Commission v. Forbes* that public television stations, even state-owned stations, have no obligation to invite all ballot-qualified candidates to participate in station-sponsored debates so long as the decision is not based on the viewpoint of the candidate. 523 U.S. 666 (1998). In that case, the Arkansas Educational Television Commission (AETC) declined to allow an independent House candidate to participate in its debate because the candidate had little public support (i.e., the candidate lacked a campaign organization; had little, if any, financial support; failed to generate appreciable voter support; and was not considered a serious candidate by news organizations covering the election).

The Court denied the candidate’s First Amendment challenge, explaining that public television stations “enjoy the widest journalistic freedom consistent with their public responsibilities” and

have a “duty to schedule programming that services the public interest, convenience, and necessity.” Importantly, the Court explained that the criteria a public television station uses to decide which candidates to invite to a debate must be objective and must not be based on the candidate’s views. In this case, the Court determined that AETC reasonably excluded the candidate because of his “objective lack of support, not his platform.”

See also Libertarian Nat’l Comm. v. Holiday, 907 F.3d 941 (6th Cir. 2018). In that case, the U.S. Court of Appeals for the Sixth Circuit determined that Kentucky Educational Television (KET) could limit its debate between candidates seeking a U.S. Senate seat to those who could demonstrate a certain pre-established level of voter support. KET’s debate criteria required that candidates: (1) qualify to appear on the ballot; (2) collect at least \$100,000 in campaign contributions; (3) receive at least 10 percent of the vote in an independent poll; and (4) maintain a website setting forth their views. The Sixth Circuit determined that KET’s criteria were “a reasonable, viewpoint-neutral exercise of journalistic discretion consistent with the First Amendment” (quoting the Supreme Court’s decision in *Forbes*).

Like KET, stations staging debates among candidates for federal office should consult with local counsel to adopt reasonable, viewpoint-neutral criteria for candidates who wish to participate, also a requirement of [Federal Election Commission rules](#), which allow discretion in the structure of debates but require staging organizations to use “pre-established objective criteria” to determine which candidates may participate.

If you have any questions, please contact PBS Standards & Practices at: standards@pbs.org