



Welcome to

Political Broadcasting

2018

A Refresher Course

The program will start shortly.
Please make sure that the volume on your computer's speakers is turned up.

Welcome to

Political Broadcasting 2018

A Refresher Course

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January 18, 2018



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CommLawBlog

The logo icon for CommLawBlog, featuring a series of blue curved lines that sweep upwards and to the right, resembling a stylized signal or sound wave.

in cooperation with



The Webinar Will Cover:

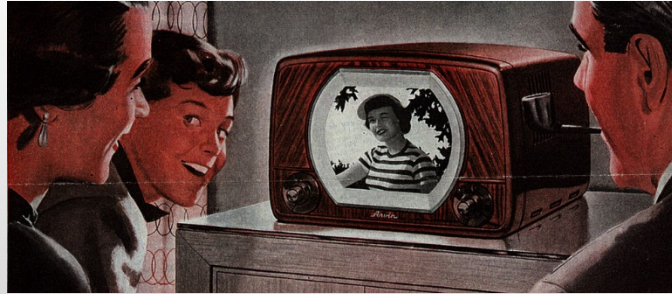
- Lowest Unit Rate calculation
- What are equal opportunities (also called equal time) requirements and what programs are exempt from this?
- Impact on streamed political ads online
- Handling “issue” ads from PACs
- Record keeping
- and more!



Legally Qualified Candidate



- Must have announced intention to run
- Must be qualified under state law to hold the office
- Must be qualified under state law to be on the ballot or a write-in candidate
- Presidential candidates must be qualified in the state or in ten states
- Check with governmental officials



The Key Element of Political Broadcasting Is a Candidate “Use”

- A “use” must include a candidate appearance in an *identifiable* voice or picture
- Any “positive” appearance by a candidate is a “use”
- The appearance does *not* have to be controlled or approved by the candidate
- “Use” triggers “equal opportunity” for opponents of that candidate

Exempt Programs

- Bona fide newscasts
- Bona fide news interview programs
- Bona fide documentaries
- On-the-spot coverage of bona fide news events (includes debates)



Candidate Access: Two Different Standards

- Federal candidates - have “reasonable access” rights
- State and local candidates – Only “access” at station discretion

Federal Candidates Are Entitled to Reasonable Access

- Applies to candidate “uses” (see definition) during entire campaign period
- Stations cannot set flat “limits” on amount or type of spots/program time that candidates can buy
- But stations may reject unreasonable requests and negotiate with candidates
- Stations need not respond to “blind” requests for avails or time



Continued . . .

Federal Access *(Continued)*

- Must be offered prime time, program time
- May be excluded from news
- May *not* be excluded from any other category of programs
- Do not have a right of access to any particular program, day or day-part
- Note: non-commercial “educational” stations (FCC reserved channels) are exempt from “reasonable access” concerns by Section 312(a)(7)

Reasonable Determinations by Stations

Station's "reasonable determination" consider:

- how much time previously sold to candidate
- potential disruptive effect on programming
- possibility of "equal opportunity" requests
- timing of request – near election date?

State and Local Candidates

- Stations can take political ads/program from some races and not others
- Stations can limit the number of ads/programs
- Stations can restrict to certain day-parts
- Stations must make all “discount classes” available
- Equal Opportunities, Lowest Unit Charge and No Censorship apply



Equal Opportunities

- Applies when candidate becomes legally qualified
- Applies to candidates in “same race” (opponents seeking the same office)
- But candidates must request equal opportunities within seven days of opponent’s “use”
- Triggered by non-exempt “use”

Political Rates

- Apply to all races - federal, state & local during “windows”
- Lowest unit charge applies during political “windows”
 - 45 days before a primary or caucus
 - 60 days before a general or special election
- Use must be in connection with the campaign



Lowest Unit Charge

- The lowest unit charge (“LUC”) is the lowest rate charged for the same class and amount of time for the same period-- that runs within a LUC window. Not always easy to determine.
- Same “class” (fixed/preemptible/ROS, etc.)
- Same “amount of time” (30/60+, etc.)
- Same “period” (prime time, drive time, etc.)

Charges Inside the Political Window

- Maxim: The political advertiser receives the benefit of all discounts, frequency & otherwise, offered to the most favored commercial advertiser for the same class & amount of time for the same period without regard to the frequency of use by the candidate.

Package Plans

Package plans or bonus spots are *not* considered a separate class.

- Package within a class is just a volume discount.
- Package containing spots in multiple classes and/or dayparts may be allocated.
- Calculate value for each & retain in private non-public file in case complaint/FCC inquiry.

Pre-emptible Time

- Stations with separate levels of pre-emptible time (with different rights) may treat each level as a separate class, each with its own LUC.
- Stations must disclose estimate of approximate “likelihood” of preemption of each class.
- Stations which sell time on a perpetual “auction” basis have only one class of pre-emptible time.

What to Include in the LUC

- All paid spots
- Value of packages and bonus spots
- All contracts in effect during the political window
- Frequency Discounts
- “Special” Package Plans

What to Exclude From the LUC

- Spots for which no payment is received
- Barter spots
- Per-inquiry spots
- Bonus spots for charitable organizations/government entities
- Billboards & Program Sponsorships

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What to Exclude From the LUC *(continued)*

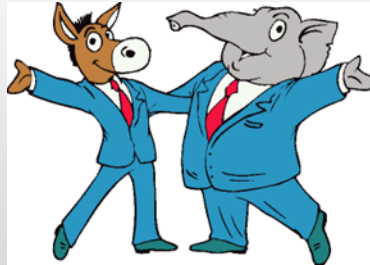
- Non-cash merchandizing/promotional incentives (but make available to candidate on same terms unless de minimis in value or imply a relationship with the station)
- Web services excluded. Treat like non-cash incentive. If part of packages for other advertisers then candidate gets on same basis.
- Charges for production, line charges, remote production etc.

Make-Goods

- If the value is same as other spots in time period broadcast, then no effect. But, if make-good spot is lower than other spots, make-good lowers LUC.
- Audience Short-Fall Make-Goods:
 - Audience information/rating may not be available before the election. Disclose this possibility. Give after election cash rebate or try offer/negotiate for make-good for subsequent election.

Time Sensitive Make-Goods

Political make-good must run before the election, if station has provided time-sensitive make-goods to any commercial advertiser purchasing the same class of time during the year preceding.



Bipartisan Campaign Reform Act (“BCRA”) Federal Candidate Certification

- To be entitled to LUC, a Federal Candidate “must certify” to Station that “if” the candidate’s on-air material refers to an “opponent” (negative or positive) that certain required language will be inserted into the audio & video message.
- This requirement is for “federal candidates” only.
- Can deny LUC if the candidate does not certify.

Disclosure Statement

- Advisable to have in writing
- Provided to every candidate or agency requesting political time (inside or outside the political windows)
- Stations do not have to ensure that candidates read the disclosure statement
- May change during the political season



Disclosure Statement Contents

- Time classes available to advertisers (pre-emptible, ROS, etc. available to commercial advertisers)
- LUC or comparable rate for each class
- Make-good policies
- Pre-emptible time practices, different classes/approx. likelihood of preemption

Continued . . .

Disclosure Statement Contents

(continued)

- Audience delivery sales practices, value-added privileges, discounts, etc.
- Any other sales practices
- Charges for use of facilities, advance payment policies, etc.

Sponsor Identification

- All spots must have a proper sponsor ID
- Must use “paid for” or “sponsored by”
- Spots paid for by someone other than the candidate must state whether they are authorized by the candidate
- TV - Four second; four percent of screen height (20 scan lines)
- BCRA adds requirement for federal candidates if mention an opponent

BCRA Sponsor ID Requirement for Federal Candidates

Federal candidate certification that “if” mention opponent will add certain language:

- TV: image of candidate, identifying him/herself, & stating he/she authorized ad; plus text stating authorized ad & candidate/his/her campaign committee paid for ad. See specs for size on screen etc.
- AM/FM: candidate’s voice identifying him/herself, office sought, & that he/she approved the ad.

Other BCRA Sponsor ID Requirements

- Political Programming “Advocating” election or defeat of federal candidate
 - If authorized
 - If not authorized (third party/issue advertisers)
- Enforcement. Query: Station responsibility?

Advance Payment



- For federal candidates, stations can require payment no more than seven days in advance
- For state and local races, station's commercial advance payment policies apply

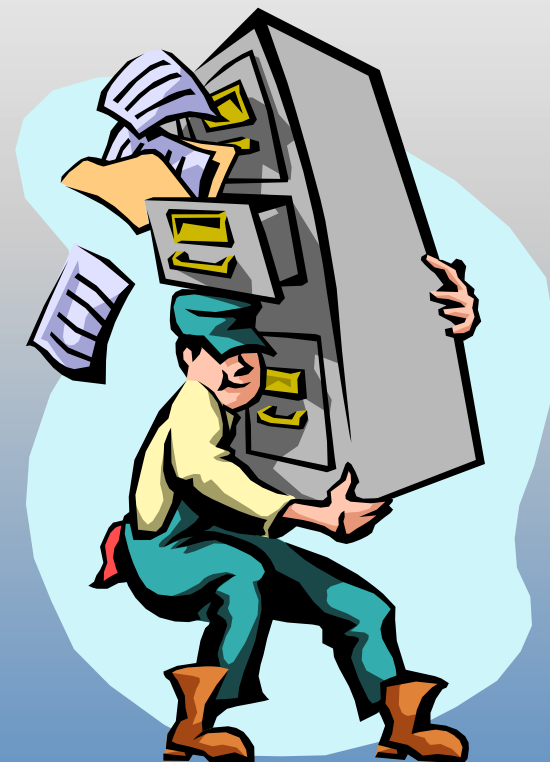
Credit Must Be Offered If . . .



- Candidate or agency has established credit relationship with the station, and
- Candidate or agency assumes responsibility for payment, and
- Station would give credit to similar commercial advertiser

Political File

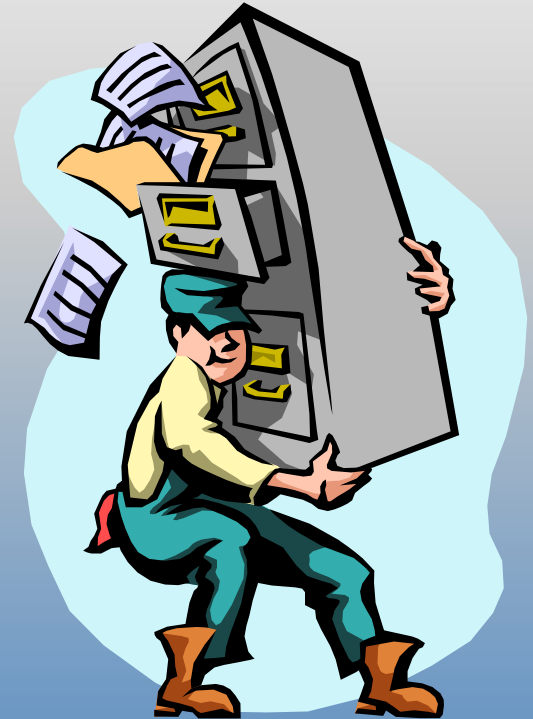
- The name of the candidate requesting time (not rate inquiries), details of who/entity placed order, names, telephone/address, etc.
- Nature and disposition of request, schedule provided, class of time, rate, when aired.



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Political File (*continued*)

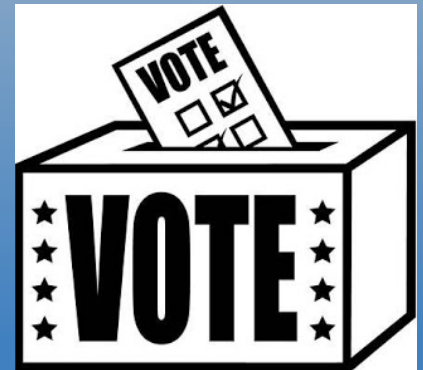
- Information as to all other non-exempt uses
- Keep information for two years
- TV Licensees must use online file



Additional BCRA Political File Requirement

Information as to “programming” that “communicates a political matter of national importance” – although this is a vague standard, it would include at least programming as to:

- legally qualified candidate
- any election to federal office
- national legislative issue



Got Questions?

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