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A SUMMARY OF
POLITICAL BROADCAST REGULATION

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A SUMMARY OF POLITICAL BROADCAST REGULATION

The broadcasting of programs and announcements of a political nature is governed by a complex regulatory framework, which is based on Sections 312(a)(7) and 315 of the Communications Act. The Federal Communications Commission ("FCC") has adopted rules to implement the statutory provisions, and the FCC and federal courts have issued many rulings interpreting the statute and the FCC's rules.

On December 12, 1991, the Federal Communications Commission adopted new rules and procedures regarding political broadcasting which supersede many previous Commission interpretations (*Codification of the Commission's Political Programming Policies*, 7 FCC Rcd 678). In a separate order of that date, the FCC asserted original and exclusive jurisdiction with respect to any cause of action dependent upon any determination of the lowest unit charge requirement or of some other duty arising under Section 315(b) of the Communications Act of 1934, as amended (*Exclusive Jurisdiction with Respect to Potential Violations of the Lowest Unit Charge Requirements*, 6 FCC Rcd 7511, *recon. denied*, 7 FCC Rcd 4123 (1992)). The FCC's political broadcasting rules were further amended in 1992 and 1994.

This summary generally describes a licensee's obligations under the political broadcasting rules and procedures as presently constituted and interpreted. We recommend that you not rely upon any materials published or updated prior to 2002, including the FCC's The Law of Political Broadcasting and Cablecasting: A Political Primer, until such time as it has been updated; the most recent edition was published in 1984. Because many political broadcast questions arise from unusual, and sometimes disputed, factual situations, we recommend that you contact counsel at Fletcher, Heald & Hildreth, PLC, if you have any doubt about the right way to meet the requirements of the Communications Act, as interpreted by the FCC.

Candidates for Public Office

The Communications Act and the Commission's rules govern a licensee's conduct with regard to "legally qualified candidates" for public office. A "legally qualified candidate" is a person (1) who has publicly announced his or her candidacy and has met the qualifications prescribed by law for candidates for the office being sought and (2) who (a) has qualified for a place on the ballot or has publicly committed himself or herself to seeking election by the write-in method and (b) is eligible under applicable law to be voted for by writing his or her name on a ballot or other such method and makes a substantial showing that he or she is a *bona fide* candidate.

Reasonable Access

Access for Federal Candidates

Section 312(a)(7) of the Communications Act requires stations to provide **federal** candidates "reasonable access" to their facilities. To satisfy the reasonable access requirement, broadcast stations must consider access requests

on an individualized basis, and broadcasters are required to tailor their responses to accommodate, as much as reasonably possible, a candidate's stated purpose in seeking air time. In responding to access requests, however, broadcasters may also give weight to such factors as the amount of time previously sold to the candidate, the disruptive impact on regular programming, and the likelihood of requests for time by rival candidates . . .

Ross Perot against ABC, CBS, NBC and Fox, 11 FCC Rcd 13109,13121-13122 (1996). Broadcasters, therefore, must weigh the needs of the candidate on the one hand, against the needs of the station on the other. If a broadcaster conducts this balancing test in a reasonable manner, the Commission's reasonable access rules will have been satisfied.

In evaluating whether a particular licensee's judgment in affording access is reasonable, the Commission will also rely on the following guidelines:

Reasonable access must be provided to legally qualified federal candidates through the gift or sale of time for their "uses," at least during the 45 days preceding a primary and the 60 days preceding a general or special election, including spot and program time; and during prime time. The question of whether access should be afforded before the election periods or before a convention or non-primary caucus will be determined by the Commission on a case-by-case basis. Generally, however, the FCC is likely to hold that a federal candidate is the best judge as to when the candidate should start his or her campaign and the candidate's first request for time must be honored if it is not, on its face, unreasonable.

If a station chooses to donate rather than sell time to candidates, it must make available to federal candidates free time of the various lengths, classes and periods that it makes available to commercial advertisers.

A station may not use a denial of reasonable access as a means to censor or otherwise exercise control over the content of political material.

A station may not adopt a policy that flatly bans federal candidates from access to the types, and classes of time which it sells to commercial advertisers, except that it may refuse to sell spot time within news programming to candidates. For other than federal candidate "uses", a station may adopt a policy of selling time only to authorized spokespersons for candidates and refuse to sell time to independent spokespersons in support of or in opposition to particular candidates. Stations may not have a flat ban on the sale of non-standard lengths of time, such as five minutes to federal candidates. To justify a negative response, a broadcaster must be able to demonstrate a realistic danger of substantial program disruption, perhaps caused by insufficient notice to permit schedule adjustments or an excessive number of equal opportunity requests.

While a station may not have a flat ban on the sale of any particular non-news time period to federal candidates, candidates are not entitled to a particular placement of their political announcements in a station's broadcast schedule.

Noncommercial educational broadcast stations were relieved of reasonable access requirements by legislation adopted in December, 2000.

Access for State and Local Candidates

Neither Section 312(a)(7) nor the "public interest standard" of the Communications Act requires a licensee to accord state and local candidates any specific right of access. However, we recommend that you accord commercial time access to state and local candidates for important offices. Each station must determine which of the non-federal candidates are of sufficient importance or interest to qualify for the purchase of time. A station may establish a policy which limits the purchase of time by non-federal candidates, either as to amount or time period. When political time is sold to state or local candidates it must be charged at lowest unit rates and the equal opportunity requirement applies.

Access with Regard to News Programming

So long as a station makes available to federal candidates a wide array of dayparts and programs, it may have a policy of banning the sale of political advertising during news programming. A station is permitted to refuse political advertising in all news programming or during some news programs or during any portion of a specific news programs (*e.g.*, refuse to sell time in hard news portion but sell time in sports or weather segments.)

A station may create a class of spot time adjacent to news programming ("news adjacencies") for political candidates when it bans such spots within news programming. However, when political spots are banned in news programming, a station may charge no more for the news adjacencies than the lowest priced spot run in the adjacent news programming. The Commission staff takes the position that the news adjacencies are a separate class of time for which a station may not charge more than the lowest cost spot which clears in the news programming. A station may not establish separate classes of time (*e.g.*, fixed and preemptible) within the adjacencies, even if those separate classes of time are sold within the news programming. If a station has no special class of news adjacency spots, however, a candidate who purchases time in a program or time period adjoining the news may be charged the rate applicable to that program or time period, even if the rate is higher than the rate for news spots and even if the candidate's spot happens to run in the break adjacent to the news programming.

Access During Weekends

If a station has provided weekend access for the purposes of arranging and providing programming (including commercial messages) to any commercial advertiser during the year preceding an election, then it must provide access to federal candidates during the weekend before the election. However, candidates only must be treated in the same manner as commercial advertisers. Hence, if a station provided weekend access to any commercial advertiser during the year preceding the election period only for the limited purpose of changing or deleting copy and did not permit the placing of new orders, then the station is required to provide access only for the same limited purpose. If weekend access is afforded to state and local candidates, it must be afforded on a non-discriminatory basis.

Deadlines for Placing Orders

A station may hold candidates to the same ordering deadline that applies to commercial advertisers so long as that deadline does not conflict with a federal candidate's statutory right to access or with any candidate's statutory right to equal opportunity. Hence, while it would be reasonable to require federal candidates to comply with a 48-hour ordering deadline during most of the 45 or 60 day pre-election periods, it is likely to be found to be unreasonable to apply the ordering deadline during the days immediately prior to the election, thereby denying a federal candidate access. Candidates may be provided access during the weekend immediately preceding the election by making available a list of telephone numbers or other method for finding responsible station personnel.

Equal Opportunities

Section 315(a) of the Communications Act provides that, when a station permits any legally qualified candidate (federal, state or local) to "use" its station, the licensee must provide "equal opportunities" to all other candidates for the same office. The appearance of a legally qualified candidate in the following news programming is exempt from the equal opportunities requirement:

Bona fide newscasts, whether produced by the licensee or a third party, so long as the third-party production is not to promote a particular candidacy;

Regularly scheduled and licensee controlled *bona fide* news interviews;

Bona fide news documentaries where the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentaries; and

On-the-spot coverage of *bona fide* news events (including but not limited to political conventions and activities incidental thereto, third party and broadcaster-sponsored debates between candidates and certain special news interviews which contain structural safeguards that offer virtually no opportunity for broadcaster favoritism).

Uses of Broadcast Facilities

To be a "use" triggering the equal opportunities provision, the person appearing must be a "legally qualified candidate" for public office and the appearance must be by voice or image in a readily identifiable manner.

In 1994, the Commission announced that it would give further consideration to the issue of what constitutes a use and whether it must be authorized by a candidate. Now a use is any "positive" appearance of a candidate's identifiable voice and/or picture. The requirement that a use be "positive" excludes ads where an opposing candidate or organization uses a candidate's voice or picture in a negative fashion. Hence, independent entities who include the voice or image of a candidate within a spot in a positive manner create a "use" whether or not the candidate voluntarily appears or authorizes the appearance.¹ Note that the Federal Election Campaign Act specifically requires that broadcast communications that advocate either the election or defeat of a particular candidate, or solicit contributions, must "clearly and conspicuously indicate" whether the broadcast was authorized by a particular candidate or was not authorized by any candidate. When an independent entity purchases time and claims that the proposed use is authorized by a non-federal candidate, it is advisable to require some form of written documentation that the state or local candidate approved or authorized the candidate's appearance.

When an independent entity purchases political time which includes the recognizable picture or voice of a candidate and is authorized by a candidate, the entity is entitled to the lowest unit charge. The FCC staff takes the position that the independent entity becomes a committee of the candidate when the candidate authorizes the purchase of the political time. With regard to federal candidates, the FCC staff takes the position that the requirement to provide access to federal candidates precludes a station from requiring an independent entity to sign a statement that the purchase is being made on behalf of a candidate. The fact that the political spot or program is identified as, for example, "Paid for by the Republican National Committee and Authorized by the Bush-Quayle Committee" is sufficient evidence that the candidate authorized the purchase. A written statement may be demanded in the case of a state candidate.

Demands for Equal Opportunity

A candidate seeking equal opportunity in response to a use by an opposing candidate for the same office must make the request of the licensee within 7 days following the appearance giving rise to the claim. Failure to make a timely request bars a claim for equal opportunity.

¹ Unless authorized by a candidate, independent entities that oppose or support candidates do not have any access rights nor are they entitled to be charged the lowest unit rates.

A licensee is under no obligation to notify a candidate's opponents of a candidate's use and to offer equal opportunity. However, see the political file requirements discussed below.

When a licensee provides free time for a use by a candidate or provides free time for a broadcast on behalf of a candidate within 72 hours prior to the day of election, the licensee must immediately place in the station's public file a statement showing the candidate's name, political affiliation, office sought and the nature of the free time provided.

Recapture of Spot Time Sold

To protect a station when it has over-sold spots to one candidate and is faced with a request for equal opportunity by that candidate's opponent, a sales contractual provision permitting recapture of spots is recommended. The following provision should be added to a station's spot sales agreement:

The station retains the right to recapture spot time sold in this order to meet equal opportunity or reasonable access requirements of the Communications Act of 1934, as amended. If spot time is recaptured by the station, the advertiser will be advised as soon as is practicable and an appropriate refund will be issued.

A station should also include a notice of the practice in its Political Advertising Disclosure Statement.

Prohibition Against Censorship of a Use

Once a station permits a candidate to "use" its station, the "use" may not, in any way, be censored. The station may not:

1. Delete libelous or indecent material;
2. Prohibit the inclusion of highly inflammatory or extremely unpopular viewpoints;
3. Require the candidate to sign an indemnification agreement; or
4. Require an advance script of the candidate's remarks. However, to verify the sufficiency of sponsorship identification, a station may request pre-airing submissions.

The Supreme Court has ruled that a station is insulated from liability from statements made by a candidate during a "use." However, when a spot is not a "use," there is no requirement to sell the time, or if it is sold, there is no prohibition against censorship.

Political advertisements that a broadcaster believes are indecent should only be broadcast in the "safe harbor," which is between 10:00 pm and 6:00 am. The Commission has defined the term indecent to mean "language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities of organs." *Petition for Declaratory Ruling Concerning Section 312 (a) (7) of the Communications Act*, 9 FCC Rcd 7638, 7643 (1994).

Political advertisements that a broadcaster believes are harmful to children, but are not indecent, may not be restricted in any way. Graphic anti-abortion spots, for example, may not be channeled to the "safe harbor" despite the effects that such advertisements may have on children. The FCC, however, has ruled that stations may place neutral advisory warnings before spots that contain material which the station believes may be disturbing to children, even if those spots might not be indecent. An appropriate

advisory would be “The following message may be disturbing to children and parental guidance is advised.”

Sponsorship Identification

Section 317 of the Communications Act requires the disclosure, on the air at the time of broadcast, of the identity of the party providing consideration for the broadcast of material. A station may require that the proposed political broadcast contain the appropriate sponsorship announcement within the time period purchased. That announcement must reasonably identify the real sponsor of the matter broadcast. Further, the Commission's rule, § 73.1212(a)(1), requires that the sponsorship identification state that the broadcast matter is "sponsored, paid for, or furnished" by the identified sponsor. These words may not be abbreviated in a visual identification. If the spot is not paid for by the candidate, the ID must state whether the spot is authorized by the candidate.

For television, a visual sponsorship ID is sufficient. That visual identification must be by letters, each of which is equal to or greater than four percent (4%) of the vertical picture height and must air for not less than four (4) seconds. Any reasonable basis for determining the size and timing used by broadcasters will be treated deferentially by the Commission. However, the Commission has stated that the most suitable method for calculating four percent of the vertical picture height is the use of the number of scan lines in a television signal. Of the 525 scan lines, 483 consist of picture content and four percent of 483 is 19.32, or 20 scan lines.

For broadcasts of five minutes' duration or less, one sponsorship identification announcement must appear either at the beginning or conclusion of the broadcast. For paid broadcasts of longer than five minutes, a sponsorship identification must appear at the beginning and conclusion of the broadcast.

A station may request pre-screening of political advertising to verify compliance with the visual identification requirement. Where there is insufficient time to review a political advertisement and still schedule the material as requested by the candidate, the Commission has stated that you must air the spot in a timely fashion. However, only one such broadcast is permitted and, thereafter, the station must add the required identification for future broadcasts. If a station cannot add the required visual identification immediately without taking extraordinary measures, the Commission will permit it to add only an aural identification, as long as the proper visual information is added within one (1) business day of the first airing. A station need not provide additional time, free of charge, in order to satisfy the sponsorship ID rules, and it may, therefore, add the necessary information within the spot itself even if it obliterates a portion of the candidate's spot.

In the case of political programming which advocates the election or defeat of a federal candidate or that solicits any political contributions, radio spots authorized by a federal candidate and/or the candidate's authorized committee must include an audio statement by the candidate identifying himself/herself and stating that the candidate approved the broadcast and that the candidate and/or the candidate's authorized committee has paid for the broadcast. If the spot mentions an opposing candidate at all, then the spot must also identify the office being sought.

A television spot advocating the election or defeat of a federal candidate or that solicits any political contributions must identify the candidate on whose behalf time was purchased, state that the candidate approved the broadcast, and state that the broadcast has been paid for by the candidate and/or the candidate's authorized committee. One of two forms is acceptable: (1) the candidate can make the statement in an unobscured, full-screen view (at least 80%); or (2) a candidate can do a voice-over, coupled with a clearly identifiable photograph or similar image of the candidate. In addition, there must be a written presentation of the same statement at the end of the political programming “in a clearly

readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least four seconds.”

Lowest Unit Charge (“LUC”)

Section 315(b) of the Communications Act directs broadcast stations to charge political candidates for "uses" the "lowest unit charge" of the station for the same class and amount of time for the same period, during the 45 days preceding a primary or runoff election and the 60 days preceding a general or special election. Expressed another way, the lowest unit charge requirement places the candidate's purchase of time for a use in the same position as a station's most favored commercial advertiser without regard to frequency of use by the candidate. That is, all discount privileges and station sales practices (such as make goods and preemption priorities) made available to commercial advertisers must be made available to political candidates without the requirement to purchase the same quantities of time as required of commercial advertisers. A station may not develop or apply sales practices that discriminate against candidates and in favor of commercial advertisers.

"Class of time" refers to rate categories such as fixed, preemptible, ROS, BTA or rotator. "Amount of time" refers to the unit of time such as 30 seconds or one minute. "Same period" refers to the period of the day when the spot or program is to be broadcast, such as during prime time or drive time or within a precise program or specified time period.

If a station normally allows an agency to deduct a commission from its rate, and, if a station is selling directly to a candidate without an agency, a station must deduct the amount of commission from its rates in determining the lowest unit charge. When the candidate buys through an agency, the agency commission may be included in the lowest unit charge.

Certification Requirement

To receive the benefit of a station's lowest unit charge, federal candidates or their authorized committees must provide a broadcast station with a written certification stating whether or not the programming refers to another candidate for the same office. This certification must be provided to the broadcast station at the time the programming is purchased.

If the programming does refer to an opposing candidate, the certification for a radio spot must state that the programming will include a message, in the candidate's voice, identifying the candidate by name, the office being sought, and that the candidate approved of the broadcast.

For a television spot that refers to an opposing candidate, the certification must state that the programming will include a clearly identifiable photographic or similar image of the sponsoring candidate simultaneously displayed with a legible printed statement identifying the candidate, the fact that the candidate approved the broadcast, and that the candidate or the candidate's authorized committee paid for the broadcast. This image must appear in an unobscured full-screen view for at least four seconds at the end of the political spot.

This provision, while originally intended to reduce "attack" ads, broadly applies to any mention of an opposing candidate, regardless of the context. A candidate who fails to provide this certification forfeits all rights to the Lowest Unit Charge for all programming aired during the remainder of the LUC window (45 days preceding a primary, 60 days preceding the general election).

Disclosure Requirement

A station must disclose and make available to candidates all pertinent information about discount privileges available to commercial advertisers, including the lowest unit charges for the different classes of time sold by the station. Numerous rulings by the FCC make it clear that adequate disclosure may be accomplished practically only by a written Disclosure Statement. A station may not infer that a candidate or its agent has knowledge of the discount privileges for the various classes and lengths of time and time periods. However, after a station has once made full disclosure to a particular candidate or the candidate's agent during a given campaign, full disclosure need not occur each time a buy is made, although any changes in rates or other information that may arise subsequent to the initial disclosure must be disclosed during succeeding negotiations. Further, the Commission places the burden upon the broadcaster to prove that the candidate has received a current Disclosure Statement. If political time is sold by your station rep, you must require your rep to supply the candidate with your Disclosure Statement and establish some procedure to verify that it has done so.

Each station should prepare and present to every candidate or the candidate's agent, a Political Advertising Disclosure Statement. The Commission requires that, at a minimum, a station disclose the following information:

A description and definition of each class of advertising time available to commercial advertisers which is complete enough to allow candidates to identify and understand what specific attributes differentiate each class;

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;

If applicable, 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;

If preemptible time is sold, an approximation of the likelihood of preemption for each kind of preemptible time; and

An explanation of the station's sales practices, if any, that are based on audience delivery.

A sample Political Advertising Disclosure Statement is attached hereto.

The Political Advertising Disclosure Statement must be reviewed periodically to insure that it accurately states current commercial practices and rate levels. A station's responsibility to disclose to candidates all rates and discount privileges offered commercial advertisers is ongoing and is not limited to the 45 and 60 day pre-election periods. That is, a station has a responsibility to disclose to candidates all rates and discount privileges offered commercial advertisers during the non-Election Periods when rates comparable to commercial advertisers must be charged. The attached sample Political Advertising Disclosure Statement does provide the necessary information to inform candidates concerning comparable rates.

In the event a request for political rate information is received by telephone, a station should advise the candidate generally of the classes of time and rates available and that complete information is available only in the station's Political Advertising Disclosure Statement. A station should insist upon mailing or otherwise providing a copy of the Disclosure Statement to any party making a request for

political advertising information and maintain a record of when and how the Disclosure Statement was provided to the candidate. For that record, it is recommended that Certified Mail, with return receipt, or telecopy, with a confirmation report, be used when distributing the Disclosure Statement.

A station may request that a federal candidate sign a written acknowledgment of receipt of a Disclosure Statement but it may not require such an acknowledgment as a condition of access. While a station could require non-federal candidates to sign such an acknowledgment so long as it did not interfere with a candidate's right to equal opportunity, we believe it is the better practice not to require the execution of a written acknowledgment by any candidate. If the execution of a written acknowledgment is requested and refused, a station should place its own notation to that effect in its political file indicating the candidate's refusal.

Classes of Time

The Commission recognizes that there are significant differences in the many ways commercial time is sold by radio and television stations. It recognizes that many stations sell advertising using a "grid card" system or a "yield maximization" system where all spots are preemptible and essentially auctioned to the highest bidder with prices changing in response to supply and demand. If a station is willing to sell any spot at any rate, with higher priced spots preempting lower priced spots, that is a continuous auction. A candidate may then choose to buy spots from the station at a high price --to assure non-preemption--but will still be entitled to receive a refund down to the charge made for the lowest priced spot that was purchased to run in a given time period or daypart and that actually ran. Further, if a continuous auction pricing system is used, a station may never be "sold out" to a candidate who is entitled to purchase time at the lowest rate that will clear.

The Commission will permit a station to offer to candidates the same variety of classes of advertising time as is offered to commercial advertisers, including classes with varying levels or assurances of preemption protection, as long as the distinction between class is based on some demonstrable benefit other than price or the identity of the advertiser. The different identifiable classes of preemptible spots must (a) each have an associated reasonably predictable likelihood of preemption; (b) be available uniformly and fairly to all advertisers during the Election Periods and non-Election Periods; and (c) be clearly disclosed to candidates. Further, the different classes of preemptible spots are permitted so long as there is not an "infinite number of classes" with small gradations of price. Such a system permits an advertiser to purchase the degree of protection it chooses. An acceptable pricing system of separate classes of immediately preemptible time would be as follows:

Four classes of immediately preemptible time: Classes A, B, C and D. Each class would preempt the lower class or classes: *e.g.*, Class A spots would preempt Classes B, C and D spots; Class B spots would preempt Classes C and D spots; and Class C spots would preempt Class D spots. Each class would have its own risk of preemption: *e.g.*, Class A spots would have 100% chance of clearing; Class B would have 90% to 100% chance of clearing; Class C would have a 75% to 90% chance of clearing; and Class D would have less than 75% chance of clearing. Each class would have a range of rates with a rate ceiling. Within a class, a higher price spot of one class would preempt any lower price spot of the same class.²

Further, a station may maintain different classes of time such as preemptible with: no notice, 24 hours notice, one week notice, no right of make good, the right of make good, the right of make good

² A station selling time by auction where any spot can be preempted by another advertiser who simply offers a higher price, with no ceiling or price level at which a spot is guaranteed to run, could not justify more than one class of immediately preemptible time.

within a week, the right to make good within 30 days, etc. It is critical that the terms of all such classes of time that are available be carefully defined, disclosed and uniformly offered to candidates. Fixed or non-preemptible spots may be treated as a distinct class of time and made available to candidates as long as the class of time is made available on a *bona fide* basis to both candidates and commercial advertisers, and no lower-priced class of time (*i.e.*, a preemptible class) sold to commercial advertisers is functionally equivalent to the non-preemptible class. A preemptible spot will be considered by the Commission to be the functional equivalent of a fixed spot if, due to the station's own priorities against preemption or other discount privileges, a commercial advertiser is, in practice, assured of not being preempted while paying a lower preemptible rate.

Distinctly different rotations constitute separate periods of time for purposes of calculating the lowest unit charge, regardless of whether or not they overlap. That is, 9:00 a.m. to noon, 9:00 a.m. to 4:00 p.m., and 9:00 a.m. to midnight are different periods of time, each with its own lowest unit charge, as are Monday to Wednesday and Monday to Sunday. The lowest unit charge for such rotations may vary and be calculated from week to week. Similarly, the lowest unit charge may be calculated for each program which is treated as a different time period where such differences are reflected in a station's sales practices. All of a station's rotations must be disclosed to candidates (or a complete summary of its procedures for identifying all of the possible rotations that can be purchased, together with a notation that a complete list of all rotations will be provided upon request).

Candidates will be able to challenge the *bona fides* of separate classes of time. The Commission will consider the following factors when evaluating whether the criteria a station has used to differentiate among classes are reasonable and not used to evade the statutory intent of Section 315(b). The factors to be considered will include but are not limited to:

- (a) whether the same separate classes are used year round, or were developed solely for the campaign season;
- (b) whether the station has applied the criteria used to distinguish between classes to all advertisers consistently and fairly;
- (c) whether the station adequately disclosed and explained the characteristics associated with each different class of time to candidates; and
- (d) whether the candidate received the appropriate lowest unit charge for the specific class of time purchased.

Failure to properly define, or consistently apply the factors used to define, separate classes of immediately preemptible time will cause the Commission to view all immediately preemptible time for a station as a single class.

Special Class of Time for Candidates

The Commission does not preclude a station from offering a non-preemptible, candidate-only class of time at a discount to political advertisers, provided that no lower-priced class of time sold to commercial advertisers is functionally equivalent to that non-preemptible class. The practice must confer a *bona fide* benefit upon candidates to justify charging any rate higher than the lowest unit charge for preemptible time, *i.e.*, there must be a realistic risk of preemption associated with a lower-priced class of preemptible time sold to commercial advertisers.

The special candidate-only class of non-preemptible time must be priced below a station's effective selling level for non-preemptible time. The special rate may not be the station's "average rate"

or just lower than the "average rate." If a station not selling non-preemptible time to commercial advertisers establishes a candidate-only class of non-preemptible time, it must be able to show (a) that commercial advertisers buying preemptible time at that same rate run a genuine risk of preemption; (b) that commercial advertisers cannot buy any preemptible time that is the functional equivalent of the station's candidate-only class of time; and (c) that the station has disclosed and offered all preemptible rates to candidates, describing the likelihood of preemption for all classes of preemptible rates (*i.e.*, provide a complete Disclosure Statement).

Package Plans

All packages, whether individually negotiated or generally available to every advertiser, are treated as volume discounts and must be considered in computing the lowest unit charge for the classes, periods and times included in the packages. A price must be allocated to every spot in every package of spots, including bonus spots, and factored into lowest unit charge calculations.

The Commission now permits a station to place a value on all spots within a package even if the contract or invoice for the purchase shows an average rate or only a gross package price. The Commission will defer to a station's reasonable, good faith judgment as to the allocation of the package price among spots in the package, paid and bonus. In assigning values to spots in a package, a station may take into account objective criteria such as seasonal differences or anticipated audience size. Importantly, the allocation of the package price among spots in the package must be done at the time the package is sold. The allocation may be on the face of the contract, invoice or an internal document prepared contemporaneously with the formation of the contract.³ The document must be signed and dated by an authorized representative of the station. We recommend the sales manager. It is the allocated prices which must be considered in determining the lowest unit charge for different classes of time. Any internal document prepared must be made available to the Commission upon request and would also be subject to discovery under the procedures described below in Disputes with Candidates section. We strongly recommend that an internal allocation of price document be prepared for every package and maintained with the sales contract. Remember, any price allocation must be signed and dated at the time made by an authorized representative of the station.

If you find that you have missed allocating the prices of spots on some existing packages, you should do so expeditiously and the value of spots so identified must be considered in determining the lowest unit charge for all classes of time. If separate documentation is used, it should be signed and dated by an authorized representative of the station. If the analysis is made on the contracts or invoices, the allocations should also be signed and dated.

Bonus spots must be factored into lowest unit charge calculations, even if the bonus spots are provided informally after the fact to compensate for audience under delivery. The only circumstance in which bonus spots need not be individually valued is when a station contracts in advance to deliver a specified audience or rating level and to provide additional spots (or refunds) to compensate for under delivery. In the latter case, the same type of arrangement must be offered to candidate even if it is not practical for a candidate to benefit from the arrangement because the adjustment is made in a subsequent quarter.

If the spots sold and bonused are of the same class and time, the lowest unit charge would be determined by dividing the total cost of the spots by the number of spots, including bonus spots. Where bonus spots are included in a package of different classes of spots, the value of the bonus spots and the

³ When a separate document is used the contract or invoice may show an average rate for paid and bonus spots which may be different from the value assigned in the separate document or may show the bulk package price.

resulting discount must be considered in computing the lowest unit charge. For example, the per spot charge for lowest unit charge consideration for such a package could be computed as follows:

14 spots morning drive at \$50 per spot
14 spots evening drive at \$45 per spot
10 spots 10 a.m. to 4 p.m. at \$20 per spot
7 spots 7 p.m. to 6 a.m. no charge (actual value \$10 per spot)
Total cost of package = \$1,530
Actual value of package = \$1,600
Discount = $\$70/\$1,600 = 4.4\%$
Discount price for lowest unit charge consideration for morning drive = \$47.80; evening drive = \$43.02; 10 a.m. to 4 p.m. = \$19.12

The calculated discounted price for each class of time must be considered in determining the lowest unit charge.

Merchandising Incentives, Billboards, Sponsorships and PSAs

Noncash promotional incentives such as bumper stickers, mailings, tickets or trips won for achieving certain volume levels need not be included in calculations of lowest unit charge. Further, noncash merchandising and promotional incentives, if *de minimis* in value, such as coffee mugs, or which may reasonably imply a relationship between the station and the advertiser, such as bumper stickers which prominently identify both the station and the advertiser, need not be offered to candidates. However, if noncash promotional incentives are of more than *de minimis* in value, they must be offered to candidates on the same terms as offered to commercial advertisers.

The Commission has concluded that the value of billboards and program sponsorships are *de minimis* and need not be offered to candidates. Further, stations are not required to offer paid PSAs, or any variation thereof, to candidates. However, sold PSAs must be treated in the same manner as bonus spots and some value assigned to them when determining the value of all spots in an order for lowest unit charge purposes. A station's good faith judgement in assigning values will ordinarily control.

Increase in Rates During Election Period

The Commission permits increases in political rates during election periods when they are the result of "ordinary business practices," such as increases due to changes in audience ratings, seasonal program changes and the general demand for spots. However, a station may not increase rates only to enable it to charge candidates more than commercial advertisers. It must be remembered that candidates who purchase time after the effective date of a rate increase are entitled to any lower rate provided to advertisers (commercial or political), who contracted for time before the rate increase but for broadcast after the rate increase, so long as the spots are for the same class and amount of time.

Timely Make Goods and Their Effect on Lowest Unit Charge

As noted above, a station may establish different classes of preemptible time and may also establish that an advertiser is entitled to a make good if preempted. Make goods must be provided to candidates under the same terms and conditions as provided commercial advertisers during the year preceding the 60-day and 45-day statutory election periods. Further, if make goods are made to commercial advertisers where time is of the essence, make goods for political spots must air before the election.

The rate paid by an advertiser who received a make good must be considered when computing the lowest unit charge for a given class of time. Hence, if the make good is placed in a more valuable program or daypart, the purchase price of the make good must be factored into the calculation of the lowest unit charge and may result in reducing the rate that may be charged other candidates purchasing the same class of spot.

Excluded from the calculation of the lowest unit charge are make goods or bonus spots furnished to meet contracted-for promises of certain audience levels, demographics, or ratings, when that is the practice for selling time to both commercial and political advertisers. A candidate purchasing the same class of time with such guarantees is also entitled to make-good or bonus spots or, if provided to commercial advertisers, a refund.

Sold-Out Time

There is no requirement that a station sell candidates spots in a particular program. A station may refuse to sell a federal candidate time in a particular program or daypart for a variety of reasons, including unavailability of open inventory, so long as that federal candidate is otherwise provided reasonable access to the station's overall schedule. However, once a station, which sells preemptible time in an auction-like manner without an established rate ceiling, decides to sell time within a given daypart or program to a candidate, it may not tell the candidate that the preemptible time is sold out in order to force the candidate to purchase non-preemptible spots in the same daypart or program. The Commission has concluded that for stations which sell time in an auction-like manner, by definition, preemptible time cannot be sold out because an offer of a higher price will preempt a lower priced spot. A candidate cannot require a station to preempt a spot by paying the same price as paid for the spot that is being preempted, unless doing so would be the only way to meet equal opportunities or reasonable access obligations. If a candidate purchases a preemptible spot at a higher price in order to preempt another advertiser, and a preemptible spot of the same class also clears the same time period, the candidate who paid the higher rate is entitled to a refund to the level of the lowest price paid for a spot that cleared of the same class during the same period.

If a station does not sell time in an auction-like manner, it is not necessarily impossible to be sold out of preemptible time. For example, if a station offers a preemptible class of time at a flat rate and a non-preemptible class of time at a flat rate, and the preemptible spots can only be bumped by spots purchased at the non-preemptible rate, once all available inventory is sold at the preemptible rate, it is sold out because the only way to preempt a spot in that program or time period is to purchase non-preemptible time. Similarly, if a station offers one or more classes of immediately preemptible time with price ceilings established for each class it would be possible for the station to be sold out of one or more of its classes of immediately preemptible time.

Payment of Charges by Candidates

A station may not discriminate between commercial advertisers and candidates, or between candidates, in its sales practices, including the requirements for advance payment or payment by cash, certified check or wire transfer.

If a station has a policy of requiring commercial advertisers without an established credit history for prompt payment to pay in advance for advertising, it may require candidates without an established credit history for prompt payment to pay in advance. If your station does not have such a policy, it should establish and implement such a policy immediately. Further, the Commission's staff has held that it is unreasonable to require payment by candidates more than one (1) week in advance of the air date of the first advertisement in the schedule.

With regard to the method of payment, the staff has ruled that a broadcaster may exercise its reasonable, good faith judgment in requiring any specific type of payment for advertising so long as there is no discrimination against, between or among candidates. That is, stations may establish the same payment requirements for candidates and commercial advertisers of similar credit standing.

The Audit of Charges and Refunds

The Commission now requires a station to audit periodically the rates charged candidates and to provide refunds or credits for overcharges before the election ends, when possible. An audit is particularly necessary when a station sells primarily preemptible time with fluctuating rates depending upon supply and demand. We recommend that an audit of political rates be undertaken weekly and that a station's records used to conduct the audit be maintained for a two year period. Those records, which are private and not placed in the public political file, should include sufficient details and notes to permit another person to verify the analysis at some later time.

The Commission recognizes that candidates need to maximize the use of their campaign funds and expects stations to provide refunds more expeditiously as the election approaches. We recommend that a station audit the time sold candidates on a weekly basis and offer candidates refunds or credits within two days of the audit.

Disputes with Candidates

The assertion of primary and exclusive jurisdiction by the Commission over disputes with candidates arising under Section 315(b) has resulted in the adoption of formal procedures for dispute resolution. It is best to attempt to resolve any dispute with a candidate informally; however, in many cases it is necessary to hold the line, even if it means bringing the matter to the attention of the Commission.

In order to invoke the Commission's enforcement procedures, a candidate must file a written complaint which sets forth a *prima facie* case of violation of Section 315(b).⁴ The complaint must be served upon the station, or its counsel, and an answer may be filed by the station within 10 days. If, after review, the Media Bureau finds that a *prima facie* case has been made, it will issue an order giving the parties the opportunity to elect one of two alternative procedures to resolve the complaint: mediation (Alternative Dispute Resolution); or evaluation and disposition by the Bureau subject to review by the full Commission.

Under either procedure, once a *prima facie* case has been found, the complainant will be permitted limited discovery subject to the limitations and timetable set forth in the Bureau's order. Subject to discovery will be station records related to rates, terms and conditions for commercial and political advertising pertinent to the complaint. The identities of commercial advertisers and other proprietary information not relevant to the complaint may be redacted from the records produced. Document production will be subject to a protective order limiting its examination to parties designated in the order.

Within 30 days after the completion of discovery, the complainant will be required to file an amended complaint based on the information discovered and stating the amounts said to be owed. The station is permitted to respond within 15 days. If the parties so desire, the dispute may be pursued

⁴ The fact that a station made efforts to settle an overcharge claim will not be considered by the Commission in deciding whether a *prima facie* case has been established.

through mediation.⁵ If the dispute is not mediated, the Bureau will issue a decision either imposing an appropriate sanction for a violation or dismissing the complaint where it finds no violation. Sanctions available include forfeitures (\$12,500 is the "base fine" for a lowest unit charge violation), letters of admonition, short-term renewal and designation of a station's license for revocation.

In appropriate cases, disputes may be referred to an Administrative Law Judge for resolution. Any decision by the Bureau or an ALJ may be appealed directly to the full Commission.

Political File Requirements

Section 73.1943 requires a station to keep and permit public inspection of a complete record of all requests for broadcast time made by or on behalf of candidates ("candidate request"), together with an appropriate notation showing the disposition made of the requests and the charges made, if the request is granted. A record of any free time provided to candidates must also be placed in the political file. Section 73.1212(e) requires that a list of the chief executive officers or members of the board of directors of the entity purchasing political time also be placed in the public file. The political file must also contain all requests for time by anyone (non-candidate), for communication of a message that refers to a legally qualified candidate or any election to federal office ("election message request"), or a message relating to any political matter of national importance ("issue request"). In addition to disposition of the request and details of the order, the record must show the name of the candidate and the election/office to which the advertising refers, if applicable, and/or the issue to which the ad refers. It must also show the name of the person purchasing the time, the name, address and phone number of a contact person, and a list of the chief executive officers or governing board of the purchaser. In addition, the rate charged must be included, as well as the date and time when the programming was broadcast.

With the exception of the precise time that political spots air (see the discussion below), all records required to be kept must be placed in the public file immediately and retained for a period of two years.⁶ As long as there is no dispute pending with any candidate as to the level of rates charged, it is recommended that the records in the political file be discarded after two years.

The NAB Political Broadcast Agreement Forms (PB-16) are appropriate to use for both a time sale agreement and for record keeping, and we recommend their use. They also include the Candidate Certification required for LUC. As the NAB forms are modified from time-to-time, use the latest forms available.⁷

If time is sold, a copy of the order and invoice should be placed in the file as soon as possible, as well as any changes or make goods. A station need not make extraordinary efforts to place immediately in the political file the exact time that candidate spots aired. However, the station must provide an alternative method for opposing candidates to ascertain the exact time that candidate spots aired such as providing information concerning the times ordered by a candidate with a notation that the station will, upon request, provide immediate assistance and access to station logs or other definitive information concerning actual air time. The public file must be sufficiently complete so that other candidates or their agents can reasonably identify the quantity, class, charges, time and period of programming or

⁵ If the mediator is an FCC employee, he or she will not otherwise be involved in adjudicating the dispute.

⁶ The Commission takes very seriously a failure of a station to see that all necessary information required to be in the political file is available to candidates. No request for such material should go unheeded.

⁷ To order the forms, call the NAB at (202) 429-5300 or 1-(800) 368-5644 or check the NAB's website at: www.nab.org.

commercial time sold or given to candidates. It is advisable to provide assistance to those reviewing the political file to see that the information desired is obtained.

We recommend that a copy of a station's current Political Advertising Disclosure Statement be maintained in the political file.

The political file must be available for public inspection at any time during regular business hours. All or part of the file may be maintained in a computer database, as long as a computer terminal is made available, at the location of the file, to members of the public who wish to review the file. Material in the file shall be made available for printing or machine reproduction upon request made in person. The station may specify the location for printing or reproduction, require the requesting party to pay the reasonable cost thereof, and may require guarantee of payment in advance (*e.g.*, by requiring a deposit, obtaining credit card information, or any other reasonable method). Requests for copies shall be fulfilled within a reasonable period time, which generally should not exceed 7 days.

Responsibilities Outside Election Periods

As set forth above, during the 45 days preceding a primary or runoff election and the 60 days preceding a general or special election, a station may only charge candidates at the lowest unit charge level. At all other times a station sells broadcast time to candidates for uses, it must do so at comparable rates and must make available to candidates, on equal terms, all rates and discount privileges offered to commercial advertisers. The Commission now requires that a station disclose to candidates available rates and discount privileges on an ongoing basis. Hence, a station must provide all candidates requesting broadcast time with a copy of its Disclosure Statement, whether or not the candidates are entitled to purchase time at the lowest unit charge.

Political Editorials/Personal Attack Rules

The FCC's prior political editorial and personal attack rules have been vacated by the FCC in response to a decision from the U.S. Court of Appeals for the District of Columbia Circuit issued on October 11, 2000.

FLETCHER, HEALD & HILDRETH, P.L.C.

Relevant Sections of the Communications Act of 1934, as amended
(47 U.S.C. § _____)

§ 312. Administrative sanctions

(a) Revocation of station license or construction permit

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.

* * *

(f) “Willful” and “repeated” defined

For purposes of this section:

(1) The term “willful”, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this chapter or any rule or regulation of the Commission authorized by this chapter or by a treaty ratified by the United States.

(2) The term “repeated”, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

§ 315. Candidates for public office

(a) Equal opportunities requirement; censorship prohibition; allowance of station use; news appearances exception; public interest; public issues discussion opportunities

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 chapter 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 chapter, 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 [431](#) of title [2](#).

(c) Definitions

For 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) Rules and regulations

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.

§ 317. Announcement of payment for broadcast

(a) Disclosure of person furnishing

(1) All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person: Provided, That "service or other valuable consideration" shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification in a broadcast of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast.

(2) Nothing in this section shall preclude the Commission from requiring that an appropriate announcement shall be made at the time of the broadcast in the case of any political program or any program involving the discussion of any controversial issue for which any films, records, transcriptions, talent, scripts, or other material or service of any kind have been furnished, without charge or at a nominal charge, directly or indirectly, as an inducement to the broadcast of such program.

* * *

§ 335. Direct broadcast satellite service obligations

(a) Proceeding required to review DBS responsibilities

The Commission shall, within 180 days after October 5, 1992, initiate a rulemaking proceeding to impose, on providers of direct broadcast satellite service, public interest or other requirements for providing video programming. Any regulations prescribed pursuant to such rulemaking shall, at a minimum, apply the access to broadcast time requirement of section 312 (a)(7) of this title and the use of facilities requirements of section 315 of this title to providers of direct broadcast satellite service providing video programming. Such proceeding also shall examine the opportunities that the establishment of direct broadcast satellite service provides for the principle of localism under this chapter, and the methods by which such principle may be served through technological and other developments in, or regulation of, such service.

* * *

§ 399. Support of political candidates prohibited

No noncommercial educational broadcasting station may support or oppose any candidate for political office.

§ 399b. Offering of certain services, facilities, or products by public broadcast station

(a) “Advertisement” defined

For purposes of this section, the term “advertisement” means any message or other programming material which is broadcast or otherwise transmitted in exchange for any remuneration, and which is intended—

- (1) to promote any service, facility, or product offered by any person who is engaged in such offering for profit;
- (2) to express the views of any person with respect to any matter of public importance or interest; or
- (3) to support or oppose any candidate for political office.

(b) Offering of services, facilities, or products permitted; advertisements prohibited

- (1) Except as provided in paragraph (2), each public broadcast station shall be authorized to engage in the offering of services, facilities, or products in exchange for remuneration.
- (2) No public broadcast station may make its facilities available to any person for the broadcasting of any advertisement.

* * *

**Relevant Sections of FCC's Rules
Dealing With Broadcast Stations (47 C.F.R. §___)**

§ 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 percent of the vertical picture height that air for not less than four 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 of 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 purpose 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 F.C.C. 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 F.C.C. 141), as modified by Public Notice, dated April 21, 1975 (FCC 75-418). Further interpretations are printed in full in various volumes of the Federal Communications Commission Reports.

[40 FR 18400, Apr. 28, 1975, as amended at 46 FR 13907, Feb. 24, 1981; 49 FR 4211, Feb. 3, 1984; 49 FR 33663, Aug. 24, 1984; 50 FR 32417, Aug. 12, 1985; 57 FR 8279, Mar. 9, 1992]

§ 73.1940 Legally qualified candidates for public office.

(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 paragraph (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 in 47 CFR chapter I, 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 the 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 9 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.

[57 FR 27708, June 22, 1992]

§ 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 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) that is not exempt under paragraphs 73.1941 (a)(1) through (a)(4) of this section.

(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.

[57 FR 208, Jan. 3, 1992, as amended at 59 FR 14568, Mar. 29, 1994]

§ 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 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-period 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 audience ratings.

(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 such 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, prospectively 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 candidate 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 the disclosure.

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

[57 FR 209, Jan. 3, 1992, as amended at 57 FR 27709, June 22, 1992]

§ 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.

[57 FR 210, Jan. 3, 1992]

§ 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.

[57 FR 210, Jan. 3, 1992]

**Relevant Sections of FCC's Rules
Dealing With Cable Television Systems (47 C.F.R. §___)**

§ 76.205 Origination cablecasts by legally qualified candidates for public office; equal opportunities.

(a) *General requirements.* No cable television system is required to permit the use of its facilities by any legally qualified candidate for public office, but if any system 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 system 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 system. (section 315(a) of the Communications Act.)

(b) *Uses.* As used in this section and §76.206, the term “use” means a candidate appearance (including by voice or picture) that is not exempt under paragraphs 76.205 (a)(1) through (a)(4) of this section.

(c) *Timing of request.* A request for equal opportunities must be submitted to the system 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 system 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 system 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 system make any contract or other agreement which shall have the

effect of permitting any legally qualified candidate for any public office to cablecast to the exclusion of other legally qualified candidates for the same public office.

[57 FR 210, Jan. 3, 1992, as amended at 59 FR 14568, Mar. 29, 1994]

§ 76.206 Candidate rates.

(a) *Charges for use of cable television systems.* The charges, if any, made for the use of any system 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 system for the same class and amount of time for the same period.

(i) A candidate shall be charged no more per unit than the system charges its most favored commercial advertisers for the same classes and amounts of time for the same periods. Any system practices offered to commercial advertisers that enhance the value of advertising spots must be disclosed and made available to candidates upon 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) Systems 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. Systems 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) Systems 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) Systems may treat non-preemptible and fixed position as distinct classes of time provided that systems articulate clearly the differences between such classes, fully disclose them, and make them available to candidates.

(vi) Systems shall not establish a separate, premium-priced class of time sold only to candidates. Systems 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. Systems 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. Systems 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 audience ratings.

(ix) Systems 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, systems shall issue such 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) Systems 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 system. 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 system 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) Systems must disclose and make available to candidates any make good policies provided to commercial advertisers. If a system 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, systems may charge legally qualified candidates for public office no more than the charges made for comparable use of the system 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 system would charge for comparable commercial advertising. All discount privileges otherwise offered by a system to commercial advertisers must be disclosed and made available upon equal terms to all candidates for public office.

(b) If a system permits a candidate to use its cablecast facilities, the system 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 on 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, as provided in §76.1611. Systems 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 enough 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 system'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 system'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, systems shall negotiate in good faith to actually sell time to candidates in accordance with the disclosure.

[57 FR 210, Jan. 3, 1992, as amended at 57 FR 27709, June 22, 1992; 65 FR 53615, Sept. 5, 2000]

§ 76.1611 Political cable rates and classes of time.

If a system permits a candidate to use its cablecast facilities, the system shall disclose to all candidates information about rates, terms, conditions and all value-enhancing discount privileges offered to commercial advertisers. Systems may use reasonable discretion in making the disclosure; provided, however, that the disclosure includes, at a minimum, the following information:

- (a) A description and definition of each class of time available to commercial advertisers sufficiently complete enough to allow candidates to identify and understand what specific attributes differentiate each class;
- (b) 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;
- (c) A description of the system'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;
- (d) An approximation of the likelihood of preemption for each kind of preemptible time; and
- (e) An explanation of the system'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.

§ 76.1615 Sponsorship identification.

(a) When a cable television system operator engaged in origination cablecasting presents 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 cable television system operator, the cable television system operator, at the time of the cablecast, shall announce that such matter is sponsored, paid for, or furnished, either in whole or in part, and 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 cablecast 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 cablecast. For the purposes of this section, the term “sponsored” shall be deemed to have the same meaning as “paid for.” In the case of any political advertisement cablecast under this paragraph that concerns 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) Each cable television system operator engaged in origination cablecasting shall exercise reasonable diligence to obtain from employees, and from other persons with whom the system operator deals directly in connection with any matter for cablecasting, information to enable such system operator to make the announcement required by this section.

(c) In the case of any political origination cablecast matter or any origination cablecast matter involving the discussion of public controversial issues for which any film, record, transcription, talent, script, or other material or service of any kind is furnished, either directly or indirectly, to a cable television system operator as an inducement for cablecasting such matter, an announcement shall be made both at the beginning and conclusion of such cablecast 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 cable television system operator in connection with the transmission of such cablecast matter: *Provided, however*, that in the case of any cablecast of 5 minutes' duration or less, only one such announcement need be made either at the beginning or conclusion of the cablecast.

(d) The announcement required by this section shall, in addition to stating the fact that the origination cablecasting 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 (c) of this section are furnished. Where an agent or other person or entity contracts or otherwise makes arrangements with a cable television system operator 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 system operator, 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.

(e) In the case of an origination cablecast 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 cablecast.

(f) The announcement otherwise required by this section is waived with respect to the origination cablecast 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.

(g) The announcements required by this section are waived with respect to feature motion picture film produced initially and primarily for theatre exhibition.

Note to §76.1615(g): 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(e) of this chapter, the predecessor television rule, went into effect.

(h) Commission interpretations in connection with the provisions of the sponsorship identification rules for the broadcasting services 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 (FCC 75–418). Further interpretations are printed in full in various volumes of the Federal Communications Commission Reports. The interpretations made for the broadcasting services are equally applicable to origination cablecasting.

§ 76.1701 Political file.

(a) Every cable television system shall keep and permit public inspection of a complete and orderly record (political file) of all requests for cablecast time made by or on behalf of a candidate for public office, together with an appropriate notation showing the disposition made by the system 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.

(d) Where origination cablecasting material is a political matter or matter involving the discussion of a controversial issue of public importance and a corporation, committee, association or other unincorporated group, or other entity is paying for or furnishing the matter, the system operator shall, in addition to making the announcement required by §76.1616(a), 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 local office of the system. Such lists shall be kept and made available for a period of two years.

**Relevant Sections of FCC's Rules
Dealing With Direct Broadcast Satellite (47 C.F.R. §___)**

§ 25.701 Public interest obligations.

(a) DBS providers are subject to the public interest obligations set forth in paragraphs (b), (c), (d), [. . .] of this section.

* * *

(b) Political broadcasting requirements—

(1) Legally qualified candidates for public office for purposes of this section are as defined in §73.1940 of this chapter.

(2) DBS origination programming is defined as programming (exclusive of broadcast signals) carried on a DBS facility over one or more channels and subject to the exclusive control of the DBS provider.

(3) *Reasonable access.*

(i) DBS providers must comply with section 312(a)(7) of the Communications Act of 1934, as amended, by allowing reasonable access to, or permitting purchase of reasonable amounts of time for, the use of their facilities by a legally qualified candidate for federal elective office on behalf of his or her candidacy.

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

(4) *Use of facilities; equal opportunities.* DBS providers must comply with section 315 of the Communications Act of 1934, as amended, by providing equal opportunities to legally qualified candidates for DBS origination programming.

(i) *General requirements.* Except as otherwise indicated in §25.701(b)(3), no DBS provider is required to permit the use of its facilities by any legally qualified candidate for public office, but if a DBS provider 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 DBS provider shall have no power of censorship over the material broadcast by any such candidate. Appearance by a legally qualified candidate on any:

(A) Bona fide newscast;

(B) Bona fide news interview;

(C) 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

(D) 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 DBS provider's facility. (Section 315(a) of the Communications Act.)

(ii) *Uses.* As used in this section and §25.701(c), the term “use” means a candidate appearance (including by voice or picture) that is not exempt under paragraphs (b)(3)(i)(A) through (b)(3)(i)(D) of this section.

(iii) *Timing of request.* A request for equal opportunities must be submitted to the DBS provider 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.

(iv) *Burden of proof.* A candidate requesting equal opportunities of the DBS provider 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.

(v) *Discrimination between candidates.* In making time available to candidates for public office, no DBS provider 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 DBS provider make any contract or other agreement that shall have the effect of permitting any legally qualified candidate for any public office to use DBS origination programming to the exclusion of other legally qualified candidates for the same public office.

(c) *Candidate rates* —

(1) *Charges for use of DBS facilities.* The charges, if any, made for the use of any DBS facility 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:

(i) 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 DBS provider for the same class and amount of time for the same period.

(A) A candidate shall be charged no more per unit than the DBS provider charges its most favored commercial advertisers for the same classes and amounts of time for the same periods. Any facility practices offered to commercial advertisers that enhance the value of advertising spots must be disclosed and made available to candidates upon 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.

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

(C) DBS providers 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. DBS providers 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.

(D) DBS providers 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.

(E) DBS providers may treat non preemptible and fixed position as distinct classes of time provided that they articulate clearly the differences between such classes, fully disclose them, and make them available to candidates.

(F) DBS providers shall not establish a separate, premium priced class of time sold only to candidates. DBS providers 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.

(G) [Reserved]

(H) 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. DBS providers 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. DBS providers 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 audience ratings.

(I) DBS providers 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, DBS providers shall issue such rebates or credits promptly.

(J) 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.

(K) DBS providers 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 system. Bonus spots, however, must be included in the calculation of the lowest unit charge calculation.

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

(M) DBS providers must disclose and make available to candidates any make good policies provided to commercial advertisers. If a DBS provider 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.

(ii) At any time other than the respective periods set forth in paragraph (c)(1)(i) of this section, DBS providers may charge legally qualified candidates for public office no more than the charges made for comparable use of the facility 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 DBS provider would charge for comparable commercial advertising. All discount privileges otherwise offered by a DBS provider to commercial advertisers must be disclosed and made available upon equal terms to all candidates for public office.

(2) If a DBS provider permits a candidate to use its facilities, it 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 on 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, as provided herein. DBS providers may use reasonable discretion in making the disclosure; provided, however, that the disclosure includes, at a minimum, the following information:

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

(ii) 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;

(iii) A description of the DBS provider'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;

(iv) An approximation of the likelihood of preemption for each kind of preemptible time; and

(v) An explanation of the DBS provider'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.

(3) Once disclosure is made, DBS providers shall negotiate in good faith to actually sell time to candidates in accordance with the disclosure.

(d) Political file. Each DBS provider shall keep and permit public inspection of a complete and orderly political file and shall prominently disclose the physical location of the file, and the telephonic and electronic means to access the file.

(1) The political file shall contain, at a minimum:

(i) A record of all requests for DBS origination time, the disposition of those 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; and

(ii) A record of the free time provided if free time is provided for use by or on behalf of candidates.

(2) DBS providers shall place all records required by this section in a file available to the public as soon as possible and shall be retained for a period of four years until December 31, 2006, and thereafter for a period of two years.

(3) DBS providers shall make available, by fax, e-mail, or by mail upon telephone request, photocopies of documents in their political files and shall assist callers by answering questions about the contents of their political files. Provided, however, that if a requester prefers access by mail, the DBS provider shall pay for postage but may require individuals requesting documents to pay for photocopying. To the extent that a DBS provider places its political file on its Web site, it may refer the public to the Web site in lieu of mailing photocopies. Any material required by this section to be maintained in the political file must be made available to the public by either mailing or Web site access or both.

POLITICAL ADVERTISING DISCLOSURE STATEMENT

[Add the current date]

The purpose of this Disclosure Statement is to make those parties who purchase political programming time fully aware of the application of the "lowest unit charge" provisions of Section 315(b) of the Communications Act. The lowest unit charge provisions apply only during the 45 days preceding a primary or run-off election and the 60 days preceding a general or special election (the "Election Periods") and to legally qualified candidates for public office or their authorized campaign organizations to promote their candidacy; they are not applicable to political action committees or to non-candidate issue advertising. At times other than the prescribed Election Periods, the rates charged candidates shall not exceed the charges made for comparable uses of the station by other advertisers.

Orders for Political Time

Orders for political time will not be considered firm until a completed and signed Agreement Form for Political Candidates (NAB Form PB 14) has been delivered and, if the candidate is without an established credit history for prompt payment, the net cash payment has been received at least one week in advance of the air date of the first spot in the schedule.

Proper Sponsor Identification

All ads must comply with sponsorship identification requirements of the Communications Act. The identification must state that the broadcast is "sponsored, paid for or furnished by" the identified sponsor. All television ads must contain a visual identification in letters equal to or greater than four percent (4%) of the vertical picture height for a period of not less than four (4) seconds. A pre-airing submission of all ads is requested to permit the station to verify compliance with the identification requirements. Should a candidate's ad not be submitted in sufficient time for a pre-airing review or not contain the proper identification, the station reserves the right to add the required material within the quantity of time purchased.

Type of Rates Offered by the Station

This station sells commercial time in thirty (30) second increments throughout the day. The rates for sixty (60) and ninety (90) second spots are, respectively, two (2) and three (3) times the thirty (30) second rate for otherwise describe the time increments sold.

Type of Spots Offered by the Station

Spots are offered for sale on a preemptible and non-preemptible (fixed) basis, as follows:
[List all and define all categories of rates offered, for example:]

Fixed Spot - Fixed spots will air in the program or time period purchased. These ads may not be preempted in favor of any other ad and will air as scheduled absent unforeseen program changes or technical difficulties.

Preemptible with Notice - Preemptible with notice spots will be preempted upon ___ days notice by any higher rated spot (either preemptible or fixed). If timely notice of preemption is not given, the spots become non-preemptible.

Immediately Preemptible with Make Good - Immediately preemptible with make good spots will be preempted up until the time of broadcast by any higher rated spot (either preemptible or fixed). If preempted, a make good spot will be rescheduled and broadcast within a reasonable period of time [or with 3 days etc.]

Immediately Preemptible without Make Good - Immediately preemptible without make good spots will be preempted up until the time of broadcast by any higher rated spot (either preemptible or fixed). A refund will be provided for preempted spots.

Guaranteed Audience Reach - Fixed or preemptible spots may be purchased with a negotiated guaranteed audience delivery. The audience levels for such spots will be determined in the subsequent quarter and make good spots will run in that quarter in case of under delivery.

Run-of Schedule - ROS spots will be placed within the broadcast schedule at times selected at the discretion of the Station. Make goods are not available.

Rotations - Spots may be purchased for time or day rotation. For example, one or more spots may be purchased to air between the hours of 10:00am-5:00pm or 4:30-7:00pm, the precise air time to be selected at the sole discretion of the station. One or more spots may be purchased to air on any one or more days to be selected at the sole discretion of the station; for example, on any three days Monday-Friday, on any two days Monday-Sunday, or on either Saturday-Sunday. Further, one or more spots may be purchased to air during a period on any of one or more days, for example, five spots to be aired any time between 4:30-7:00pm on any three days Monday-Friday, as selected by the station. A rate will be quoted for virtually any period of time or series of days. Generally, the greater the flexibility the station maintains for spot placement, the lower the rate.

Spots are sold, for example, for a specific time and date or within a specific period. The attached sheet sets forth the specific time periods within which spot time may be purchased. **[Attach a list of all time periods which may have a different rate (avails).]** Packages of spots of different classes or to be broadcast during different time periods are also sold. However, packages are treated as volume discounts and are considered in calculating the lowest unit charge.

Level of Rates Sold by the Station

Candidates are entitled to receive all discount privileges otherwise offered to commercial advertisers and are to be placed on a par with the most favored commercial advertiser of this station. Candidates will be charged the "lowest unit charge" (the "LUC") for the same class and amount of time for the same period during the forty-five (45) days preceding a primary election and the sixty (60) days preceding a general election. When a candidate purchases time outside these election periods, he or she will be charged rates comparable to current commercial rates.

The station has calculated the predicted LUC for every class of time sold on the station. The LUC may vary on a weekly basis depending upon the price of spots actually broadcast during each week. Candidates may purchase preemptible spots at the LUC or at a higher rate so as to decrease the potential for preemption. The station will supply the current or effective selling level (the "CSL") for all classes of time and time periods. The CSL is that level of rate which has a high degree of certainty of being broadcast on the station. Candidates are entitled to purchase preemptible spots at all interim levels of rates, subject to preemption by a higher rated spot. Examples of the present levels of rates for different classes of commercial time sold by the station are as follows:

[List a variety of times, including specific time periods and rotators, particularly those likely to be purchased by candidates: for example:]

Fixed Spots

<u>DAY</u>	<u>PERIOD</u>	<u>LUC</u>	<u>CSL</u>
<u>[List individual examples]</u>			

Preemptible with Notice Spots

<u>DAY</u>	<u>PERIOD</u>	<u>LUC</u>	<u>CSL</u>
<u>[List individual examples]</u>			

Immediately Preemptible with Make Goods

<u>DAY</u>	<u>PERIOD</u>	<u>LUC</u>	<u>CSL</u>
<u>[List individual examples]</u>			

Immediately Preemptible without Make Goods

<u>DAY</u>	<u>PERIOD</u>	<u>LUC</u>	<u>CSL</u>
<u>[List individual examples]</u>			

Adjacencies to News Programming

This station does not sell political advertising within news programming. The LUC for a spot within the news adjacency will be established by the LUC for the class of time purchased as if it

were in the news program. [Delete this provision if the station sells political advertising with news programming.]

Likelihood of Preemption

A fixed spot purchased at the lowest unit charge is guaranteed to run at the specific time purchased. An immediately preemptible spot with make good purchased at the LUC may be preempted and has only a ___% chance of being broadcast. An immediately preemptible spot with make good purchased at the CSL has a 95% or greater chance of being broadcast. An immediately preemptible spot without make good purchased at the LUC may be preempted and has only a ___% chance of being broadcast. An immediately preemptible spot without make good purchased at the CSL has a 95% or greater chance of being broadcast. The likelihood that a preemptible spot purchased at an interim level will be broadcast will increase as the price approaches the CSL.

At the end of each week, the station will audit the rates for all political time sold to insure that the rates charged candidates reflect the actual LUC, that is, the lowest rate any advertiser paid for the same class of spot that cleared during the same time period during the given week. Refunds will be issued for any overcharges.

Make Good Policy

[The following describes what we believe to be common practice for stations selling immediately preemptible spots with make goods, however, the precise practice of your station with regard to commercial advertisers (for each class of preemptible time) must be explained and applied equally to candidates.]

In the event an immediately preemptible with make good spot is preempted, the station will make good the spot through placement in a comparable time period or periods to deliver an audience comparable to the spot purchased.

Rates for the specific type of spot and periods desired will be provided upon request.

Deadlines for Receipt of Orders

[If a station imposes upon commercial advertisers deadlines for commercial material, time orders and contract changes, it may similarly impose such restrictions upon candidates. A description of such restrictions should be detailed.]

The station imposes the following deadlines for the receipt of orders [or audio or video tapes]:

Recapture of Spots

[If a station implements a practice of recapture of spots from candidates when over-sold and includes the terms of its recapture policy in its sales contract, an explanation of the policy, such as that provided below must be stated.]

The station reserves the right to recapture spot time sold to a candidate to meet equal opportunity or reasonable access requirements of the Communications Act of 1934, as amended. If spot time is recaptured by the station, the candidate will be advised as soon as practicable and an appropriate refund will be issued.

Value Added Features

[If a station utilizes value added features of more than *de minimis* value for its commercial advertisers, it must disclose and offer such features to political candidates.]

If scheduled during the Election Periods, candidates may purchase value-added elements offered to commercial advertisers in conjunction with spot time purchased. The following value added features are available to candidates: [describe]