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To: All Broadcast Clients

March 6, 2008

**DEBATE DETERMINED TO BE BONA FIDE NEWS EVENT;  
EXEMPT FROM EQUAL OPPORTUNITIES REQUIREMENT**

The FCC's Media Bureau recently determined that a televised presidential primary debate was a *bona fide* news event, and was therefore exempt from the requirement to provide equal opportunities to other legally qualified candidates who were excluded from the debate.

The decision was issued in response to an emergency complaint filed by Rep. Dennis J. Kucinich, who claimed that he was a "serious candidate for office of the President" and that he was "actively and vigorously campaigning in South Carolina." Kucinich was excluded from CNN's nationally-televised debate that aired on January 21, 2008, and he asked the FCC to order CNN to allow him to participate.

Section 315 of the Communications 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 also provides, however, that appearances by legally qualified candidates in *bona fide* news programming are exempt from the equal opportunities requirements. A program is a *bona fide* news event if (i) the format of the program reasonably fits within the news event exempt category, and (ii) the decision to carry a particular news event was the result of good faith news judgment and not based on partisan purposes.

The Commission has consistently held that debates between at least two competing legally qualified candidates are exempt news events. CNN included only candidates that finished in the top four in any of the earlier primaries or caucuses and who polled five percent or more in recent polls. The Media Bureau determined that CNN's criteria for inclusion in the debate was reasonable, and not based on partisan purposes.

Based on the newsworthiness of a debate between candidates for the presidential nomination of a major party, the objective criteria on which participation in this debate was based, and the absence of a showing by Kucinich that coverage of the debate was motivated by partisan purposes, the Media Bureau concluded that the debate was a news event that was exempt from the equal opportunities requirement. In addition, the Media Bureau noted that the FCC does not have the authority to order CNN to include a candidate in a debate, since such could be regarded as censorship of programming content.

If you have any questions about political programming during this political season, please contact any attorney in our office.

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This memorandum is intended only as a general discussion of these issues and should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired. To discuss any of the issues presented here, please contact any attorney in our office.