Political Broadcast Manual

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Political Rules in a Nutshell
(Section Numbers of this Manual are in Parentheses)

A broadcast licensee must provide to (II) LEGALLY QUALIFIED political candidates for federal office (III) REASONABLE ACCESS.

When any legally qualified candidate makes a (IV) USE of a broadcast facility during a (V) NON-EXEMPT PROGRAM, then an opposing candidate is entitled to make a (VI) REQUEST for (VII) EQUAL OPPORTUNITIES.

Certain uses may qualify for the station's (VIII) LOWEST UNIT CHARGE.

A full (IX) DISCLOSURE of the station's selling practices must be made to all political advertisers.

All uses must be free from (X) CENSORSHIP and must bear the proper (XI) SPONSORSHIP IDENTIFICATION.

Documentation of each request for a use of the station's facilities, together with other relevant information, must be maintained in the station's (XII) POLITICAL FILE. Public (XIII) ACCESS TO THE POLITICAL FILE must be provided.

The (XIV) FAIRNESS DOCTRINE and the rules governing (XV) POLITICAL EDITORIALS and (XVI) PERSONAL ATTACKS have been repealed.

(XVII) ISSUE ADVERTISING is subject to special considerations. Stations are still subject to rules regarding (XVIII) NEWS DISTORTION.

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This Manual is provided for general information purposes only and should not be relied upon as legal advice pertaining to any specific factual situation.

I. Introduction

The FCC has regulated political broadcasting from the start. The original draft of the Communications Act of 1934 contained provisions to ensure fair and equitable treatment of candidates for public office and to assure the listening public of a full airing of campaign issues. Over the years, the Commission, Congress and the courts have expanded and reinforced these goals. Broadcasters, more concerned with pragmatic questions than abstract policy goals, have struggled with the Commission's increasingly complex rules regulating political advertising, which are fraught with ambiguity and complexity.

The Communications Act and the Commission's rules impose certain obligations on broadcasters and bestow certain rights on candidates. It is essential to determine what the obligations are and who is entitled to benefit from them. At the beginning of this manual is an outline of the most fundamental principles with key terms expressed in BOLD and the sections of this guide describing those principles in parentheses.

The political rules apply to all forms of broadcasting. This includes analog and digital radio, television, cable and most direct broadcast satellite services. The political rules do not apply to ancillary services such as teletext, subscription television, and subsidiary communications authorizations (SCAs), which are generally intended as point-to-point communications of interest to a narrow group of subscribers. In addition, the FCC's political rules do not apply to newsletters, websites, blogs, program guides and other non-broadcast activities of a broadcaster.

There is a separate rule for federal candidates' access to broadcast stations that does not apply to non-federal candidates. Candidates for President, Vice President and Congress are entitled to access on stations under certain conditions, while candidates for state and local offices are not. Candidates for federal office also have special requirements under the Federal Election Campaign Act for identifying and taking credit for the contents of their ads (see Section XI). Otherwise, all candidates are treated the same under the Communications Act.

Noncommercial educational stations are not required to run political programming but may do so (without charge, of course). This choice applies to all candidates (including federal candidates who, as noted in Section III, are entitled to access on commercial stations). To the extent that a noncommercial educational station chooses to run political programming, then it is subject to the same rules regarding equal opportunities, censorship of uses, identification and record keeping that apply to commercial stations.

II. "Legally Qualified" Candidates

Only legally qualified candidates are entitled to access (including equal opportunities). Thus, the first step is to determine whether the candidate seeking access is "legally qualified."

Sometimes it may be quite apparent that a candidate is legally qualified. In other instances, the question may be close, particularly in the early stages of a campaign or when a "fringe" candidate is involved. Unless a candidate can demonstrate that he or she meets the requirements under the Communications Act and applicable local law, a licensee has no obligation to provide access.

The Three Part Test

The Communications Act provides a three-part test. It is up to the candidate, and not the broadcaster, to demonstrate that he or she satisfies each criterion. This is one of the few areas of the political broadcasting rules in which the burden is on the candidate.

- Public Announcement

  This requirement can be fulfilled through a public statement or by filing the necessary papers to qualify for a place on the ballot. However, if the candidate is simply expected to run, this is not in itself sufficient. Thus, an incumbent is not automatically a legally qualified candidate for reelection even though there may have been widespread speculation or even broad hints from the incumbent that he or she will run again. Incumbents are often very careful to avoid making any public announcement until the last moment in order to deny their opponents equal opportunities. As will be discussed below, newscasts and other types of news and public affairs programming are exempt from the equal opportunities requirement so there is no need to be concerned about restricting a station's own news coverage of an incumbent's activities.

- Local Legal Qualifications

  The candidate must meet the age, residency and other requirements of applicable law to hold the office for which he or she is a candidate.

- *Bona fide* Candidacy

  The candidate must make a substantial showing that he or she is a *bona fide* candidate. This requirement can be satisfied in either of two ways. Any candidate who has qualified for a place on the ballot is considered *bona fide*. A write-in candidate may be considered *bona fide* by being otherwise qualified to hold the office sought and by making a substantial showing of genuine candidacy through engaging in activities commonly associated with political campaigning, such as making speeches, distributing literature, organizing a campaign committee and fund raising.

  The candidate must make the substantial showing of a *bona fide* candidacy. Since such questions are a matter of local law, the prudent course in the event of uncertainty would be to obtain an opinion from the Attorney General or other state official who has authority to decide a candidate's legal qualifications. Unless subsequently overturned by a court, the state official's ruling will be followed by the FCC and can be relied upon by a station.

"Fringe" candidates present a problematic area. So long as an individual has met the three-part test outlined above, that person must be considered a legally qualified candidate even if he or she has no significant chance of winning and is doing little or no campaigning.

Exceptions

There are two overall exceptions to the above rules:

- Candidates for President and Vice President (or their delegates) must either qualify or make a substantial showing of *bona fide* candidacy separately in each state in which broadcast rights are sought. However, when a Presidential or Vice Presidential candidate has qualified in at least 10 states (including D.C.) then he or she will be deemed qualified in all states. Note that this provision applies separately to

candidacy for nomination and to candidacy for election. That is, a candidate for nomination to either office must qualify for the primary or Presidential preference ballot, and then the same candidate for election to that office must qualify separately for the general election ballot itself.

- Other candidates for nomination by convention or caucus will not be considered legally qualified until 90 days before the convention or caucus is to begin. Even then, they must meet the three-part test above.

III. Reasonable Access

Once a candidate demonstrates his or her legal qualification, he or she must be accorded broadcast rights equal to all other legally qualified opponents, and, if a candidate for federal office, must be given reasonable access to a broadcast facility. This consideration does not apply to exempt news and public affairs programming, as discussed at Section V.

Federal Candidates

The Communications Act clearly states that all federal candidates are to have "reasonable access" to broadcast facilities. The Communications Act authorizes the FCC to revoke a station license:

> ... for willful and repeated failure to allow reasonable access or to permit purchase of reasonable amounts of time for the use of a broadcasting station, other than a non-commercial educational broadcast station, by a legally qualified candidate for Federal elective office on behalf of his candidacy.

While the use of the word "reasonable" twice in the same sentence of this law might at first suggest a balance between candidate and licensee needs, the Supreme Court has interpreted the provision as requiring that a licensee accommodate *all* federal candidate requests unless there exists a realistic danger of substantial program disruption. Commission staff has suggested that candidates must negotiate their demands with broadcasters and that accommodations are especially appropriate for requests involving non-standard length or placement. Nonetheless, if a dispute remains, it is more likely that the Commission and the courts will favor the candidate rather than the licensee, reasoning that the candidate's needs to address the public are paramount. Access cannot be denied on the basis of content. In that context, please see the discussion on censorship at Section X.

The Commission has set out the following guidelines for determining whether a licensee's judgment in affording access was reasonable for legally qualified candidates for federal office:

- Reasonable access must be provided to legally qualified federal candidates at least during the 45 day period preceding a primary or runoff election and 60 days before a general election. Outside of these time periods, the Commission will determine the issue of reasonable access on a case-by-case basis. It is likely to be guided by a 1980 Supreme Court decision which held that stations must provide reasonable access to federal candidates if the request for time outside the 45 or 60 day period will not cause serious disruption.

- Except as noted below, a broadcaster must afford federal candidates all of the types, lengths and classes of program time that a candidate may request unless running the requested political program or advertisement would severely disrupt the station's schedule. Thus, a television station might be able to reject a request for a

10-minute prime time political broadcast on the ground that it could not fill the remaining 20 minutes of the half hour. Radio stations, however, probably could not make the same claim since most radio programming normally is not limited to specific time lengths.

- Stations may bar candidates from spot positions during newscasts, but must make access available for news adjacencies. This ban may extend to all news broadcasts, to only certain programs (i.e. the 6 p.m. but not the 11 p.m. news) or to only specified portions of a newscast (i.e. to the "hard news" segments but not to sports or weather).

- Stations may refuse political advertising on the election day itself, but such a policy must apply to all federal candidates; that is, once any federal candidate is allowed to purchase advertising on election day, then all federal candidates must be afforded access as well.

- Commercial stations must sell spot announcements to legally qualified federal candidates during prime or drive time.

- If a commercial station chooses to donate time to legally qualified federal candidates rather than sell time, it must donate it on the same basis it sells time to non-political advertisers; that is, the same lengths, classes and time periods must be available. Once a station donates time to one legally qualified candidate, it must be prepared to donate equivalent amounts of time to all opposing candidates who request it.

When an access issue arises, the Commission confines its analysis to two questions:

- Whether the broadcaster followed the proper standards in deciding whether to grant a candidate's request for access; and

- Whether the broadcaster's explanation of its decision is reasonable in terms of those standards.

In considering the first of these questions, the Commission follows the admonition of the Supreme Court that "...to justify a negative response, broadcasters must cite a realistic danger to substantial program disruption - perhaps caused by insufficient notice to allow adjustments in their schedule - or of an excessive number of equal time requests." To limit access, broadcasters may consider the following factors:

- How much time was previously sold to the candidate;

- The number of candidates in a particular race;

- The equal opportunities likely to be requested by opposing candidates and the probable timing of such requests;

- The potentially destructive impact on the station's regular programming.

Non-Federal Candidates

Licensees are not required to provide access to non-federal candidates. Yet a licensee may be risking substantial ill will in the community (and with the politicians themselves) if it were to adopt a policy of excluding all non-federal candidates. Although there is no requirement to provide time to non-federal candidates, many civic leaders and candidates consider it fair and reasonable to do so. Moreover, the public tends to look to broadcasters for thorough and fair reporting of the candidates and the issues in the election.

Assuming that a licensee will want to provide some access for non-federal candidates, it may allocate time to those non-federal political races which it determines to be of greatest importance to its service area. Broadcast time for less important races can be limited or even refused. Once a licensee decides to present the candidates for a given office, it may also:

- Limit time sales to a given pre-election period;
- Limit program or spot availability to certain amounts or day-parts;
- Limit candidates to a specific format (such as one-minute spots or five-minute programs only);
- Refuse to sell time at all; and
- Give away free time equally to the candidates and sell no spots.

Keep in mind that once the decision is made to provide airtime to candidates for any office, the rules discussed in the remaining sections of this manual will apply with full force, including the equal opportunity and lowest unit charge obligations.

Election Weekend Sales

During the 1990 election there was some confusion as to whether station personnel must be available to process orders for political time on the weekend before the election. The Commission clarified this requirement, stating that if a station had taken an order from any commercial advertiser on a weekend even once during the previous year, then it must be available to sell time to political advertisers on the weekend before the election. The Commission further clarified that the services to be made available to the political advertiser need be no more extensive than the range of services that had been provided to any commercial advertiser. Thus, if access had been given to the commercial advertiser only to deliver or change copy, then only the same service need be afforded to candidates. If a station can prove that it has never sold time on weekends during the past year, it can justify a refusal to sell time to political candidates on the weekend before the election. However, a station that has done this just once for a favored advertiser (such as for a store running a holiday promotion or a movie preparing to open), then it should be prepared to process political advertising requests on the weekend before an election.

IV. "Uses" of Broadcast Facilities

In 1994 the Commission reverted to its former definition of what constitutes "use" of a station's facilities. Any positive use of a candidate's voice or picture in a context not otherwise exempt constitutes a "use." The significance of a use is that it entitles the candidate to lowest unit rates and triggers the "equal opportunities" provision of Section 315 of the Communications Act. Fleeting appearances and disparaging uses of the candidate's voice or picture by an opponent will not trigger Section 315 nor will any of the recognized exceptions in the statute, which include: (1) *bona fide* newscasts, (2) *bona fide* news interviews, (3) *bona fide* news documentaries and (4) on-the-spot coverage of *bona fide* news events (including political documentaries). These four categories will be discussed further in the next section.

The former requirement that limited a "use" to only a voluntary recognizable appearance controlled, sponsored or approved by the candidate was deleted in 1994. Congress occasionally considers election reform proposals which could restore the previous rule or impose other limitations upon qualification as a "use." Until then, an involuntary appearance, such as a use arranged by another party but not authorized by the candidate or the broadcast of a

recording or film featuring the candidate without his or her authorization, would be considered a "use," so long as it is positive rather than disparaging.

The candidate's appearance on a spot must be identifiable to constitute a "use". The candidate's voice qualifies as aural identification and makes a spot in which it is clearly heard into a "use". Even if a candidate merely reads the sponsorship tag, his or her voice on the spot for this purpose brings the spot within the "use" definition if his or her voice is identifiable to a substantial segment of the community. (Any doubt can be avoided by requiring the candidate to identify himself or herself in the tag.) There is little guidance on the question of how long an appearance must be to be considered visually identifiable, although the Commission has considered spot appearances of two seconds in a photo montage and the inclusion of a candidate in a brief group shot of six people to be so quick as to elude identification. *Note: The foregoing governs whether a use has occurred; once it has, federal candidates are required to appear, by voice and/or image, in the manner specified in section XI.*

Note, however, that the following exceptions are not considered uses:

- Broadcasts by American political candidates on foreign stations received in the U.S.
- Broadcasts by incumbents before public announcement of their candidacy for reelection (since the definition of a legally qualified candidate requires a public announcement or formal filing).
- Broadcasts by *supporters* of a legally qualified candidate, since only personal appearances by the candidate will qualify.

Otherwise, all positive appearances by legally qualified candidates on non-exempt programs are uses. It is immaterial whether or not a candidate discusses his or her candidacy during any appearance. To take some extreme examples:

- A candidate's appearance on a network variety show was a use.
- PSAs read by a candidate were uses.
- A minister's continued appearances on his church's regular Sunday program were deemed uses once he became a legally qualified candidate for public office.
- A judge's appearance as an expert on a panel of a public affairs discussion program was a use when the judge became a legally qualified candidate for reelection.
- Commercials regularly voiced by the sponsor's owner became uses upon announcement of his candidacy.
- A television station screening the film *Bedtime for Bonzo* during the 1966 California Gubernatorial race resulted in equal opportunities to actor/candidate Ronald Reagan's opponent, Edmund G. "Pat" Brown.

On-Air Employees

Special concern arises when an on-the-air employee decides to run for public office. All on-the-air appearances by station employees who have qualified as candidates become "uses" triggering equal opportunity responsibilities. This applies even when the appearance is on an otherwise exempt program, discussed in the next section, such as a newscaster or debate moderator.

When faced with an employee-candidate situation, one potential solution is to propose to each legally qualified opposing candidate a schedule of free spots or programs in lieu of the equal opportunities to which they would otherwise be entitled.

Opposing candidates, however, have no obligation to grant waivers of their full equal opportunity rights, and absent such a voluntary agreement a use would be triggered every time a candidate employee appears on the air. Thus, to avoid equal opportunity obligations, a station might be forced to require an employee-candidate to take a furlough from on-the-air activities for the duration of his or her campaign.

V. Exempt Programs

In 1959, the Communications Act was amended to exempt from the definition of a "use" appearances by legally qualified candidates on certain categories of programs. A candidate's appearance on an exempt program will not trigger "equal opportunity" rights by his or her opponents.

The four categories of exempt programs are:

- *bona fide* [*i.e.,* genuine] newscasts,
- *bona fide* news interviews,
- *bona fide* news documentaries, and
- on-the-spot coverage of *bona fide* news events.

The theory behind these exemptions is that the public benefit from political news and informational coverage is so great as to outweigh any risk of favoritism through a slight disparity of exposure. Blatant favoritism on an otherwise exempt program, of course, would defeat the purpose of the exemptions and the requirement that the airing reflects the station's good faith judgment as to news-worthiness.

Bona Fide Newscasts and News Interviews

A *bona fide* newscast may be either a regularly scheduled newscast or a special newscast precipitated by a particular and sudden news event. In either case, the program is exempt if it involves a licensee's genuine effort to focus upon a newsworthy event, rather than an effort to advance a candidacy. An appearance by a legally qualified candidate in the course of a news program is not a use. There is an exception, though – when a candidate who is a station employee appears on-air as a newscaster, narrator, reporter or other talent in one of the other exempt categories of programs, the appearance is not exempt and does constitute a use.

In determining whether a newscast or a news interview program is *bona fide*, the Commission considers the following:

- whether it is regularly scheduled outside the election period;
- how long it has been broadcast;
- whether decisions on the format, content and participants are based upon the licensee's reasonable, good faith journalistic judgment rather than on an intention to advance the candidacy of a particular person;
- whether the selection of persons to be interviewed and topics to be discussed is based on their newsworthiness;
- whether the normal format of the program is followed on the occasion in question; and
- whether the licensee's news coverage as a whole manifests any substantial indication of having given favoritism to a particular candidacy.

To illustrate, the Commission has ruled the following broadcasts to fall outside the newscast/news interviewexceptions:

- A governor's interview program in which his staff selected questions to

which answers were pre-recorded and subject to editing prior to broadcast, because the broadcaster did not fully control the program content.

- A one-time program with an incumbent Congressman concerning his experiences in office, since the station had no regularly scheduled interview program, and did not demonstrate that it routinely ran special interview programs of this type.

- A regularly scheduled segment of a newscast featuring an interview of an incumbent district supervisor, because the moderator often failed to exercise sufficient control and allowed the supervisor to dominate the program and determine its overall direction.

- The use of material during a newscast which had been supplied to the station by a candidate, since the format and content of the segment was not sufficiently within the exclusive control of the licensee.

Individual segments of a variety or magazine-type show can qualify as exempt interviews even though the show as a whole might not. The Commission has tended to uphold a licensee's judgment as to whether a program segment that satisfies the traditional criteria is a "*bona fide* news interview." Programs such as "Larry King" and even "Howard Stern," even though primarily oriented toward entertainment and variety rather than current issues and events, have qualified under the exemptions with respect to individual news interview segments that feature political candidates. The Commission has also found that appearances by legally qualified candidates on segments of shows with "specialty" formats such as "Entertainment Tonight," as well as shows with religious formats, can qualify as exempt under the *bona fide* news interview exemption. Call-in programs and shows with live studio audience participants will also generally qualify if the producer prepares audience questioners beforehand as to topics considered to be of primary newsworthiness and the host cuts off or rephrases noncompliant questions.

News interview programs for which the Commission had previously issued a declaratory ruling as exempt may be presumed to continue to meet FCC requirements, but licensees are responsible for ensuring that the exemption standards are met and that each individual program is aired in the exercise of the licensee's good-faith news judgment.

News Documentaries

The third exempt program category is the appearance of a candidate on a news documentary. The Commission considers a documentary to be a program that develops the background chronology leading to an event in order to place it in historical context. Most documentaries consist of non-fictionalized depictions of past events. The appearance of a candidate on such a program must be incidental to the presentation of the subject covered by the documentary and the program must in no way be designed to aid or impede his or her candidacy. Therefore, a program consisting primarily of a studio discussion of a current event, or which deals predominately with a particular candidate or candidates of a particular party probably would not qualify as a *bona fide* news documentary and would trigger an equal opportunities obligation for all legally qualified opponents.

On-the-Spot Coverage of Bona Fide News Events

Determining what constitutes a "*bona fide* news event" is not always easy. For instance, the Commission has held that the appearance of a candidate during World Series pre-game ceremonies to present an award to former baseball player Jackie

Robinson was a *bona fide* news event. On the other hand, a special pre-recorded message by the President inaugurating an annual United Way charity drive was deemed not exempt.

Generally, though, the same considerations would apply here as apply to *bona fide* newscasts and news interviews. The key, if one indeed exists, is whether coverage of the event is prompted primarily by a licensee's independent journalistic judgment that the event itself is newsworthy, regardless of participation of any political candidate.

Candidate news conferences generally are considered newsworthy. The fact that a portion of a news conference may be devoted to a self-serving political speech by the candidate does not affect its status, so long as the broadcaster had no reason to doubt the newsworthiness of an announced press conference beforehand.

The *bona fide* news event exemption specifically includes political conventions and incidental activities, such as acceptance speeches.

Debates

Candidate debates also qualify as on-the-spot coverage of a *bona fide* news event when the debate or its coverage was motivated by the licensee's determination that it would be a newsworthy event, rather than for the contrived purpose of giving political advantage to the participants. Moreover, a key determinant is that the debate be adversarial in nature and permit spontaneous interaction among the participating candidates.

The Commission formerly imposed restrictions regarding who could sponsor a debate, the selection of candidates, the arranging of their appearances and the overall production of the debate. These restrictions have been removed, and a broadcaster and even candidates themselves (or their committees) may sponsor a debate directly, provided, however, that no candidate is in a position to control the content, format or production.

To qualify for the exemption, a debate (or any other exempt category of program, for that matter) need not include all legally qualified candidates for a given office. Courts have held that minor candidates have other means of communicating with the electorate.

Delayed Broadcast or Editing

A delayed broadcast or editing of any news event (including debates) remains exempt from equal opportunity obligations if the event remains newsworthy and if the delayed and/or edited report is intended in good faith by the broadcaster to better inform the public by maximizing audience potential and is not intended to favor or disfavor any candidate. The decision is made on a case-by-case basis. In an extreme instance, the Commission has permitted a delay of five weeks between a news event and its broadcast.

VI. Requests for Equal Opportunities

A right to equal opportunities does not arise automatically, but only upon proper request. There is no required form for a proper request. However, since equal opportunity rights are personal to an individual candidate, the request must be made by a candidate or by his or her authorized representative and not by a political party or special interest group. All equal opportunity requests must be for a "use" by the candidate.

Opposing Candidates

Rights to equal opportunities vest only in legally qualified opposing candidates. In order for candidates to be "opposing

candidates" the same elective office must be involved. Prior to a nominating convention or a primary election, the opposing candidate would normally be from the same party, unless some type of coalition party is involved. Thus, a Republican seeking election in a Republican primary would not be an opposing candidate to a Democrat seeking election in a Democratic primary, but only to another candidate in the Republican primary. If a candidate is running unopposed in his or her party's primary, then there would be no opposing candidate entitled to equal opportunities. Upon nomination, of course, equal opportunities would then accrue in favor of an opposing party's nominee for the same public office.

Seven Day Rule

The most frequent complexity that generally arises with respect to requests for equal opportunities is the "seven day rule". A request for equal opportunities must be made within seven days of an opposing candidate's prior use. Thus, if A "uses" a broadcast facility on August 5, 10, 15, 20 and 25, B's request for equal opportunities on August 26 will only cover A's uses of August 20 and 25; B lost his right to request equal opportunities to A's first three uses by waiting more than seven days after they had occurred.

Two fine points:

First, the seven day rule applies only to the request for equal opportunities and not to the date selected for the reply broadcast. Thus, in the above example, B's request can be for equal opportunity uses in late September, so long as the request itself is made within seven days of A's uses.

Second, a request cannot be based upon another candidate's equal opportunity. Where more than one prior user is involved, the request must be made within seven days of the *first* prior use giving rise to equal opportunities. Assume, for example, that A makes a use on August 1, and B requests an equal opportunity on August 6 to be broadcast on August 15. Can C, having learned on August 16 of B's August 15 broadcast, request an equal opportunity? No, because the first use which triggered the entire chain of equal opportunities was A's use of August 1, and C's request was due no later than seven days after that. (B's use was an equal opportunity, upon which a further equal opportunity cannot be based.)

Notice

A station is under no obligation to advise a candidate that time has been made available to an opposing candidate - even when a use occurs toward the very end of a campaign. However, upon inquiry from a legally-qualified candidate, the station must provide the candidate with the facts relative to opposing candidates' requests, including the time sold and the changes made. This may be done by showing the candidate (or his or her representative) the station's political file, discussed in section XII.

Prior Requests for Expected Uses

Requests made *before* an opponent's use must be honored only if directed to a specific future use known at the time of the request. Thus, if A announces on August 1 that he will speak on August 15, B can request equal opportunities at any time between August 1 and 22 (this is, between the date of announcement of the use and seven days after the use). Further, when A will use a station according to a fixed and continuing pattern (such as a spot in the 7:00 p.m. news every Monday), then a single request from B for equal opportunities will apply not only to A's uses during the preceding seven days but for all of A's subsequent scheduled uses as well under the same "buy."

VII. Equal Opportunities

What it Means

Equal opportunities means that a licensee must treat all legally qualified candidates for the same office alike. It may make no discrimination in charges, practices, regulations, facilities or services rendered among legally qualified candidates for a particular office. This applies to the availability of broadcast time, the use of production facilities, the extension of credit, and the application of technical requirements.

Equal opportunity does not mean an identical segment of broadcast time. When an opposing candidate requests an equal opportunity, the licensee must consider the daypart concerned, the length of the time segment, and the desirability of the particular broadcast time (including adjacency to popular programs). The station is not required to afford an opposing candidate an opportunity to appear on the same program, or even at the same time of day or the same day of the week, as long as the time segments offered are reasonably comparable.

The mechanics of working out equal opportunities is a matter normally left to the licensee and the candidates involved, within the framework of the general principles described above. A summary of some illustrative rulings may provide guidance in this area.

The Commission has found the following practices to comply with its equal opportunity rules:

- Permitting only two candidates to appear on a single hour broadcast and giving the third candidate a half hour for his equal opportunity.
- Refusal to grant equal opportunity use in response to a "make good" program necessitated by serious technical problems (but only if it is the station's policy to refuse make goods to commercial advertisers under comparable circumstances).

On the other hand, the Commission has found the following practices to violate the spirit of equal opportunities:

- Scheduling of the initial use and equal opportunity in time periods having unequal audience potential.
- Letting one candidate preview his opponent's unaired message before recording his own.
- Forcing one candidate to submit a script in advance.
- Requiring one candidate to prepay but allowing another to be billed (unless the licensee has a valid economic justification for the disparate treatment, based upon the candidates' past credit histories).
- Failure to enforce collection against one candidate.
- Selling so much choice time to one candidate that others could not obtain comparable exposure.
- Charging unequal rates for the use of production facilities.
- Adding a disclaimer tag to the spots run by only one candidate for a given office.

There is one broad recognized exception to equal opportunities – "last-minute uses." It is assumed that exposures become increasingly valuable as an election approaches. While no absolute rules or formulas have evolved, a licensee may provide less than numerically comparable opportunities shortly before a primary or general election. Thus, if A launches his

campaign with a saturation buy of 100 spots from August 1-3 and B requests equal opportunities on August 7, a licensee may properly refuse B's demand to use all of his equal opportunities in early November. On the other hand, if the licensee were to honor B's demand, then it might be justified in allowing A to buy a few further spots in early November to offset B's more favorable placement without triggering any further equal opportunities for B.

The Former "Zapple Doctrine"

This former exception is named after the case brought by Nick Zapple, then Chief Counsel for the Senate Communications Subcommittee. This exception is also referred to as the *quasi-equal opportunity* principle. As we have observed, equal opportunities apply only to requests by candidates or their authorized campaign committees or representatives. But the Commission recognized that a political imbalance would occur were only the supporters of one competing candidate to buy or obtain time. Thus, beginning in 1970, the Zapple doctrine required that where A's supporters had bought time, then legally qualified opponent B's supporters (but not B himself) had to be given an opportunity to buy comparable time. Similarly, a gift of free time to A's supporters was be countered with a gift of comparable free time to B's supporters upon request. The Zapple doctrine applied only to supporters of candidates with substantial support (generally meaning the nominees of major political parties). Further, it did not require the same degree of equivalence that is necessary for equal opportunities, but rather a roughly comparable opportunity.

Often considered an adjunct of the fairness doctrine which is no longer enforced (see section XIV), Commission staff kept the Zapple doctrine in place in order to avoid circumvention of the equal opportunity policies through an expedient of having supporters act in lieu of the candidates themselves. However, in May 2014 the FCC finally ruled that the Zapple doctrine was no longer in effect. As a result, it is now clear that mere supporters of a candidate have no right to claim access or opportunities to respond to opponents or their supporters.

Two miscellaneous final points:

Production Facilities

Equal opportunities apply here, too. If anything more than the bare necessities for a broadcast are made available to one candidate, then they must be made available to all opposing candidates at identical rates and terms.

Networks

A network use will trigger equal opportunity rights on each affiliate that carried the program or spot. Thus, if the network itself does not provide an equal opportunity upon proper request, it is the obligation of each affiliate to which a timely demand has been presented to honor the request.

VIII. Lowest Unit Charges

Without question, the most difficult and contentious area of the political broadcasting rules is the matter of determining the correct charge for political time. Section 315(b) of the Communications Act provides:

The charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign shall not exceed:

- during the forty-five days preceding the date of a primary or primary runoff election and during the sixty days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge

of the station for the same class and amount of time for the same time period; and

- at any other time, the charges made for comparable use of such station by other users thereof.

Charges Outside the Political Window – Comparable Rates

The second part of Section 315(b) generally poses few problems. Outside the 45 and 60 day periods preceding primary and general elections, each station is obligated to charge a political candidate no more than what it would charge a commercial advertiser for comparable time. That is, political advertisers must not be charged more than anyone else for the same frequency, class, and amount of time in the same period. A few cautions:

- If a station has both national and local rates, the latter would apply to candidates who seek to appeal to residents of the same general area as advertisers who qualify for the local rate.

- The "comparable use" rates are upper limits, and a station is free to charge less if it wishes. However, a discount rate given to one candidate must be extended to all of his or her opponents.

- All opposing candidates must be given the same rate. Thus, if a station raises its commercial rates after A buys a spot package, his opponent B is entitled to the same rate given to A. Conversely, if a station lowers its commercial rates after A buys a spot package, it would be obligated to sell spots to B at the new low rate and issue a refund to A for the difference.

- Run-of-Schedule ("ROS") or preemptible political spots must be scheduled in the same manner as commercial ROS's or preemptibles. If A's ROS spots happen to all run in prime time (through no manipulation or other favoritism by the station), then B would still assume the risk that his would not if he, too, bought an ROS package; to be assured of prime time exposure, B would have to buy fixed prime time spots (and pay the higher rate).

In determining comparable charges, the rates actually charged to commercial advertisers must be used, even if they are discounted from the station's rate guide.

Charges Inside the Political Window – Lowest Unit Rates

The lowest unit charge rules take effect during the 45 and 60 day periods preceding primary and general elections when most political advertising is purchased. These rules are complex and subject to varying interpretations, not all of which are entirely clear. The basic point to remember is this - the political advertiser must be treated no worse than a station's "most favored advertiser" without regard to the quantity of advertising purchased. Thus, even though the political advertiser may be buying only a few spots over a relatively short period of time, the candidate must be treated as though he or she had been the station's best advertiser to whom quantity discounts may have been provided.

Please note that in order to qualify for lowest unit rates, a Federal candidate must provide the broadcaster with a written certification that the candidate will comply with the notice requirements outlined in Section XI. That certification must be provided at the time a use containing a direct reference to another candidate for the same office is purchased.

Classes of Time

In the past, the Commission recognized limited classifications of broadcast time. As selling practices in the industry continue to evolve, the Commission permits stations to have numerous classifications, so long as the differences between them are genuine and are clearly defined.

First, some definitions as the Commission has adopted them:

- Fixed or fixed position – a spot that will be guaranteed to run on a particular date at a specified time.

- Rotation – a spot which is to run within a specified portion of the broadcast day.

- Run-of-schedule – a preemptible spot that may be scheduled at any time at the discretion of the station and may be preempted without prior notice to the advertiser.

- Non-preemptible – a spot that is not subject to preemption during any particular daypart, program or time period. In contrast to a fixed or fixed position spot, a non-preemptible spot may run any time during the designated program, daypart or time period.

- Preemptible with notice – a spot that may be preempted only after notice is provided to the advertiser by a specific time, for example one week before airing. Frequently, the advertiser will be given the opportunity to pay a higher rate in order to avoid preemption.

Previously the Commission had treated all classes of immediately preemptible time as the same. It now recognizes that many stations use a "yield maximization" system or "grid card" and that treating all such classes of time the same is not what Congress envisioned when it enacted Section 315 of the Communications Act. The Commission also recognizes that commercial advertisers may be willing to take a "significant prospective risk of non-clearance" and accordingly pay less, a risk that a political advertiser might not be so willing to accept.

The Commission will permit stations to establish and define their own reasonable classes of immediately preemptible time. These separate classifications, however, may not be based solely on price or the identity of the advertiser. There must be some demonstrable benefit to the advertiser as well as a different obligation upon the station in each classification of time such as varying levels of preemption protection, scheduling flexibility or make good benefits. There can only be a single class of preemptible time, however, where a station sells by auction so that any spot can be preempted by an advertiser who offers a higher price. By way of contrast, a station may establish separate classes of immediately preemptible time if it discloses a specific price (or limited price ranges) as well as the estimated probability that a spot at each price level will run. Each classification of time must be disclosed to all candidates. The Commission, concerned that there might be some abuse, permits candidates to file complaints challenging classifications viewed as manipulative or discriminatory.

The same policy will also apply to time that is preemptible with notice. Stations may establish separate classes of time with varying periods of notice (one day, two days, one week, one month, etc.). These classifications must also be clearly defined, fully disclosed and made available to all candidates.

A station generally may not steer a candidate to non-preemptible time by stating that preemptible time is sold out. Preemptible time can be sold out only if its preemptible spots may be bumped by spots

purchased at a fixed rate or by a higher class of immediately preemptible time. Preemptible time may also be considered sold out if, as a matter of normal business practice, the station limits the number of spots sold in each class of preemptible time. These practices must be followed throughout the year and cannot be restricted to political periods, unless changes are made for *bona fide* business purposes.

Special Classes of Political Time

The Commission recognizes that fixed position or non-preemptible spots are more suited to the needs of political advertisers. A licensee may create a special class of non-preemptible spots available only to candidates under either of two conditions.

First, the special class must be discounted so that it is no more expensive than preemptible time sold to commercial advertisers which bears a genuine risk of preemption. Thus, candidates cannot be charged a premium for non-preemptible time if, in fact, equivalent or lower-priced preemptible spots are virtually certain to run. Note, though, that a class of time is not considered to be specially for candidates as long as it is genuinely offered, and legitimately available, to commercial advertisers (even if they have not purchased it).

Second, news adjacencies can be considered a separate class of time for politicians only when the spots are guaranteed to run adjacent to the news; these are especially desirable when candidates have been banned from access to the news programming itself. If candidates are banned from access to the news, then the lowest unit rate for this class cannot exceed the lowest unit rate for commercial spots within the news. However, if candidates could have purchased spots within the news, then adjacencies may be priced consistent with the lowest unit price of commercial spots in the same adjacent time slot, even if it reflects a premium over the price of the news spots themselves. Be careful to distinguish this type of spot, though, from one which is sold as part of a broader rotation but which happens to run adjacent to the news programming; the lowest unit rate for such a spot would be that of the rotation under which it was sold.

Spots in Specific Programs

The Commission continues to recognize that prime time programs (primarily on television) will differ in value on a program-by-program basis. If the station's normal sales practices treat individual programs in this fashion, the Commission will recognize each such program as a separate class of time for purposes of calculating the lowest unit charge.

Political Discounts

While stations may create a special class of time for political advertisers only under special circumstances, there is nothing in the rules to prevent stations from creating a discount available only to political advertisers. Thus, a station may offer non-preemptible time to political advertisers at a special discounted rate not available to other advertisers. This may be an efficient way to avoid many of the complications in calculating the lowest unit charge when a station has multiple levels of preemptible time. It will avoid a later accusation that the candidate could have purchased preemptible time and obtained the practical benefit of non-preemptible time. For example, a station may offer non-preemptible time to political advertisers at a rate less than that offered to other advertisers. This rate must be lower than the highest level of preemptible time that is actually subject to preemption. This will avoid the possibility that candidates will be steered toward buying non-preemptible time when they could have purchased preemptible time and had a significant chance their spot would have aired.

Assume that a station has three levels of preemptible time. Level A (the

highest-priced time) historically has a 90 percent chance of airing. Level B has a 70 percent chance of airing and Level C has a 50 percent chance of airing. That station could offer non-preemptible time to a candidate at a price between level A and Level B preemptible time; that is, if non-preemptible time is offered to candidates at a discount, the price must be lower than the next highest level of preemptible time. A similar result would be achieved by pricing this special non-preemptible political time at the "average unit rate" for the particular class of preemptible time. However, there must be more expensive preemptible time that is actually subject to preemption. In the above example, if in practice Level A time were not preempted, then time purchased at the special discounted rate for non-preemptible time would be subject to a rebate lower than Level B, the level of the lowest unit charge for spots actually subject to preemption.

Rebates

If rebates are required, they must be calculated on a periodic basis and made promptly - and, to the extent practical, within a useful time frame. The Commission expects stations to make rebates on an even more expeditious basis as election day draws closer.

Rotations

Many stations use various forms of rotators to sell preemptible time. The Commission recognizes distinctly different rotations as separate periods of time for calculating the lowest unit charge even if rotators overlap. In analyzing the reasonableness of a station's determination, the Commission will consider whether two ostensibly different rotations are consistent with the station's normal selling practices and are based upon objective criteria such as varying audience size or demographics which warrant differences in their prices. It is essential that a station disclose to candidates either all of its rotations or a complete summary of its procedures for identifying all possible rotations that can be purchased.

The Commission also recognizes that prices may vary from week to week and even day to day. Stations may calculate the lowest unit charge solely on the basis of spots that ran during the relevant 24-hour period, even if some of the spots were the result of contracts that are in effect over the course of several weekly rotations. Assume that a commercial advertiser has bought a 13-week rotation and at the time of the purchase the price per spot was $200. During the course of that rotation, the station increases its rates to other commercial advertisers to $250. The political advertiser must pay no more than $200 even though commercial advertisers may be charged more, if one of those $200 13-week rotation ads was left to run in the 24-hour period surrounding the candidate's ad.

Package Plans, Volume Discounts and Bonus Spots

The Commission does not consider package plans or bonus spots to be a separate classification of time. All rates and bonuses offered to commercial advertisers in packages must be included in lowest unit charge calculations. This includes all packages and bonus spots, whether individually negotiated or available to every advertiser. When the package is simply a volume discount within a single class of spot, then the unit rate for each spot within the package is the package price divided by the number of spots. When a package contains spots in more than one class or time period, though, a licensee may allocate the package price among the spots in each class or time period. Otherwise, the rotation may establish a new lowest unit rate for other classes of time within the rotation.

Determining the value of bonus spots or spots within a package can be illustrated as follows. If a radio station sells five morning drive spots for $1000 and throws in another five morning drive spots at no

charge, the average cost of the spots for lowest unit charge purposes would be $100 (that is, the $1000 total price divided by the ten total morning drive spots). If, though, the station were to sell the five morning drive spots for $1000 and then throw in another five ROS spots at no charge, the station could value the ROS spots at the lowest unit charge for that class of time (for example, $10 each), resulting in a lowest unit rate for the drive time spots of $190.

Thus, the station may, and should, allocate an ROS package over its various classes of time in which the spot will run and assign different values to them. The Commission also recognizes that the spots in a package sold over a long period of time will have different values in different seasons, and will allow the allocation of those spots over time. Thus a 26-week package of afternoon drive radio spots, sold in March, may be assigned different values in April, July and September.

The prices assigned to each spot in the package must be documented, either on the face of the contract or invoice or on a separate internal memorandum. If a separate memorandum is used, it must be prepared simultaneously with the formation of the contract and should be signed and dated by an authorized representative of the station. Moreover, if the pertinent rates for lowest unit charge purposes are included on the separate document but are different from the value reflected in the contract and/or invoice (which may reflect only an average rate or total cost), then the information on the separate document must either be included in the public file or otherwise disclosed to candidates seeking to purchase time.

Network Compensation

Compensation received by individual broadcast station affiliates of a network for advertising sales generated by a network need not be included in the affiliate's lowest unit charge calculations, provided:

- No commercial advertiser, even the "most favored," could go directly to the station and receive a rate comparable to that which is offered to the network.

- Each station charges the network a rate which would not be available to that station's most favored commercial advertiser for time sold on that station alone.

Any candidate who chooses to buy time from the network must be given the network's LUC for the various kinds of time it sells to commercial advertisers.

Non-Cash Incentives

Non-cash merchandising and promotional incentives which have minimal value (such as coffee mugs) or which might imply a relationship between the station and an advertiser (such as a bumper sticker) need not be offered to candidates. A more substantial incentive (such as a vacation) would have to be offered to any political advertiser who became eligible by purchasing the required amount of advertising.

Billboards and Promotional Announcements

Billboards (*i.e.,* brief promotional announcements preceding or following a sponsored program) and announcements of upcoming programming need not be offered to political advertisers, nor must their value be factored into lowest unit rate calculations for the class and time period in which they appear. The Commission's exemption of these types of bonuses is premised upon the impracticality of including the required political sponsorship identification in such mentions, which are generally quite brief.

PSAs

A special consideration applies to "paid" or "sponsored" public service announcements ("PSAs") (that is, PSAs

promoting a non-profit organization or activity that are paid for, at least in part, by a commercial advertiser and are identified as such). Examples would be a United Way solicitation followed by mention that this reminder was brought to you as a community service by a local auto dealer or a responsible drinking promotional spot purchased by a brand of beer. Sponsored PSAs sold by themselves would be counted the same as any other paid advertisement for purposes of calculating lowest unit rates. If a station offers sponsored PSAs to commercial advertisers as a bonus or as part of a package, then the value of these paid PSAs must be calculated as part of the lowest unit charge in the same manner as package plans by assigning a reasonable value to the bonus PSA spots. Thus, if the paid PSA is of the same class and time period as a commercial spot, then the "package price" must be prorated among commercial and paid PSA spots in order to arrive at the lowest unit rate. When the paid PSA is run in a different class or time period, then the Commission will generally defer to the station's reasonable good faith judgment in allocating the price of a package among the PSAs and spots. Be careful, though, in assigning too low a value to the paid PSAs, as this could depress the lowest unit charge for the classes and time periods during which the PSAs were aired.

Advance Payment and Credit Policies

A station is required to extend credit only to those candidates or their advertising agencies that have a credit relationship established with the station. If there is no credit relationship, the station may require payment in advance from a candidate for an advertising schedule, but no earlier than seven days before the first spot on the schedule is to run.

Period for Rate Comparisons

The Commission generally requires that lowest unit rates be calculated in comparison to commercial spots running in the 24-hour period surrounding the political spot in question. However, artificial manipulation of long-term schedules (that is, to eliminate low-priced spots from a seasonal or annual contract for the period near an election) may be disregarded.

Increases in Rates during the Election Period

Stations may increase rates during the 45 or 60 day political window, but only for a commercially valid reason, such as audience ratings, seasonal program changes or, if time is sold routinely in weekly rotations, on a weekly basis. A candidate who purchases time after a rate increase, however, is entitled to the lower rate paid by another advertiser who contracted for time before the rate increase and whose ad runs in the 24-hour period surrounding the political advertisement, so long as the spots are of the same class of time. Thus, if a long-term advertiser purchases time at a lower rate than that charged in the 24-hour period, due to a rate increase, the long-term lower rate must be used to calculate the lowest unit charges for the same class and amount of time for those times in which such spots are aired. The long-term advertiser in this instance is the "most favorable advertiser." Thus, the political advertiser must obtain the same benefit.

"Fire Sale" Rates

"Fire sales" during or near a political window could result in an artificially low lowest unit charge rate, and should be viewed as a dangerous practice. Before selling any spots at deeply discounted rates, a broadcaster should calculate the cost of the unsold inventory against the cost of rebating political advertisers down to the lowest unit charge established by the fire sale rate. In some instances, particularly where there is a heavy volume of political business on the air, it may be less expensive to retain the unsold spots in inventory than to sell them at fire sale rates and have to provide rebates to political advertisers.

Advertising Agency Discounts

Where a station, rather than the advertiser, normally pays a commission, the savings must be passed on to a candidate who deals directly with the station. Thus, advertising agency discounts must be passed through to a candidate who does not utilize an advertising agency, but rep commissions are not considered in calculating lowest unit charges.

Sold-Out Time

A broadcaster may consider a particular program or day part to be sold out so long as a candidate legally entitled to time is provided reasonable access to the station's overall schedule. A station may claim to be sold out of preemptible time only if its preemptible spots may be bumped by spots purchased at a fixed rate or by a higher class of immediately preemptible time. On the other hand, a station cannot claim that is sold out of preemptible time where all of its preemptible time is sold in an auction-like manner whereby advertisers can continue to preempt each other simply by paying an incrementally higher rate. Thus, a station may not steer a candidate to purchase higher priced time if it gives commercial advertisers the opportunity to clear merely by paying an increased rate.

Local and National Rates

There is no distinction between local and national rates for purposes of lowest unit charges. Thus, the lower rate controls the calculation of lowest unit charges.

Production Facilities, Web Site Advertising, Blogs

The lowest unit charge applies to purchases of broadcast time and does not apply to the use of a station's production facilities, website advertising, the mention or provision of blogs or other non-broadcast activities. The station is free to charge its standard commercial rates for any of these facilities, regardless of whether a candidate qualifies for lowest unit charges in the purchase of broadcast time. However, stations may not discriminate against political candidates *vis a vis* commercial advertisers. For example, if free production of spots is available to commercial advertisers, free production of spots must also be offered to political candidates. If a charge is made for a station website banner, the opposing candidate may not be charged a premium beyond the standard charge. Note from Section XI, below, that production required to add a missing legal element to a broadcast spot, such as a sponsorship tag, may be billed at standard rates.

Make Good Policies

A "make good" is a spot run without charge to compensate for a spot that had been scheduled but was not broadcast due to preemption or a technical problem. It can also represent compensation for failure to deliver guaranteed audience levels during a scheduled broadcast.

If a station sells preemptible time on a weekly rotation basis and a make good happens to run in a normally more expensive rotation period, then it will become the lowest unit rate for that time period. To illustrate, assume a candidate buys three 30-second, $100 spots to run between 6:00 p.m. and 7:00 p.m. sometime Monday through Friday in a given week. Assume further that a $75 commercial spot preempted from an earlier date happens to run at 6:50 p.m. that Friday. This will cause the $75 rate to become the lowest unit charge for any spot run during the 6-7 p.m. period of the entire week and the candidate would be entitled to a $25-per-spot refund. To avoid this problem, make goods should run within the same time slot as originally scheduled.

Special considerations apply to make goods which arise not because of technical failure, scheduling errors or preemption, but rather due to a short-fall in a promise of audience delivery. The problem here is that

pertinent audience information may not be ascertainable until after an election. In such cases, a station should either provide a prompt rebate or offer a make-good in connection with any subsequent general or special election in which the candidate may be running.

If a station's policy is to make good a spot preempted by a higher-paying advertiser, and if it is willing to run the make good spot within a specific time frame (*i.e.*, a holiday sale make good would be sure to run before the holiday or an event make good would have to run before the date of the event), then it must also ensure that make goods for political spots air before the election. On the other hand, if a station does not make good time-sensitive preempted commercial spots, there is no obligation to do so with respect to political ads. If that is the station policy, then candidates may prefer more expensive fixed-rate spots to assure the exposure they seek.

IX. The Disclosure

The Commission emphasizes that stations must fully disclose their selling practices to political advertisers out of concern that stations may steer naïve political advertisers toward premium-priced fixed or non-preemptible time when their needs would have been served by a lower-priced class of time.

Following the 1990 election, many candidates complained that they were not aware that they could have had their spots run without paying for non-preemptible time, even though they had the services of experienced advertising agencies and time buying services. (In their defense, stations complained that agencies and buyers deliberately bought unduly expensive ads in order to bolster their own compensation, which was a percentage of the total amount spent.) To reduce station liability and confusion about what disclosure is required, the Commission now requires that stations must disclose to political advertisers all discount privileges available to commercial advertisers. It is a good idea to attach the disclosure to any avail sheet provided to political advertisers. Additionally, rep firms should be advised that the disclosure must be attached to any avails it provides and must accompany any order it returns to the station.

The burden of disclosure is on the station, not the candidate. Licensees must *always* disclose their selling practices to political advertisers, not just during the 45-day period preceding primary or run-off elections and the 60-day period before the general election, but during the "comparable rate" periods as well. This disclosure requirement applies regardless of the complexity of a station's rate structure and even if it has no rate structure at all, but rather negotiates deals based on whatever price it can obtain.

It is essential that your disclosure forms accurately describe your stations' selling practices. It is further essential to err on the side of extensive disclosure. As a general principle, the disclosure must include all information a political advertiser might need to make a fully-informed purchasing decision. Full disclosure is your best defense against claims that a naïve advertiser was misled into spending more than was necessary to achieve his or her objectives.

The Commission has declined to adopt a model disclosure form, but has stated that the disclosure made to candidates must include at a minimum the following:

- A description and definition of each class of time available to commercial advertisers that is complete enough to permit candidates to identify and understand the specific attributes of each class of time.

- A complete description of the lowest unit charge and related privileges

(such as priorities against preemption and make goods prior to specific deadlines) for each class of time offered to commercial advertisers.

- A description of the station's practices with regard to selling preemptible time based on advertiser demand (including "current selling level" or "street rate") with the assurance that candidates will be able to purchase time at these demand-generated rates on the same basis as commercial advertisers.

- An approximation based on current experience of the likelihood of preemption of each class of preemptible time. This is designed to protect candidates from being steered to higher-priced fixed or non-preemptible time when there is an acceptable probability that a certain level of preemptible time would air. If a station has a practice of selling preemptible time to a high-volume advertiser with an understood assurance that the station will see to it that the spot will run, that same privilege must be accorded to the political advertiser even if the candidate is purchasing only a single spot.

- If the station has any sales practices based on audience delivery (such as no-charge bonus spots if the promised audience is not delivered), these practices must also be made known and made available to the candidate.

As the purpose of the disclosure is both to inform potential political advertisers and to protect the station against accusations of deceptive selling practices, the disclosure should be phrased in simple, non-technical language that is likely to be understood even by those with no prior experience in this area.

Once the initial disclosure is made to a candidate, it need not be repeated each time the candidate purchases additional time. However, the station remains obligated to update or modify all previous information as often as necessary to ensure its accuracy.

The Commission recognizes that there is no way to compel a candidate to heed the disclosure. For this reason, all disclosures should be in writing and attached to the contract. Non-federal candidates may be required to sign a written acknowledgement of receipt of the disclosure as a condition of initial access to a broadcast station. Equal opportunities, though, cannot be denied on the basis of a candidate's refusal to sign a receipt of the disclosure. Moreover, because of their right to station access, federal candidates cannot be required to sign a receipt of the disclosure. If a candidate or candidate's representative refuses to sign a receipt, a notation to that effect should be placed in the political file. A sample form for that purpose is included in Appendix B.

X. Censorship of Uses

Most political broadcast rules are complex, subject to interpretation, exceptions and qualifications. But if there is a rule in political broadcasting which is nearly absolute it is that a use cannot be censored in any way.

This principle is often put to the test by attorneys and other candidate representatives claiming that opponents' spots are false and demanding that they be pulled. But if the challenged material qualifies as a use, then the station has no obligation to investigate its accuracy and no choice but to run it as scheduled.

There are only two possible exceptions, although they rarely arise: the broadcast of obscenity, which is prohibited by a Federal criminal statute, and the broadcast

of a direct incitement to immediate lawless action. Both fall outside the Constitutional protection of free speech.

It remains unclear whether political advertising containing obscene material is to be free from censorship and has to be broadcast. In a memorandum to Congress, the Commission suggested that the criminal statute prohibiting obscene broadcasts overrides the statutory no-censorship provision. Although no formal decision has ever been rendered, the Commission staff has informally advised that a broadcaster may refuse to air a political broadcast that is genuinely obscene.

The same statute also bans the broadcast of indecent or profane material, but the constitutionality of these provisions has never been tested and is doubtful. Such material presents a threshold problem of determining whether it is indecent in the first place. That, in turn, requires that context be considered. FCC staff has suggested that candidates should be afforded great leeway in presenting their views on campaign issues and so political speech, even if highly distasteful or rude, might not qualify as indecent.

In 1992, there was a proliferation of television advertisements by candidates for federal office depicting abortions and aborted fetuses in graphic terms. These candidates invoked the "reasonable access" provision of Section 312(a)(7) of the Communications Act to demand that the spots air at times of their choosing. The spots put licensees who contended the advertisements were obscene or indecent in the awkward position of either violating the law against indecent and obscene broadcasts or the law requiring reasonable access for federal candidates.

A federal district court judge in Atlanta ruled that stations could restrict a federal candidate's graphic abortion advertisement to a "safe harbor" comprising the hours between midnight and 6 A.M. when children were less likely to be in the audience. The Commission then held that a licensee who made a reasonable, good faith judgment that a spot was indecent could restrict it to the "safe harbor" period. Subsequently, however, the Court of Appeals for the District of Columbia Circuit struck down the Commission's "safe harbor" for indecent programming. Even so, the Court did not disturb a broadcaster's right to precede an indecent political spot with a warning. However, one must be careful in deciding to precede such a spot with a disclaimer, as it could be considered prejudicial and preferential unless ads for all legally qualified candidates for the same office receive the same disclaimer.

Although this type of situation remains troubling (especially since the penalty for refusal to run a federal spot could extend to license revocation), no recent attempts have been made to air indecent material under the guise of a political use, and so perhaps the problem has subsided. Nonetheless, should it recur, then licensees will have to consider the risks of running, rejecting or attempting to channel the objectionable material.

So far, there have been no cases in which a broadcaster was exempted from airing a use that could constitute a direct incitement to immediate lawlessness. Indeed, the Commission has held that threats against the station do not warrant an exemption from the no-censorship provision.

Aside from these two exceptions, which are rarely encountered, censorship of a use is forbidden. Musical backgrounds that clash with a station's image, libelous remarks or even racial slurs may not be censored by a station during a use. To take an extreme example, if a legally qualified candidate buys time for a use, never once mentions his campaign, and proceeds to use the time to slander his creditors, the use must be permitted without licensee intervention.

Nor can a licensee engage in procedural censorship, such as requiring a

tape or script in advance (to screen for content) or attempting to limit the topics to be discussed. An advance tape or script may be requested, but only to check its qualification as a use, to verify that it contains proper sponsorship identification, and to measure its length. If a candidate refuses to supply advance material, he or she cannot be compelled to do so, but can simply be reminded of sponsorship and length requirements and the consequences for violation. Similarly, if a candidate wishes to appear live, the licensee may not inquire as to the proposed content beyond what is necessary to provide required facilities.

A licensee may add content-neutral audio and/or visual disclaimer tags to political spots. Acceptable disclaimers could identify the spot as a paid political advertisement or a statement that the views expressed do not represent those of the station; however, such tags must be added to all advertising broadcast on behalf of every candidate for the same office. A licensee may not add a disclaimer that in any way might be construed as an editorial comment.

In exchange for its inability to exercise any control over the content of a "use," a broadcaster is immune from liability for any libel or defamation contained in a use that it broadcasts. This federal protection preempts any state or local laws to the contrary. However, the immunity only extends to "uses." Broadcasts by supporters of a candidate or advocacy groups are not immune. The licensee can protect itself from liability through a requirement of prior approval of a script or tape of any material other than a use. In addition, a station may freely address issues raised by political advertising in its news and public affairs programming.

XI. Sponsorship Identification

The Communications Act and the Commission's rules require that any sponsored message identify who paid for it. The Federal Election Campaign Act goes further to require a statement as to whether a political message was authorized by any candidate. The 2002 Bipartisan Campaign Reform Act seeks to assign personal responsibility of the candidate or other sponsor. These requirements apply to all political messages and are not limited to "uses".

These requirements are:

- If a program or spot is both paid for and authorized by a candidate or his campaign committee, the announcement must identify the candidate and state that it is paid for or sponsored by (the name of the candidate or the legal name of the candidate's campaign committee).

- Federal candidates must read the required statement and must state that the candidate has approved the broadcast. Radio ads must name the office sought. The last four seconds of a television spot must consist either of an unobscured view of the candidate making the required statement or the candidate's voice accompanied by a clearly identifiable photographic or similar image of the candidate, together with a clearly readable printed text of the statement. The image must be at least 80% of screen height and the text must be in letters at least 4% of screen height and must reasonably contrast with the background.

- In addition to the foregoing, a further requirement applies to spots qualifying for the lowest unit rate that contain a direct reference to another federal candidate for the same office. Radio spots must identify the office sought. TV spots must state that the candidate's authorized committee paid for the broadcast. In addition, in order to qualify for lowest unit rates, a

Federal candidate must certify to a station that he or she will comply with all of these notice requirements.

- If a third party pays for the program, and it is authorized by the candidate or his committee, then the sponsorship portion of the announcement must read: "Paid for (or sponsored) by (name of third party) and authorized by (name of candidate or his committee)."

- If the program is paid for by a third party and not authorized by any candidate, then the announcement must identify the sponsor (by name, address and phone number or website) and state that the broadcast is not authorized by any candidate. In addition, any such broadcast concerning a federal candidate or soliciting contributions to influence federal elections must state: "_____is responsible for the content of this advertising;" with the blank to be filled in with the names of the payor and any connected organizations. A television spot must accompany the audio statement with the printed text of the statement for a period of at least four seconds using well-contrasted letters at least 4% of screen height.

Note that in all of the above announcements, the words "paid for by" or "sponsored by" are mandatory. Substitutions such as "brought to you by" or "made possible by" are not acceptable.

One further point: if a station donates time to a candidate, such time either can be identified as "provided by Station XXXX as a public service" or mention of sponsorship can be omitted. (The authorization portion of the tag would still be required, though.) Note that donations of time will trigger free equal opportunities upon request by opponents. If an opposing candidate claims such equal opportunities, then the only announcement required would be that the material is authorized by the candidate or his or her committee. Similar considerations apply if a candidate agrees to accept spots or program time in lieu of equal opportunities against a station employee who is a candidate.

Solicitation of Funds

If a program or spot is financed by a political committee and solicits political contributions, the following must be added: "A copy of our report is filed with the Federal Election Commission and is available for purchase from the Federal Election Commission, Washington, D.C."

Controversial Issues of Public Importance

Commission rules require that any matter that discusses a controversial issue of public importance (including most political material) and that is furnished to a station as an inducement for broadcast (whether or not any payment is made) must contain an announcement that it was furnished and by whom. This could include audio feeds and film clips supplied by a candidate for use in a newscast or other programming. However, Commission staff advises that if a station edits such material into a substantially different form or embeds a portion into its own program, then an announcement would not be required.

Recently, the issue has arisen in the context of "video news releases" (VNRs) furnished by advertisers but designed to look as though they are part of a regularly-scheduled news program. The Commission has launched an inquiry to determine whether these VNRs constitute a violation of its sponsorship identification rules. When material is furnished to a station and used in a program, an announcement should be made in the program as in the above three examples, but with the words "Furnished by" substituted for "Paid for by" or "Sponsored by."

Placement of the Sponsorship Identification

Regardless of which announcement applies, it must appear or be heard either at the beginning or at the end of any spot or other broadcast matter that does not exceed five minutes in length. If the length exceeds five minutes, then the required announcement must be given at both the beginning and the end of the program.

Licensee Responsibility

It is the responsibility of the broadcaster to determine that all sponsored political messages comply with the above requirements. A station may request, but cannot require, pre-airing submissions of political advertising. Remember – this is not for purposes of censorship, but only to verify length, technical compatibility and compliance with the sponsorship identification rule. (See Section X.)

If a spot does not comply, the broadcaster must add or substitute the required announcement. If a station routinely includes the time required for sponsorship identification in computing the length of commercial announcements, then the same practice can be applied with respect to the tag added to political announcements. If there are problems regarding the sponsorship identification, the station should attempt to work them out with the candidate. If these problems cannot be resolved, the station is permitted to insert its own sponsorship identification in compliance with the Commission's rules, even if it means covering up part of the candidate's aural (or visual) message. The station is not required to provide additional time for the sponsorship identification free of charge. The broadcaster may choose whatever means it decides are appropriate to meet its responsibility for proper sponsorship identification.

Recognizing that there may be instances where there may not be sufficient time to prescreen the political sponsorship ID (especially for a use), the Commission allows a station to run a spot the first time without risking a violation. Once aired, however, the station will be required to add, at the candidate's expense for the costs of production, the required identification for future broadcasts if the spot is not in compliance.

The 2002 Campaign Reform Act serves to raise a troubling but as-yet unresolved question as to responsibility when a broadcaster becomes aware of a federal candidate's failure to adhere to the specific on-air notice requirements, including an accurate certification that he or she intends to strictly comply. The Act provides that such a candidate forfeits the right to lowest unit charges for all broadcast advertising on all stations during the entire campaign season after only a single infraction.

Since 2002, several federal candidates indeed have made mistakes that were pointed out by their opponents, who demanded that the offender be charged commercial rates and suggested that any station continuing to offer lowest unit rates would be making illegal campaign contributions. Such matters potentially fall under the jurisdiction of both the FCC and the Federal Election Commission (FEC), which has primary jurisdiction over campaign financing. So far, each agency has deferred to the other. FCC staff tends to support licensees' good-faith determination whether to continue to honor lowest unit rates in such situations (provided, of course, that the result does not discriminate among candidates). The FEC, in turn, has declined to give advance guidance and awaits an actual case in which to consider assessing liability, although it has suggested that "substantial compliance," if not literal compliance, with the disclosure requirements might suffice. Until reliable guidance is made available, broadcasters remain vulnerable.

Hidden Sponsorship

A question will occasionally arise as to whether a broadcaster has a duty to investigate charges of "hidden sponsorship," that is, where there is some indication that an unidentified party is really responsible for an ad. The emerging standard appears to be that the duty arises only when the broadcaster is presented with circumstances that raise a suspicion in the mind of a reasonable person. Actual knowledge of the true sponsor would require an appropriate identifying announcement. But if confronted with conflicting allegations of sponsorship, a broadcaster may rely upon the nominal sponsor's representation that it is, in fact, the true sponsor, absent circumstances so strong as to outweigh the value of such an assurance. In any event, no arduous investigation is required.

State Requirements

Occasionally, a state may impose more stringent sponsorship regulations. Texas, for example, requires that all political tags include the address of the sponsor as well as a statement that the spot is a paid political announcement. To the extent that such state requirements supplement rather than conflict with FCC requirements, they are valid.

XII. Political File Contents

Broadcasters must keep a political file containing information with respect to all requests to purchase political broadcast time, whether or not made on behalf of a legally qualified candidate. Covered are all messages made by or on behalf of a legally qualified candidate for public office or relating to any political matter of national importance. A message of national importance is presumed to exist where it relates to:

- a legally qualified candidate;
- any election to Federal office; or
- a national legislative issue of public importance.

Note that the latter could include any of a multitude of issues, including state or even local issues. For example, a discussion about California air pollution laws being proposed for autos might impact auto manufacturing generally and thereby trigger national pollution control issues, or national employment issues were it to shut down a factory, or international trade issues were it to raise manufacturing costs that would make American goods uncompetitive with imports.

The political public file must contain information regarding:

- whether the request to purchase broadcast time is accepted or rejected by the licensee;
- the rate charged for the broadcast time;
- the date and time on which the communication is aired;
- the class of time that is purchased;
- The name of the candidate, office, election or issue to which the communication refers (as applicable);
- If a request is made by, or on behalf of, a candidate, then the name of the candidate, the authorized committee of the candidate and the treasurer of such committee; and
- the name of the person purchasing the time, the name, address and phone number of a contact person for such purchaser, and a list of the chief executive officers or members of the executive committee or board of directors of such purchaser.

It must be reemphasized: all requests for political broadcast time – including equal opportunities – must be reduced to writing and kept in the political file. However, it is essential to redact irrelevant private information from materials made public, such as account numbers if checks are used to document payment amounts.

Sample standard written agreement forms for political advertisers are found in Appendix B to this manual. Please note, though, that this rule applies only to specific requests for time and not to mere inquiries as to rates or for general information.

XIII. Access to the Political File

The political file must be maintained at the same location as the station's local public inspection file. Formerly that location was most often at the station's main studio and was required to be available for inspection during all normal business hours, plus at other times (especially close to an election) as necessary to apprise opponents of potential equal opportunities.

FCC Online Public File

All television and radio stations are now required to post their political files (as well as the rest of their local public inspection files) online. As of the effective date for each service, only new materials had to be uploaded to the FCC online public file.

Due to its highly time-sensitive nature, unlike the rest of the FCC hosted station public file, stations are required to maintain a local backup of the political file and be able to make it available to candidates and the public in the event the Commission's file system becomes unavailable. Prior appointments cannot be required. Those seeking to inspect the file may be asked for personal identification (name and address only) but no other information, including organizational affiliation or the purpose of the request. While stations should be as welcoming as possible, supervision by station staff to ensure the integrity of the file is appropriate. Abusive behavior by a party seeking inspection may justify denial of further access.

If the local backup file is kept in electronic form, a computer terminal must be available to afford access to the contents of the file so that candidates and their representatives can obtain necessary information without delay.

Unlike requests for other items in a station's public file, telephonic requests for information in the political file need not be honored, although it is essential that each station adopt and apply a uniform policy for all such requests, so as to be sure that no favoritism is displayed. If it maintains a website, the caller may be referred to the online FCC public file by directing their attention to its posting on the station's website home page.

The Commission has always emphasized that the file must be kept "neat and accurate" so that "anyone viewing the contents of this file will be able readily to discern what the station has sold or otherwise provided to each and every candidate." Therefore, it is important that information is uploaded to the correct folder in the station's online public file. To satisfy the requirement of maintaining in the political file a record of the spots that actually run and the time the spots run, the licensee may include in the file a notation that the station will provide prompt assistance, including access to its program logs, to candidates requesting this information.

Retention Period

The political file must be maintained for two years after an election. After this time period the file may be discarded, unless there is a claim against the licensee or an investigation by the Commission for which material in the political file is relevant. Local

political public file materials from before the online requirement date could be retained in a local public file for the required retention period, but could also be voluntarily uploaded as an alternative.

Updates

The political log should be updated on a daily basis and made available as part of the station's public inspection file. A primary purpose of the political file is to permit opposing candidates or their representatives to determine whether they are entitled to equal opportunities triggered by political broadcasts of their opponents.

In lieu of keeping a separate political log, a file of Agreement Forms may be kept. Note, however, that *all* forms requesting time must be placed in the file - even if the request is refused. If a "form file" is used, it must be supplemented with a log of gifts of free time. Rebate information also must be included in the political file.

XIV. The Fairness Doctrine

The Fairness Doctrine is no longer in effect, either as a general matter or as it was applied to ballot issues in elections.

In 1987 the Commission repealed the Fairness Doctrine, which had imposed upon broadcasters the obligations to provide coverage of important issues of public interest in their communities of license, and to assure a reasonable opportunity for the presentation of contrasting viewpoints on such issues. At that time, the Commission did not address the issue of whether the Fairness Doctrine remained intact for elections.

A corollary to the Fairness Doctrine, commonly known as the *Cullman* Doctrine, had required stations to provide free time to Side A on a ballot issue where Side B had purchased advertising time and Side A could not afford to purchase time. When it repealed the Fairness Doctrine, the Commission left open the question of whether it would continue to require stations to provide free time in response to paid time on ballot issues.

In January, 1992, the Commission clarified its position, holding that the Fairness Doctrine does not apply to ballot issues. Thus, it now appears that the *Cullman* Doctrine is of no further effect. However, the "Zapple Doctrine" (which applies to candidates' supporters - see section VII) remains in effect.

XV. Political Editorials

In November 2000 the FCC eliminated its rules concerning political editorials and personal attacks, as required by the US Court of Appeals for the District of Columbia Circuit following a successful challenge by the Radio-Television News Directors Association. However, while the Court ruled that the policies could not be sustained on their existing rationales, it did not reject the substance of the policies; rather, it noted that the FCC (or, presumably, Congress) was free to conduct a new rulemaking and reinstate the rules if it determined that their purposes remained valid. That possibility still exists. Therefore, we are describing the former rules in the remainder of this, and in the next, section.

Unlike most of the political broadcast rules, the broadcast of a political editorial triggered an affirmative obligation on the part of the broadcaster to notify candidates and to provide free response time.

A political editorial is any broadcast statement that represents the view of station management and which either endorses or opposes a legally qualified candidate. Thus a statement of personal political opinion by an announcer would not be an editorial. On the other hand, a news item announcing a

station owner's voting preference would be a political editorial. Endorsement of or opposition to a candidate can be indirect, such as in a statement calling for a change in the local school board when certain members are running for reelection. In addition, editorial recaps in which a station's endorsements or positions are quickly summarized are themselves editorials, which generated additional notification and response obligations.

Notice

While the rule was in effect, upon broadcast of a political editorial, a licensee, within 24 hours, had to transmit:

- notification of the date and time of the editorial;
- a complete script or tape, and
- an offer of a reasonable reply opportunity for a candidate, or his or her spokesperson, to respond over the licensee's facility.

The Commission's rules were very specific as to how the notice was to be given.

- If the editorial opposed a candidate, then the materials had to be sent to that candidate.
- If the editorial endorsed a candidate, then the offer had to be transmitted to all legally qualified opposing candidates.
- If the editorial was to be broadcast within 72 hours prior to the day of election, then the licensee had to act sufficiently in advance of the broadcast to enable all appropriate candidates to have a reasonable opportunity to prepare and present a response in a timely manner.

For all practical purposes, unless all the appropriate candidates had been advised sufficiently in advance, editorials within three days of an election were effectively barred.

Response Requirements

A reasonable opportunity to respond, in most cases, consisted of comparable time and scheduling. But it could have required far more, as the time allotted had to permit a meaningful response. That is, if a one-minute editorial briefly criticized ten incumbents, then a six-second reply opportunity for each clearly would have been inadequate.

The station could have required that a candidate's spokesperson, rather than the candidate, respond. (If the candidate appeared personally, this would have been a free "use," which, in turn, would have required comparable gifts to all opponents.) With that exception, the format and content of the response time were a matter largely within the discretion of the candidate. Thus, if a 30 second editorial was broadcast six times, the candidate could be given broad discretion as to whether the spokesperson will take six 30-second responses, one three-minute program, etc., provided that the impact of the scheduling of the response did not grossly exceed that of the original editorial. At the same time, since the candidate did not appear and since there was no use, a licensee could have censored the reply within reason.

XVI. Personal Attacks

Please see the introduction to the previous section, as the same considerations apply to the status and future of the personal attack rule.

When a derogatory personal reference was made upon an identifiable person or group in the context of discussing a controversial issue of public importance, a personal attack was deemed to have occurred.

Action Previously Required

Like the political editorial rule, the personal attack rule also required affirmative action by a licensee. However, the rule was rarely triggered in political broadcasting, since it did not apply to statements made by a legally qualified candidate, his or her authorized spokespersons, or those associated with him or her in the campaign directed to other candidates, their authorized spokespersons or those associated with them. Nor did the rule apply to *bona fide* news interviews and on-the-spot coverage of *bona fide* news events.

Three Elements

To trigger the rule:

(1) An attack must have been upon the *honesty, character, integrity* or like personal qualifies of an identified person or group. This meant that disagreement with or disparagement of a person's political views, voting record, knowledge, intelligence, fiscal responsibility or background - no matter how vehemently expressed - did not constitute personal attacks.

(2) The identity of the individual or group must have been *recognizable* by a substantial segment of the audience, even if specific names were not used. A reference to "those crooks on the school board" would have sufficed.

(3) The attack must have been made during the presentation of views on a *controversial issue* of public importance. Most election topics were presumed to be controversial issues of public importance.

Licensee's Duties

Once the rule applied, within a reasonable time, and in no event later than one week after the attack, the licensee had to transmit to the person or group attacked:

- notification of the date, time and identification of the broadcast;
- a script or tape of the attack (or an accurate summary if a script or tape was not available); and
- an offer of a reasonable opportunity to respond over the licensee's facilities.

Except for the fact that there was no 72-hour rule here, the "reasonable opportunity" provision was to be interpreted as discussed previously with respect to political editorials. Should the person or group have refused the station's offer, the licensee need have made no further effort. The right to respond was a personal one, and no outside party was able to raise a complaint on behalf of the party actually attacked.

Note that the personal attack rule applied whether or not the licensee was responsible for the attack. In any event, it was the licensee who was responsible for remedying the personal attack. Thus, if a paid issue advertisement contained a personal attack, then it was the licensee, rather than the sponsor of the advertisement, who had to take remedial steps. Similarly, an attack during a network or syndicated program triggered an obligation in each affiliate or station carrying the program to notify and offer an opportunity for a response.

XVII. Issue Advertising

Political action committees (PAC's) have become increasingly involved in the sponsorship of broadcast issue advertising. Frequently, the advertisements are used to express support or opposition to a political philosophy or legislative program. In other

instances, they are used to criticize the performance of an incumbent.

It is not necessary to allow such groups access to a broadcast station. The Commission has reasoned that no group has a general right of access. The only exception deals with individual federal candidates. The Commission has specifically approved a policy of refusing time to any PAC during the political campaign season regardless of views expressed. It falls within a licensee's editorial discretion as to whether any specific PAC spot should be accepted. Thus, permitting one PAC to air a spot does not open the door to all others (from a strictly legal standpoint, that is - public perception of fair play is an entirely different, and potentially a more serious, matter).

Should a licensee choose to run PAC spots, the question arises as to what obligations would be triggered. The Fairness Doctrine and personal attack rules are no longer applicable. However a PAC spot directed against anyone who has not yet become legally qualified (including an incumbent for reelection) could trigger libel or slander liability since only a "use" protects a broadcaster. (Note that a person can be defamed even if not actually named, so long as a reference is sufficiently clear to identify him or her as the object of an assertion.) To guard against these problems, a licensee is free to accept or reject an issue advertisement, especially if its content could trigger additional obligations or liability.

Following the demise of the Zapple doctrine, it seems clear that a PAC cannot claim a right of reply to a candidate or his supporters. Thus, if anti-labor representative X buys time to advance his candidacy for election, a union PAC cannot claim a right to reply to criticize his record, since a PAC, by its very nature, cannot be considered the authorized representative of an opposing candidate.

XVIII. News Distortion

The Commission's present standards for considering news distortion complaints still rest upon a handful of cases centered upon controversy over network coverage of the 1968 Democratic Convention and CBS's "Selling of the Pentagon" and "Hunger in America" television exposés. At that time, the Commission proceeded from the premise that "rigging or slanting the news is a heinous act against the public interest - indeed there is no act more harmful to the public's ability to handle its affairs." Although the Commission undertook its own investigation of the convention coverage, it soon adopted a policy of refusing to take direct action, instead referring the complaint to the licensee for internal investigation and proper handling. In an extreme case, the Commission held out the possibility of forfeiture against the licensee.

News Editing

Two practices in particular have proven troublesome. The first is the editing of interview responses, ostensibly to "tighten up" a rambling answer. An extreme example was revealed in a 1984 case involving a CBS report on automobile accidents staged for the purpose of defrauding insurance companies. There, a former participant in such a scheme was asked a simple question, to which his broadcast answer was a simple "yes." The unedited transcripts of the interview, however, revealed the actual answer to have been equivocal but generally negative. Even so, the Commission was willing to write the incident off as a legitimate, if erroneous, exercise of journalistic judgment.

News Staging

The other focal point of many distortion complaints is that of staging an event - that is, portraying an event that did not occur or reenacting an event without clear identification as such. Reporters at the

1968 Convention had asked participants to reenact their protests for the cameras, which had not been present during that phase of the event. In the "Hunger in America" investigation, CBS was criticized for having portrayed an infant dying of starvation, when in fact the depicted victim was prematurely born, not undernourished, and expiring of natural causes. In another incident, jail employees were cast as inmates in order to illustrate prison conditions in which actual prisoners could not be photographed. In that event, the Commission carved out a broad exception to its general policy in order to permit staging that is relatively minor and incidental to the program as a whole.

The Commission's modern stand with respect to all of these matters is to avoid involvement in editorial judgments and to assume an honest mistake unless the complainant presents direct evidence that the broadcaster had a deliberate intent to distort the news. To satisfy this standard requires testimony of an insider having direct personal knowledge of orders to falsify the news from the licensee, top management or news management. This is an extremely difficult burden to meet, and in fact was satisfied in only a single reported case, and that was in 1949.

The Commission will not infer a deliberate intent to distort from the mere falsity of broadcast items or from circumstantial evidence of a broadcaster's knowledge of falsity. An illustration of the lengths to which the Commission will resort to avoid a finding of news distortion is the famous case involving CBS's "60 Minutes" accusation that General Westmoreland ordered enemy body counts to be exaggerated. CBS's own investigation acknowledged that interviewee statements contradictory to a "conspiracy" premise were deliberately suppressed, interviewees were prepared for interviews in violation of CBS's news gathering standards, interviews with persons who refuted the "conspiracy" premise were harsher in tone than supportive ones, the audience was not informed that a principal interviewee had been paid a substantial consulting fee, and the deceptive juxtaposition of various interview segments had created false impressions. Even then, the Commission found no intention to distort.

It is clear from this and other recent cases that the Commission leans over backward to find a lack of deliberate intent unless confronted with overwhelming direct evidence. Even so, it is important that upon receiving responsible complaints a licensee undertake full investigation and correct any errors through on-air retractions, disciplinary measures, and other appropriate actions. It is in the court of public opinion that such matters are often weighed.

XIX. Conclusion

The political broadcasting rules can be dangerous, but the first step towards staying out of trouble is familiarity with their requirements, through this guide and other sources. Make sure that all personnel who are involved in any way with the sale, production or scheduling of political time are familiar with the rules. To minimize the potential for errors and rule violations, try to limit the number of persons who have responsibility for political advertising.

What to Do If There is a Complaint

If a complaint is received from or on behalf of a candidate, contact legal counsel immediately. Some candidates or their attorneys may request extensive information beyond what is required to be in the political file. This information should not be provided without legal consultation. The candidate may be requested to be specific as to the dates, times and circumstances of the alleged infraction.

The Commission strongly urges parties to settle disputes privately. In negotiating and formalizing any settlement of a dispute, care must be taken to ensure that

the understanding is clear and legally effective.

It should be noted in closing that political broadcasting is an area of law subject to rapid change. Moreover, it is not always apparent how to apply the general principles we have described to specific factual situations. Therefore, it is essential to consult with counsel concerning specific problems or questions that may arise.

XX. APPENDICES

POLITICAL BROADCASTING RULES ..... APPENDIX A
- Communications Act of 1934, As Amended
- Federal Communications Commission
- Federal Election Commission

CANDIDATE ADVERTISING AGREEMENT FORMS ..... APPENDIX B
- Candidate Agreement Form
- Refusal of Acknowledgement of Receipt of Disclosures
- Actual Schedule of Broadcasts

ISSUE ADVERTISING AGREEMENT FORMS ..... APPENDIX C
- Non-Candidate / Issue Advertiser Agreement Form
- Actual Schedule of Broadcasts

APPENDIX A - POLITICAL BROADCASTING RULES

Communications Act of 1934, as amended

Section 315 [47 USC §315]. Facilities for Candidates for Public Office

(a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: Provided, that such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is imposed under this subsection upon any licensee to allow the use of its station by any such candidate. Appearance by a legally qualified candidate on any --

(1) bona fide newscast,

(2) bona fide news interview,

(3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or

(4) on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto), shall not be deemed to be use of a broadcasting station within the meaning of this subsection. Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

(b) Charges. --

(1) In general. -- The charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election, to such office shall not exceed --

(A) subject to paragraph (2), during the forty-five days preceding the date of a primary or primary runoff election and during the sixty days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period; and

(B) at any other time, the charges made for comparable use of such station by other users thereof.

(2) Content of Broadcasts-

(A) In General. -- In the case of a candidate for Federal office, such candidate shall not be entitled to receive the rate under paragraph (1)(A) for the use of any broadcasting station unless the candidate provides written certification to the broadcast station that the candidate (and any authorized committee of the candidate) shall not make any direct reference to another candidate for the same office, in any broadcast using the rights and conditions of access under this Act, unless such reference meets the requirements of subparagraph (C) or (D).

(B) Limitation on Charges. -- If a candidate for Federal office (or any authorized committee of such candidate) makes a reference described in subparagraph (A) in any broadcast that does not meet the requirements of subparagraph (C) or (D), such candidate shall not be entitled to receive the rate under paragraph (1)(A) for such broadcast or any other broadcast during any portion of

the 45-day and 60-day periods described in paragraph (1)(A), that occur on or after the date of such broadcast, for election to such office.

(C) Television Broadcasts. -- A candidate meets the requirements of this subparagraph if, in the case of a television broadcast, at the end of such broadcast there appears simultaneously, for a period no less than 4 seconds--

(i) a clearly identifiable photographic or similar image of the candidate; and

(ii) a clearly readable printed statement, identifying the candidate and stating that the candidate has approved the broadcast and that the candidate's authorized committee paid for the broadcast.

(D) Radio Broadcasts. -- A candidate meets the requirements of this subparagraph if, in the case of a radio broadcast, the broadcast includes a personal audio statement by the candidate that identifies the candidate, the office the candidate is seeking, and indicates that the candidate has approved the broadcast.

(E) Certification. -- Certifications under this section shall be provided and certified as accurate by the candidate (or any authorized committee of the candidate) at the time of purchase.

(F) Definitions. -- For purposes of this paragraph, the terms “authorized committee” and “Federal office” have the meanings given such terms by Section 301 of the Federal Election Campaign Act of 1971 (2 USC 431).

(c) For the purposes of this section:

(1) The term "broadcasting station" includes a community antenna television system; and

(2) The terms "licensee" and "station licensee" when used with respect to a community antenna television system, mean the operator of such system.

(d) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.

(e) Political Record. --

(1) In General. -- A licensee shall maintain, and make available for public inspection, a complete record of a request to purchase broadcast time that--

(A) is made by or on behalf of a legally qualified candidate for public office; or

(B) communicates a message relating to any political matter of national importance, including--

(i) a legally qualified candidate;

(ii) any election to Federal office; or

(iii) a national legislative issue of public importance.

(2) Contents of Record. -- A record maintained under paragraph (1) shall contain information regarding--

(A) whether the request to purchase broadcast time is accepted or rejected by the licensee;

(B) the rate charged for the broadcast time;

(C) the date and time on which the communication is aired;

(D) the class of time that is purchased;

(E) the name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable);

(F) in the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee; and

(G) in the case of any other request, the name of the person purchasing the time, the name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person.

(3) Time to Maintain File. -- The information required under this subsection shall be placed in a political file as soon as possible and shall be retained by the licensee for a period of not less than 2 years.

Section 312 [47 USC §312]. Administrative Sanctions

(a) The Commission may revoke any station license or construction permit --

* * *

(7) for willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station, other than a non-commercial educational broadcast station, by a legally qualified candidate for Federal elective office on behalf of his candidacy.

(b) Where any person . . . (3) has violated or failed to observe any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States, the Commission may order such person to cease and desist from such action.

Federal Communications Commission Rules

(Important Note: The FCC has not yet updated its rules to reflect the provisions of the Bipartisan Campaign Reform Act of 2002. Therefore, these rules are not a reliable guide to all of the requirements and procedures outlined in this manual.)

§73.1212 Sponsorship identification; list retention; related requirements.

(a) When a broadcast station transmits any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such station, the station, at the time of the broadcast, shall announce:

(1) that such matter is sponsored, paid for, or furnished, either in whole or in part, and

(2) by whom or on whose behalf such consideration was supplied: provided, however, that "service or other valuable consideration" shall not include any service or property furnished either without or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification of any person, product, service, trademark, or brand name beyond an identification reasonably related to the use of such service or property on the broadcast.

(i) For the purposes of this section, the term "sponsored" shall be deemed to have the same meaning as "paid for."

(ii) In the case of any television political advertisement concerning candidates for public office, the sponsor shall be identified with letters equal to or greater than four (4) percent of the vertical picture height that air for not less than four (4) seconds.

(b) The licensee of each broadcast station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any matter for broadcast, information to enable such licensee to make the announcement required by this section.

(c) In any case where a report has been made to a broadcast station as required by Section 507 of the Communications Act of 1934, as amended, of circumstances which would have required an announcement under this section had the consideration been received by such broadcast station, an appropriate announcement shall be made by such station.

(d) In the case of any political broadcast matter or any broadcast matter involving the discussion of a controversial issue of public importance for which any film, record, transcription, talent, script, or other material or service of any kind is furnished, either directly or indirectly, to a station as an inducement for broadcasting such matter, an announcement shall be made both at the beginning and conclusion of such broadcast on which such material or service is used that such film, record, transcription, talent, script, or other material or service has been furnished to such station in connection with the transmission of such broadcast matter: provided, however, that in the case of any broadcast of 5 minutes' duration or less, only one such announcement need be made either at the beginning or conclusion of the broadcast.

(e) The announcement required by this section shall, in addition to stating the fact that the broadcast matter was sponsored, paid for or furnished, fully and fairly disclose the true identity of the person or persons, or corporation, committee, association or other unincorporated group, or other entity by whom or on whose behalf such payment is made or promised, or from whom or on whose behalf such services or other valuable consideration is received, or by whom the material or services referred to in paragraph (d) of this section are furnished. Where an agent or other person or entity contracts or otherwise makes arrangements with a station on behalf of another, and such fact is known or by the exercise of reasonable diligence, as specified in paragraph (b) of this section, could be known to the station, the announcement shall disclose the identity of the person or persons or entity on whose behalf such agent is acting instead of the name of such agent. Where the material broadcast is political matter or matter involving the discussion or a controversial issue of public importance and a corporation, committee, association or other unincorporated group, or other entity is paying for or furnishing the broadcast matter, the station shall, in addition to making the announcement required by this section, require that a list of the chief

executive officers or members of the executive committee or of the board of directors of the corporation, committee, association or other unincorporated group, or other entity shall be made available for public inspection at the location specified by the licensee under §73.3526 of this chapter. If the broadcast is originated by a network, the list may, instead, be retained at the headquarters office of the network or at the location where the originating station maintains its public inspection file under §73.3526 of this chapter. Such lists shall be kept and made available for a period of two years.

(f) In the case of broadcast matter advertising commercial products or services, an announcement stating the sponsor's corporate or trade name, or the name of the sponsor's product, when it is clear that the mention of the name of the product constitutes a sponsorship identification, shall be deemed sufficient for the purposes of this section and only one such announcement need be made at any time during the course of the broadcast.

(g) The announcement otherwise required by Section 317 of the Communications Act of 1934, as amended, is waived with respect to the broadcast of "want ad" or classified advertisements sponsored by an individual. The waiver granted in this paragraph shall not extend to a classified advertisement or want ad sponsorship by any form of business enterprise, corporate or otherwise. Whenever sponsorship announcements are omitted pursuant to this paragraph, the licensee shall observe the following conditions:

(1) Maintain a list showing the name, address, and (where available) the telephone number of each advertiser;

(2) Make this list available to members of the public who have a legitimate interest in obtaining the information contained in the list. Such list must be retained for a period of two years after broadcast.

(h) Any announcement required by Section 317(b) of the Communications Act of 1934, as amended, is waived with respect to feature motion picture film produced initially and primarily for theatre exhibition.

NOTE:

The waiver heretofore granted by the Commission in its Report and Order adopted November 16, 1960 (FCC 60-1369; 40 FCC 95), continues to apply to programs filmed or recorded on or before June 20, 1963, when §73.654, the predecessor television rule, went into effect.

(i) Commission interpretations in connection with the provisions of the sponsorship identification rules are contained in the Commission's Public Notice, entitled "Applicability of Sponsorship Identification Rules," dated May 6, 1963 (40 FCC 141), as modified by Public Notice, dated April 21, 1975. Further interpretations are printed in full in various volumes of the Federal Communications Commission Reports.

§73.1940 Legally qualified candidates for publicoffice.

(a) A legally qualified candidate for public office is any person who:

(1) Has publicly announced his or her intention to run for nomination or office;

(2) Is qualified under the applicable local, State or Federal law to hold the office for which he or she is a candidate; and

(3) Has met the qualifications set forth in either paragraphs (b), (c), (d) or (e) of this section.

(b) A person seeking election to any public office including that of President or Vice President of the United States, or nomination for any public office except that of President or Vice President, by means of a primary, general or special election, shall be considered a legally qualified candidate if, in addition to meeting the criteria set forth in paragraph (a) of this section, that person:

(1) Has qualified for a place on the ballot, or

(2) Has publicly committed himself or herself to seeking election by the write-in method and is eligible under applicable law to be voted for by sticker, by writing in his or her name on the ballot or by other method, and makes a substantial showing that he or she is a bona fide candidate for nomination or office.

(c) A person seeking election to the office of President or Vice President of the United States shall, for the purposes of the Communications Act and the rules thereunder, be considered legally qualified candidates only in those States or territories (or the District of Columbia) in which they have met the requirements set forth in paragraphs (a) and (b) of this section: except, that any such person who has met the requirements set forth in paragraphs (a) and (b) of this section in at least 10 States (or 9 and the District of Columbia) shall be considered a legally qualified candidate for election in all States, territories and the District of Columbia for purposes of this Act.

(d) A person seeking nomination to any public office, except that of President or Vice President of the United States, by means of a convention, caucus or similar procedure, shall be considered a legally qualified candidate if, in addition to meeting the requirements set forth in paragraph (a) of this section, that person makes a substantial showing that he or she is a bona fide candidate for such nomination: except, that no person shall be considered a legally qualified candidate for nomination by the means set forth in this paragraph prior to 90 days before the beginning of the convention, caucus or similar procedure in which he or she seeks nomination.

(e) A person seeking nomination for the office of President or Vice President of the United States shall, for the purposes of the Communications Act and the rules thereunder, be considered a legally qualified candidate only in those States or territories (or the District of Columbia) in which, in addition to meeting the requirements set forth in paragraph (a) of this section:

(1) He or she, or proposed delegates on his or her behalf, have qualified for the primary or Presidential preference ballot in that State, territory or the District of Columbia, or

(2) He or she has made a substantial showing of a bona fide candidacy for such nomination in that State, territory or the District of Columbia: except, that any such person meeting the requirements set forth in paragraphs (a)(1) and (2) of this section in at least 10 States (or nine and the District of Columbia) shall be considered a legally qualified candidate for nomination in all States, territories and the District of Columbia for purposes of this act.

(f) The term "substantial showing" of a bona fide candidacy as used in paragraphs (b), (d) and (e) of this section means evidence that the person claiming to be a candidate has engaged to a substantial degree in activities commonly associated with political campaigning. Such activities normally would include making campaign speeches, distributing campaign literature, issuing press releases, maintaining a campaign committee, and establishing campaign headquarters (even though the headquarters in some instances might be the residence of the candidate or his or her campaign manager). Not all of the listed activities are necessarily required in each case to demonstrate a substantial showing, and there may be activities not listed herein which would contribute to such a showing.

§73.1941 Equal opportunities.

(a) General requirements. Except as otherwise indicated in §73.1944, no station licensee is required to permit the use of its facilities by any legally qualified candidate for public office, but if any licensee shall permit any such candidate to use its facilities, it shall afford equal opportunities to all other candidates for that office to use such facilities. Such licensee shall have no power of censorship over the material broadcast by any such candidate. Appearance by a legally qualified candidate on any: (1) bona fide newscast; (2) bona fide news interview; (3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary); or (4) on-the-spot coverage of bona fide news events (including, but not limited to political conventions and activities incidental thereto) shall not be deemed to be use of a broadcasting station. (Section 315(a) of the Communications Act.)

(b) Uses. As used in this section and §73.1942, the term "use" means a candidate appearance (including by voice or picture) or political advertisement that is not exempt under §73.1941(a)(1)-(4).

(c) Timing of request. A request for equal opportunities must be submitted to the licensee within 1 week of the day on which the first prior use giving rise to the right of equal opportunities occurred; provided, however, that where the person was not a candidate at the time of such first prior use, he or she shall submit his or her request within 1 week of the first subsequent use after he or she has become a legally qualified candidate for the office in question.

(d) Burden of proof. A candidate requesting equal opportunities of the licensee or complaining of noncompliance to the Commission shall have the burden of proving that he or she and his or her opponent are legally qualified candidates for the same public office.

(e) Discrimination between candidates. In making time available to candidates for public office, no licensee shall make any discrimination between candidates in practices, regulations, facilities, or services for or in connection with the service rendered pursuant to this part, or make or give any preference to any candidate for public office or subject any such candidate to any prejudice or disadvantage; nor shall any licensee make any contract or other agreement which shall have the effect of permitting any legally qualified candidate for any public office to broadcast to the exclusion of other legally qualified candidates for the same public office.

§73.1942 Candidate rates.

(a) Charges for use of stations. The charges, if any, made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his or her campaign for nomination for election, or election, to such office shall not exceed:

(1) During the 45 days preceding the date of a primary or primary runoff election and during the 60 days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period.

(i) A candidate shall be charged no more per unit than the station charges its most favored commercial advertisers for the same classes and amounts of time for the same periods. Any station practices offered to commercial advertisers that enhance the value of advertising spots must be disclosed and made available to candidates on equal terms. Such practices include but are not limited to any discount privileges that affect the value of advertising, such as bonus spots, time-sensitive make goods, preemption priorities, or any other factors that enhance the value of the announcement.

(ii) The Commission recognizes non-preemptible, preemptible with notice, immediately preemptible and run-of-schedule as distinct classes of time.

(iii) Stations may establish and define their own reasonable classes of immediately preemptible time so long as the differences between such classes are based on one or more demonstrable benefits associated with each class and are not based solely upon price or identity of the advertiser. Such demonstrable benefits include, but are not limited to, varying levels of preemption protection, scheduling flexibility, or associated privileges, such as guaranteed time-sensitive make goods. Stations may not use class distinctions to defeat the purpose of the lowest unit charge requirement. All classes must be fully disclosed and made available to candidates.

(iv) Stations may establish reasonable classes of preemptible with notice time so long as they clearly define all such classes, fully disclose them and make them available to candidates.

(v) Stations may treat non-preemptible and fixed position as distinct classes of time provided that stations articulate clearly the differences between such classes, fully disclose them, and make them available to candidates.

(vi) Stations shall not establish a separate, premium-priced class of time sold only to candidates. Stations may sell higher-priced non-preemptible or fixed time to candidates if such a class of time is made available on a bona fide basis to both candidates and commercial advertisers, and provided such class is not functionally equivalent to any lower-priced class of time sold to commercial advertisers.

(vii) [Reserved]

(viii) Lowest unit charge may be calculated on a weekly basis with respect to time that is sold on a weekly basis, such as rotations through particular programs or dayparts. Stations electing to calculate the lowest unit charge by such a method must include in that calculation all rates for all announcements scheduled in the rotation, including announcements aired under long-term advertising contracts. Stations may implement rate increases during election periods only to the

extent that such increases constitute "ordinary business practices," such as seasonal program changes or changes in audienceratings.

(ix) Stations shall review their advertising records periodically throughout the election period to determine whether compliance with this section requires that candidates receive rebates or credits. Where necessary, stations shall issue rebates or credits promptly.

(x) Unit rates charged as part of any package, whether individually negotiated or generally available to all advertisers, must be included in the lowest unit charge calculation for the same class and length of time in the same time period. A candidate cannot be required to purchase advertising in every program or daypart in a package as a condition for obtaining package unit rates.

(xi) Stations are not required to include non-cash promotional merchandising incentives in lowest unit charge calculations; provided, however, that all such incentives must be offered to candidates as part of any purchases permitted by the licensee. Bonus spots, however, must be included in the calculation of the lowest unit charge calculation.

(xii) Make goods, defined as the rescheduling of preempted advertising, shall be provided to candidates prior to election day if a station has provided a time-sensitive make good during the year preceding the pre-election periods, respectively set forth in paragraph (a)(1) of this section to any commercial advertiser who purchased time in the same class.

(xiii) Stations must disclose and make available to candidates any make good policies provided to commercial advertisers. If a station places a make good for any commercial advertiser or other candidate in a more valuable program or daypart, the value of such make good must be included in the calculation of the lowest unit charge for that program or daypart.

(2) At any time other than the respective periods set forth in paragraph (a)(1) of this section, stations may charge legally qualified candidates for public office no more than the charges made for comparable use of the station by commercial advertisers. The rates, if any, charged all such candidates for the same office shall be uniform and shall not be rebated by any means, direct or indirect. A candidate shall be charged no more than the rate the station would charge for comparable commercial advertising. All discount privileges otherwise offered by a station to commercial advertisers must be disclosed and made available upon equal terms to all candidates for public office.

(b) If a station permits a candidate to use its facilities, the station shall make all discount privileges offered to commercial advertisers, including the lowest unit charges for each class and length of time in the same time period and all corresponding discount privileges, available upon equal terms to all candidates. This duty includes an affirmative duty to disclose to candidates information about rates, terms, conditions and all value-enhancing discount privileges offered to commercial advertisers. Stations may use reasonable discretion in making the disclosure; provided, however, that the disclosure includes, at a minimum, the following information:

(1) a description and definition of each class of time available to commercial advertisers sufficiently complete to allow candidates to identify and understand what specific attributes differentiate each class;

(2) a description of the lowest unit charge and related privileges (such as priorities against preemption and make goods prior to specific deadlines) for each class of time offered to commercial advertisers;

(3) a description of the station's method of selling preemptible time based upon advertiser demand, commonly known as the "current selling level," with the stipulation that candidates will be able to purchase at these demand-generated rates in the same manner as commercial advertisers;

(4) an approximation of the likelihood of preemption for each kind of preemptible time; and

(5) an explanation of the station's sales practices, if any, that are based on audience delivery, with the stipulation that candidates will be able to purchase this kind of time, if available to commercial advertisers.

(c) Once disclosure is made, stations shall negotiate in good faith to actually sell time to candidates in accordance with thedisclosure.

(d) This rule (§73.1942) shall not apply to any station licensed for noncommercial operation.

§73.1943 Political file.

(a) Every licensee shall keep and permit public inspection of a complete and orderly record (political file) of all requests for broadcast time made by or on behalf of a candidate for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if the request is granted. The "disposition" includes the schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased.

(b) When free time is provided for use by or on behalf of candidates, a record of the free time provided shall be placed in the political file.

(c) All records required by this paragraph shall be placed in the political file as soon as possible and shall be retained for a period of two years. As soon as possible means immediately absent unusual circumstances.

§73.1944 Reasonable access.

(a) Section 312(a)(7) of the Communications Act provides that the Commission may revoke any station license or construction permit for willful or repeated failure to allow reasonable access to, or to permit purchase of, reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy.

(b) Weekend access. For purposes of providing reasonable access, a licensee shall make its facilities available for use by federal candidates on the weekend before the election if the licensee has provided similar access to commercial advertisers during the year preceding the relevant election period. Licensees shall not discriminate between candidates with regard to weekend access.

Federal Election Commission Rules

§110.11 Communications; advertising; disclaimers (2 U.S.C 441d).

(a) *Scope*. This section applies only to public communications, defined for this section to include the communications at 11 CFR 100.26 plus unsolicited electronic mail of more than 500 substantially similar communications and Internet websites of political committees available to the general public, and electioneering communications as defined in 11 CFR 100.29. The following types of such communications must include disclaimers, as specified in this section:

(1) All public communications for which a political committee makes a disbursement.

(2) All public communications by any person that expressly advocate the election or defeat of a clearly identified candidate.

(3) All public communications by any person that solicit any contribution.

(4) All electioneering communications by any person.

(b) *General content requirements*. A disclaimer required by paragraph (a) of this section must contain the following information:

(1) If the communication, including any solicitation, is paid for and authorized by a candidate, an authorized committee of a candidate, or an agent of either of the foregoing, the disclaimer must clearly state that the communication has been paid for by the authorized political committee;

(2) If the communication, including any solicitation, is authorized by a candidate, an authorized committee of a candidate, or an agent of either of the foregoing, but is paid for by any other person, the disclaimer must clearly state that the communication is paid for by such other person and is authorized by such candidate, authorized committee, or agent; or

(3) If the communication, including any solicitation, is not authorized by a candidate, authorized committee of a candidate, or an agent of either of the foregoing, the disclaimer must clearly state the full name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication, and that the communication is not authorized by any candidate or candidate's committee.

(c) *Disclaimer specifications*—

(1) *Specifications for all disclaimers*. A disclaimer required by paragraph (a) of this section must be presented in a clear and conspicuous manner, to give the reader, observer, or listener adequate notice of the identity of the person or political committee that paid for and, where required, that authorized the communication. A disclaimer is not clear and conspicuous if it is difficult to read or hear, or if the placement is easily overlooked.

(2) *Specific requirements for printed communications*. In addition to the general requirement of paragraphs (b) and (c)(1) of this section, a disclaimer required by paragraph (a) of this section that appears on any printed public communication must comply with all of the following:

(i) The disclaimer must be of sufficient type size to be clearly readable by the recipient of the communication. A disclaimer in twelve (12)-point type size satisfies the size requirement of this paragraph (c)(2)(i) when it is used for signs, posters, flyers, newspapers, magazines, or other printed material that measure no more than twenty-four (24) inches by thirty-six (36) inches.

(ii) The disclaimer must be contained in a printed box set apart from the other contents of the communication.

(iii) The disclaimer must be printed with a reasonable degree of color contrast between the background and the printed statement. A disclaimer satisfies the color contrast requirement of this paragraph (c)(2)(iii) if it is printed in black text on a white background or if the degree of color contrast between the background and the text of the disclaimer is no less than the color contrast between the background and the largest text used in the communication.

(iv) The disclaimer need not appear on the front or cover page of the communication as long as it appears within the communication, except on communications, such as billboards, that contain only a front face.

(v) A communication that would require a disclaimer if distributed separately, that is included in a package of materials, must contain the requireddisclaimer.

(3) *Specific requirements for radio and television communications authorized by candidates*. In addition to the general requirements of paragraphs (b) and (c)(1) of this section, a communication that is authorized or paid for by a candidate or the authorized committee of a candidate (see paragraph (b)(1) or (b)(2) of this section) that is transmitted through radio or television, or through any broadcast, cable, or satellite transmission, must comply with the following:

(i) A communication transmitted through radio must include an audio statement by the candidate that identifies the candidate and states that he or she has approved the communication; or

(ii) A communication transmitted through television or through any broadcast, cable, or satellite transmission, must include a statement that identifies the candidate and states that he or she has approved the communication. The candidate shall convey the statement either:

(A) Through an unobscured, full-screen view of himself or herself making the statement, or

(B) Through a voice-over by himself or herself, accompanied by a clearly identifiable photographic or similar image of the candidate. A photographic or similar image of the candidate shall be considered clearly identified if it is at least eighty (80) percent of the vertical screen height.

(iii) A communication transmitted through television or through any broadcast, cable, or satellite transmission, must also include a similar statement that must appear in clearly readable writing at the end of the television communication. To be clearly readable, this statement must meet all of the following threerequirements:

(A) The statement must appear in letters equal to or greater than four (4) percent of the vertical pictureheight;

(B) The statement must be visible for a period of at least four (4) seconds; and

(C) The statement must appear with a reasonable degree of color contrast between the background and the text of the statement. A statement satisfies the color contrast requirement of this paragraph (c)(3)(iii)(C) if it is printed in black text on a white background or if the degree of color contrast between the background and the text of the statement is no less than the color contrast between the background and the largest type size used in the communication.

(iv) The following are examples of acceptable statements that satisfy the spoken statement requirements of paragraph (c)(3) of this section with respect to a radio, television, or other broadcast, cable, or satellite communication, but they are not the only allowable statements:

(A) "I am [insert name of candidate], a candidate for [insert Federal office sought], and I approved thisadvertisement."

(B) "My name is [insert name of candidate]. I am running for [insert Federal office sought], and I approved thismessage."

(4) *Specific requirements for radio and television communications paid for by other persons and not authorized by a candidate*. In addition to the general requirements of paragraphs (b) and (c)(1) of this section, a communication not authorized by a candidate or a candidate's authorized committee that is transmitted through radio or television or through any broadcast, cable, or satellite transmission, must comply with thefollowing:

(i) A communication transmitted through radio or television or through any broadcast, cable, or satellite transmission, must include the following audio statement, "XXX is responsible for the content of this advertising," spoken clearly, with the blank to be filled in with the name of the political committee or other person paying for the communication, and the name of the connected organization, if any, of the payor unless the name of the connected organization is already provided in the "XXX is responsible" statement; and

(ii) A communication transmitted through television, or through any broadcast, cable, or satellite transmission, must include the audio statement required by paragraph (c)(4)(i) of this section. That statement must be conveyed by an unobscured full-screen view of a representative of the political committee or other person making the statement, or by a representative of such political committee or other person in voice-over.

(iii) A communication transmitted through television or through any broadcast, cable, or satellite transmission, must also include a similar statement that must appear in clearly readable writing at the end of the communication. To be clearly readable, the statement must meet all of the following three requirements:

(A) The statement must appear in letters equal to or greater than four (4) percent of the vertical pictureheight;

(B) The statement must be visible for a period of at least four (4) seconds; and

(C) The statement must appear with a reasonable degree of color contrast between the background and the disclaimer statement. A disclaimer satisfies the color contrast requirement of this paragraph (c)(4)(iii)(C) if it is printed in black text on a white background or if the degree of color contrast between the background and the text of the disclaimer is no less than the color contrast between the background and the largest type size used in the communication.

(d) *Coordinated party expenditures and independent expenditures by political party committees*.

(1)

(i) For a communication paid for by a political party committee pursuant to 2 U.S.C. 441a(d), the disclaimer required by paragraph (a) of this section must identify the political party committee that makes the expenditure as the person who paid for the communication, regardless of whether the political party committee was acting in its own capacity or as the designated agent of another political party committee.

(ii) A communication made by a political party committee pursuant to 2 U.S.C. 441a(d) and distributed prior to the date the party's candidate is nominated shall satisfy the requirements of this section if it clearly states who paid for the communication.

(2) For purposes of this section, a communication paid for by a political party committee, other than a *communication* covered by paragraph (d)(1)(ii) of this section, that is being treated

as a coordinated expenditure under 2 U.S.C. 441a(d) and that was made with the approval of a candidate, a candidate's authorized committee, or the agent of either shall identify the political party that paid for the communication and shall state that the communication is authorized by the candidate or candidate's authorized committee.

(3) For a communication paid for by a political party committee that constitutes an independent expenditure under 11 CFR 100.16, the disclaimer required by this section must identify the political party committee *that* paid for the communication, and must state that the communication is not authorized by any candidate or candidate's authorized committee.

(e) *Exempt activities*. A public communication authorized by a candidate, authorized committee, or political party committee, that qualifies as an exempt activity under 11 CFR 100.140, 100.147, 100.148, or 100.149, must comply with the disclaimer requirements of paragraphs (a), (b), (c)(1), and (c)(2) of this section, unless excepted under paragraph (f)(1) of this section, but the disclaimer does not need to state whether the communication is authorized by a candidate, or any authorized committee or agent of any candidate.

(f) *Exceptions*.

(1) The requirements of paragraphs (a) through (e) of this section do not apply to the following:

(i) Bumper stickers, pins, buttons, pens, and similar small items upon which the disclaimer cannot be conveniently printed;

(ii) Skywriting, water towers, wearing apparel, or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable; or

(iii) Checks, receipts, and similar items of minimal value that are used for purely administrative purposes and do not contain a politicalmessage.

(2) For purposes of this section, whenever a separate segregated fund or its connected organization solicits contributions to the fund from those persons it may solicit under the applicable provisions of 11 CFR part 114, or makes a communication to those persons, such communication shall not be considered a type of public communication and need not contain the disclaimer required by paragraphs (a) through (c) of thissection.

(g) *Comparable rate for campaign purposes*.

(1) No person who sells space in a newspaper or magazine to a candidate, an authorized committee of a candidate, or an agent of the candidate, for use in connection with the candidate's campaign for nomination or for election, shall charge an amount for the space which exceeds the comparable rate for the space for non-campaign purposes.

(2) For purposes of this section, comparable rate means the rate charged to a national or general rate advertiser, and shall include discount privileges usually and normally available to a national or general rate advertiser.

§ 110.12 Candidate appearances on public educational institution premises.

(a) *Rental of facilities at usual and normal charge*. Any unincorporated public educational institution exempt from federal taxation under 26 U.S.C. 115, such as a school, college or university, may make its facilities available to any candidate or political committee in the ordinary course of business and at the usual and normal charge. In this event, the requirements of paragraph (b) of this section are not applicable.

(b) *Use of facilities at no charge or at less than the usual and normal charge*. An unincorporated public educational institution exempt from federal taxation under 26 U.S.C. 115, such as a school, college or university, may sponsor appearances by candidates, candidates' representatives or representatives of

political parties at which such individuals address or meet the institution's academic community or the general public (whichever is invited) on the educational institution's premises at no charge or at less than the usual and normal charge, if:

(1) The educational institution makes reasonable efforts to ensure that the appearances constitute speeches, question and answer sessions, or similar communications in an academic setting, and makes reasonable efforts to ensure that the appearances are not conducted as campaign rallies or events; and

(2) The educational institution does not, in conjunction with the appearance, expressly advocate the election or defeat of any clearly identified candidate(s) or candidates of a clearly identified political party, and does not favor any one candidate or political party over any other in allowing such appearances.

§110.13 Candidate debates.

(a) *Staging organizations*.

(1) Nonprofit organizations described in 26 U.S.C. 501 (c)(3) or (c)(4) and which do not endorse, support, or oppose political candidates or political parties may stage candidate debates in accordance with this section and 11 CFR 114.4(f).

(2) Broadcasters (including a cable television operator, programmer or producer), bona fide newspapers, magazines and other periodical publications may stage candidate debates in accordance with this section and 11 CFR 114.4(f), provided that they are not owned or controlled by a political party, political committee or candidate. In addition, broadcasters (including a cable television operator, programmer or producer), bona fide newspapers, magazines and other periodical publications, acting as press entities, may also cover or carry candidate debates in accordance with 11 CFR part 100, subparts B and C and part 100, subparts D and E.

(b) *Debate structure*. The structure of debates staged in accordance with this section and 11 CFR 114.4(f) is left to the discretion of the staging organizations(s), provided that:

(1) Such debates include at least two candidates; and

(2) The staging organization(s) does not structure the debates to promote or advance one candidate over another.

(c) *Criteria for candidate selection*. For all debates, staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate. For general election debates, staging organizations(s) shall not use nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate. For debates held prior to a primary election, caucus or convention, staging organizations may restrict candidate participation to candidates seeking the nomination of one party, and need not stage a debate for candidates seeking the nomination of any other political party or independent candidates.

APPENDIX B

APPENDIX B-1

.Candidate Agreement Form for Political Advertisements

Station and Location:_____

Date:_____, 201_

I,_____,

[check one:] ☐ being

☐ on behalf of:_____, a legally qualified candidate of the_____political party for the office of_____in the_____election to be held on_____, 201_ , a

☐ Federal Elective Office ☐ State/local Elective Office

do hereby request station time as follows:

Dates of Broadcast	Class of Time	Time of Day, Rotation or Package	Length	Times Per Week	Number of Weeks	Rate
TOTAL CHARGES:						

Note on the order any part of the request that has not been accepted by station.

The broadcasts ☐ will ☐ will not include, in whole or in part, material that "communicates a message relating to any political matter of national importance. For material that will, list the matters of national importance:

_____

_____

_____

_____

_____

I represent that the candidate named above has authorized the announcements ordered above to be broadcast pursuant to the terms of this agreement.

Each announcement must include a statement that it is paid for or sponsored by, and then name the sponsor (*i.e.*: the candidate or his/her campaign committee).

In addition, if the announcement is on behalf of a candidate for Federal office: (a) it must include a statement read by the candidate that identifies the candidate by name and states that the candidate approved the broadcast, (b) any radio broadcast must include the office being sought, and (c) any television broadcast must conclude with at least a four-second segment consisting of either an unobscured view of the candidate making the required statement or the candidate's voice accompanied by a clearly identifiable photographic or similar image of the candidate, together with a clearly readable printed text of the statement. The image must be at least 80% of screen height and the text must be in letters at least 4% of screen height and must reasonably contrast with the background.

The payment for the above described broadcast time has been furnished by the following:

You are authorized to announce the time as paid for by such person or entity. The entity or person furnishing the payment for this announcement is either a legally qualified candidate or an authorized committee/organization of the legally qualified candidate.

Name of the Treasurer's of the candidate's authorized committee: _____

This application, whether accepted or rejected, will remain available for public inspection for a period of at least two years.

☐ I hereby acknowledge that I have received and understand the station's political advertising practices and policies, classes of time, rates and discount policies, and promotional and sales practices.

Signed by: Candidate or Authorized Committee

Signature and Title Date

Signed by: Station Representative

Signature and Title Date

APPENDIX B-2

.EXTRA FORM FOR FEDERAL CANDIDATES OR EQUAL OPPORTUNITY USERS WHOSE REPRESENTATIVES REFUSE TO ACKNOWLEDGE RECEIPT OF THE STATION'S POLICY AND RATE DISCLOSURES

The following candidate or agent seeking Federal office or an equal opportunity completed a "Candidate Agreement Form for Political Advertisements" but would not acknowledge that he or she received and understood the station's rate guide, as indicated thereon. I hereby certify that he or she did in fact receive a copy of that rate guide and was apprised of the station's normal and customary selling practices before completing and signing such form.

_____
Name of candidate or agent

_____ _____
Date Signature of Station Representative

_____
Name and Title of Station Representative

APPENDIX B-3

. CANDIDATE CERTIFICATION – Federal Only

MUST BE PROVIDED FOR CANDIDATE TO BE ENTITLED TO LOWEST UNIT CHARGE

I,_____do hereby certify that the programming to be broadcast under this order ☐ does ☐ does not refer to an opposing candidate.

I certify that radio programming to be broadcast under this order that does refer to an opposing candidate will contain a personal audio statement by the candidate that identifies the candidate, the office being sought and that the candidate approves the message, or

I certify: (a) that the television programming to broadcast under this order will contain a statement that identifies the candidate and states that the candidate has approved the communication; (b) that the statement shall be conveyed by (i) an unobscured, full-screen view of himself or herself making the statement, or (ii) through a voice-over by himself or herself, accompanied by a clearly identifiable photographic or similar image of the candidate that shall be at least eighty (80) percent of the vertical screen height; and (c) that a similar statement will appear in clearly readable writing at the end of the programming that (i) is in letters equal to or greater than four (4) percent of the vertical picture height, (ii) must be visible for at least four (4) seconds, and (iii) must appear with a reasonable degree of color contrast between the background and the disclaimer statement (which can be printed in black text on a white background or the degree of color contrast between the background and the text of the disclaimer must be no less than the color contrast between the background and the largest type size used in the communication).

Name of candidate or authorized committee

_____

Signature

_____ _____

Date Signature of Station Representative

_____

Name and Title of Station Representative

APPENDIX B-4

.ACTUAL SCHEDULE OF BROADCASTS
(to be completed after broadcasts of candidate advertising)

(include all make goods and specify reasons for each) (list each broadcast separately)

Dates of Broadcast	Class of Time	Time of Day, Rotation or Package	Length	Times Per Week	Number of Weeks

If any lower-priced spots of the same length and class ran in the same periods as those ordered (or, if in error, a lower-priced spot of a different class ran that was not meant to run in the same period), list the dates and times, the price differential and the nature, amounts and timing of all make-goods and rebates:

Date & Time	Price Differential	Nature, Amounts And Timing of All Make-Goods & Rebates

Actual Schedule Run Summaries or invoices can be attached to this form showing the following:

1. Actual date, exact time, class and charge per spot;
2. Date and exact time for all make-goods (if any) and reasons for them; and
3. Exact date, time, class, and dollar amount for each rebate given (if any).

All of the foregoing information must be placed in the station's political file as soon as possible. If this information is only generated less frequently than daily, the file should include a contact name that can provide specific spot airing times.

Date & Time	Price Differential	Nature, Amounts And Timing of All Make-Goods & Rebates

Agreement Form for Non-Candidate / State and Local Issues Advertisements

Station and Location: _____

Date: _____

I, _____, hereby request station time as follows:

Dates of Broadcast	Class of Time	Time of Day, Rotation or Package	Length	Times Per Week	Number of Weeks

A. This form is for use with advertisements to be broadcast discussing a political matter of importance to citizens of California. These are matters that are the subject of particular controversy or discussion at the state or local level. If the advertisement communicates a message relating to a matter that is a matter "Political Matter of National Importance", do not use this form. This form is for messages that discuss matters internal to the state of California or that discuss an action that may be taken only by Californians or relate to a local or state incident. The issues to be discussed are:

_____

_____

_____

_____

A copy of this completed form must be retained by this station, placed in the station Online Public File and made publicly available. The file must include the identity of the part who sponsored or paid for the advertisement.

I verify that payment for the above-described broadcast time has been provided by:

_____

_____

If the payor for this broadcast time is any entity other than an individual person, below are the names, addresses and offices of the chief executive officers OR members of the executive committee OR members of the board of directors of that entity. (A separate list may be attached if necessary or more convenient. If only one name is supplied by the payor, further inquiry is made for a full list. If only one name is provided after further inquiry, provide a separate letter explaining that inquiry was made and the facts supporting only one name.

_____

_____

If the undersigned is not the appropriate contact person for the advertiser, please provide the name, address and phone number for such contact person:

Issue Advertiser Signature _____

Signature of Advertiser _____ Date _____ Phone Number_____

Station Representative Signature: _____

☐ Accepted ☐ Rejected ☐ Accepted in part [specify portions accepted.]

Signature_____

Printed Name and Title _____ Date _____

Address of advertiser _____

Placed in Online Public File on: Date: _____

Signed: _____

THIS STATION DOES NOT DISCRIMINATE OR PERMIT DISCRIMINATION ON THE BASIS OF RACE OR ETHNICITY IN THE PLACEMENT OR ACCEPTANCE OF ADVERTISING

I agree to indemnify and hold harmless the station for any damages or liability, including reasonable attorney's fees, that may ensue from the broadcast of the above-requested advertisement(s). For the above-stated broadcast(s), I also agree to prepare a script, transcript, or tape, which will be delivered to the station at least _____ before the time of the scheduled broadcasts.

Issue Advertiser Signature:

_____	_____	( ) _____
Signature of Advertiser	Date	Phone Number

Station Representative Signature:

☐ Accepted ☐ Rejected ☐ Accepted in part [specify portions accepted.]

_____	_____	_____
Signature	Printed Name and Title	Date

APPENDIX C-2

. ACTUAL SCHEDULE OF BROADCASTS

(to be completed after broadcast of all issue advertisements that communicate a message relating to any political matter of national importance. List each broadcast separately. Include all make goods and specify reasons for each)

Dates of Broadcast	Class of Time	Time of Day, Rotation or Package	Length	Times Per Week	Number of Weeks	Rate
TOTAL CHARGES:						

Actual Schedule Run Summaries or invoices can be attached to this form showing the following:

1. Actual date, exact time, class and charge per spot;
2. Date and exact time for all make-goods (if any) and reasons for them; and
3. Exact date, time, class, and dollar amount for each rebate given (if any).

All of the foregoing information must be placed in the station's political file as soon as possible. If this information is only generated less frequently than daily, the file should include a contact name that can provide specific spot airing times.