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NBC stations tune out Al Sharpton

Equal-time rule affects candidate's 'SNL' airing

By AARON BARNHART The Kansas City Star

What, exactly, made the Rev. Al Sharpton's appearance on "Saturday Night Live" last weekend so dicey that almost nobody in Missouri or Iowa got to see it?

NBC affiliates in Kansas City, St. Louis, Springfield and 29 other cities nationwide pulled the broadcast rather than trigger a clause in federal law that would have required those stations to offer "equal time" to other Democratic presidential candidates.

So, while most viewers watched Sharpton sing James Brown's "I Got You" and play one of the Three Wise Men being pulled over by police while traveling to Bethlehem, about 15 percent of viewers across the country tuned in to their NBC station to see an alternate "SNL" broadcast comprised of clips featuring comedian Steve Martin.

They also didn't get to hear "SNL" regulars Jimmy Fallon and Tina Fey make fun of cities across America where the Sharpton telecast wasn't seen: "Des Moines, Iowa: Snoozeville, USA ... Oklahoma: Never heard of it. ... Rochester, Minn.: Nerds! You guys are nerds!"

Besides KSHB, Channel 41 in Kansas City, the Sharpton "SNL" was banned by every NBC affiliate in Missouri except KOMU-TV in Columbia. Outside the Kansas City metropolitan area, all other Kansas stations, including Topeka and Wichita, aired the program. The state isn't holding a Democratic primary in 2004.

It's the second time this fall that the little-used and little-understood equal-time provision has reared its head. During the California recall election, TV stations in that state rescheduled movies with Arnold Schwarzenegger in them after he declared his



DANA EDELSON/The Associated Press

Citing an equal-time rule, several NBC affiliates did not broadcast presidential hopeful Al Sharpton's performance last weekend on "Saturday Night Live." He appeared with Tracy Morgan (right).

candidacy for governor in July.

Celebrity candidates have had to dance around this obscure campaign law ever since former "Smothers Brothers" star and presidential perennial Pat Paulsen unsuccessfully challenged it in 1972. Paulsen, who made a brief appearance in the Doris Day movie "Where Were You When The Lights Went Out?", sued the Federal Communications Commission after it ruled that TV stations that aired the movie had to offer other presidential candidates equal time.

After an appeals court upheld the law, it was enforced again in 1976, when "Bedtime for Bonzo" and other movies starring former matinee idol Ronald Reagan disappeared from TV while Reagan pursued the presidency.

Sharpton is a qualified candidate for the Iowa caucuses on Jan. 19, and the Missouri Democratic primary on Feb. 3. By law, TV stations serving those states would be obliged to "afford equal opportunities to all other such candidates for that office," according to Section 315 of the Communications Act of 1934.

That reasoning also led the NBC affiliate in Boston, which serves southern New Hampshire, to opt out of the Sharpton "SNL," along with stations in Tennessee, Oklahoma — and, fittingly, the station serving Schwarzenegger's new business address, Sacramento, Calif. These stations were offered the alternate program.

Viewers expecting to see Sharpton — whose appearance was heavily promoted all week — were mystified.

"KSHB's programming decision amounts to censorship," said Mark Prout of Lee's Summit. "I believe I have the right to see Sharpton do what he does best — entertain."

Two stations that did air the Sharpton broadcast were KOMU in Columbia and WPSD-TV, which is based in Kentucky but serves the Cape Girardeau area. Program directors at these stations said they had discussed the possibility of having to offer equal time to other candidates and decided it was worth the risk.

"This was a no-brainer," said Matt Garrett of KOMU, which is operated by the University of Missouri. "Our audience was looking forward to it and we didn't want to deny it to them."

And if John Kerry calls up to demand equal time Saturday night?

"We're prepared to make that time available to legally qualified candidates should they request it," Garrett said.

The equal time law has an even more obscure second part, which regulates campaign advertising. Under it, TV and radio stations must make political time — commercial time, paid for by the candidate — available to all comers equally.

This is where the law's real power is contained, according to Andrew Jay Schwartzman, president of the Media Access Project, a media-law group in Washington, D.C.

"In a small town where one family owns the newspaper and Clear Channel owns all the radio stations, they can't just favor their friends on the city council," Schwartzman said.

He said that instances like the "SNL" blackout might make equal time "seem ridiculous." But the law is a good one that helps level the playing field in elections.

And yet Schwarzenegger was allowed to appear on Howard Stern's syndicated radio program after the federal agency ruled that the shock jock conducted "bona fide news interviews" that are exempt from the equal-time law. Similar exemptions have been granted over the years to Phil Donahue, Oprah Winfrey, "Politically Incorrect" and other entertainment programs. And cable channels could show "Total Recall" during the recall campaign, because equal time doesn't apply to cable.

These compromises have led some legal observers to call for the repeal of equal time.

"What we really need is compulsory time handed by the broadcasters back to the public for the purpose of conducting debates," said Jamin Raskin, professor of constitutional law and First Amendment law at American University. More debates, Raskin said, "would take the pressure off of media broadcasters to parcel out the minutes on an equal basis."

The irony is that local NBC affiliate KSHB actually does give time back to candidates to discuss the issues — but during newscasts, not entertainment programs.

"There was just no reason for us to be putting ourselves in that position," said KSHB general manager Jim Swinehart, who said his corporate attorneys had reviewed the matter carefully with the Federal Communications Commission.

KSHB, along with the other TV stations owned by E.W. Scripps Co. of Cincinnati, is participating in a "Democracy 2004" initiative to offer candidates time to talk about the issues during local newscasts.

"We'll be offering free time to the candidates before the election anyway," Swinehart said. "But we wanted to be able to put those on in the confines of the newscast."

Among the three dozen complaints the station received Monday were some accusing management of racist motives in excluding Sharpton. "Clearly, that was not the issue," Swinehart said.

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