

A
Candidate's Guide
to the
Law
of
Political
Broadcasting

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national association
of broadcasters



**A CANDIDATE'S GUIDE TO THE LAW
OF POLITICAL BROADCASTING**

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THE AMERICAN RADIO HISTORY

OF THE AMERICAN PEOPLE

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INDUSTRY

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A CANDIDATE'S GUIDE TO THE LAW OF POLITICAL BROADCASTING

Introduction

This pamphlet is designed to introduce political candidates to the complex area of federal regulations governing political broadcast advertising. It summarizes in general terms the laws and regulations which the Federal Communications Commission (the "Commission") administers concerning "equal opportunities," reasonable access, rates that may be charged to candidates for broadcast time, the fairness doctrine as it applies to political campaigns, the personal attack and political editorializing rules, and the rules on sponsorship identification, logging of broadcasts and records which broadcast stations must maintain. The Federal Election Commission (FEC) also administers laws on Federal elections, and this pamphlet briefly discusses certain obligations imposed by the Federal Election Campaign Act on candidates making political broadcasts. (The FEC has published a *Campaign Guide for Congressional Candidates and Their Committees*, available free of charge. This booklet may be ordered, and quick questions answered by calling the FEC toll free at (800) 424-9530.)

Familiarity with federal regulations governing political advertising may prevent expensive mistakes in the execution of your media strategy. The fall, when most election campaigns are conducted, is also one of the periods of highest advertiser demand, especially for television. The most desirable time periods may be sold out well in advance and candidates should make their time buys as early as possible.

In view of these competing demands for advertising time, you will achieve the best relations with broadcasters in your area if you and your staff are as familiar as possible with the rules governing political broadcasting. Unnecessary disagreements will be prevented and negotiations facilitated if you take the time now to protect your rights. On the other hand, this pamphlet is no substitute for legal advice. Specific questions of legal interpretation should be referred to your own attorney. Our summaries are just that and the law of political broadcasting is constantly changing as the Commission issues new interpretations of its rules.

The Commission has recently issued a comprehensive primer entitled "The Law of Political Broadcasting and Cablecasting." The primer is a lengthy document containing numerous rulings on political broadcasting questions. It could prove invaluable to a member of your staff who has the time to study it. The primer was published in the *Federal Register* (43 *Fed. Reg.* 36342, Wednesday, August 16, 1978); copies may be ordered directly from the Federal Communications Commission, Public Information Office, 1919 M Street, N.W., Washington, D.C. 20554, (202) 632-7260.

This pamphlet and even the comprehensive primer cannot answer all questions which could arise during a campaign. Accordingly, the last section discusses procedures which you should follow in making inquiries to the Commission.

Some Basic Terminology

While our purpose is not to advise you on the complexities of buying advertising time, you must have some understanding of the basic terms of the business if you are to fully appreciate the scope of your rights. Many candidates today hire advertising agencies to assist in their campaigns. Agencies specialize in media analysis and selection, time buying, program and spot conception, and production. They are experienced negotiators which can achieve more efficient and effective purchases of advertising time than you probably could yourself. Fees are a matter of individual negotiations, but most agencies depend on a 15 percent commission from the media for the time purchased on your behalf. In addition, they may pass along production costs to you.

Whether or not you employ an agency, you will be introduced to many terms which are commonly used throughout the industry. While practices vary from market to market and state to state, the following definitions have broad applicability and roughly the same meaning throughout the country:

Fixed position announcements. These announcements are guaranteed to run at exactly specified times. There is generally a premium price for this pre-clearance.

Pre-emptible announcements. These are sold to the advertiser at a reduced rate with the understanding that they may be moved to another time, or even cancelled in favor of an advertiser who is willing to pay a higher rate for a fixed position. Naturally, the greater the advertising activity, the greater the risk of being pre-empted.

Package plan. This is a cover-all term to describe the sale of a quantity of announcements in various time periods on a station, normally at a reduced rate. It usually specifies the number of announcements, which general time periods are involved, and the total costs. These announcements are usually pre-emptible.

Run of station (ROS) announcements. These announcements are purchased, usually in bulk quantity, at reduced rates, and with the full understanding that there is no guarantee when, or even if, they will be broadcast. Stations run ROS spots wherever they have vacant announcement positions, and the announcements often, if not usually, run in less desirable time periods and at lower rates.

End rate. This is the lowest rate published or offered by a station for a specific time period. It is earned by volume purchases. As is discussed in detail below, during the 45-day period before primary elections, and the 60-day period before general elections, political candidates who themselves personally appear in their own spots, or their own program in connection with their own campaign, will be charged at the end rate, or "lowest unit charge," for a given time period no matter how few spots they purchased from that particular station.

As an advertiser, you are fully entitled to take advantage of the cost savings which might result from use of other than fixed position announcements. You should bear in mind, however, that the lower rates associated with other types of spot announcements reflect a smaller audience or mean that there is a real danger that your announcement will not be aired. Since the campaign season is relatively brief, you should carefully weigh the risks versus the costs savings of alternatives to the fixed position spot.

I. Candidate's Right No. 1—"Equal Opportunities"

A. The rule

The basic rule is that any use of broadcast facilities by a legally qualified candidate for public office imposes an obligation on broadcast stations to afford *equal opportunities* to all other such candidates for the *same* office. This is occasionally called the "equal time" rule which is a misnomer. Section 315(a) of the Communications Act not only requires equal time, but equal treatment in other respects such as the rates charged and the specific times of the day for which you are permitted to purchase time. The text of Section 315(a) is reprinted in full in Appendix A.

B. What is a "use"?

Generally speaking, any appearance by a candidate on a radio or television station is a "use" of the station's facilities. This rule covers all appearances no matter how brief, perfunctory, ceremonial or theatrical. Unless the candidate's appearance comes under one of the specific exemptions to Section 315 discussed below, equal opportunity must be granted.

While your participation may be fleeting, you must take part in the program or spot in such a way that the audience will recognize your voice or picture. Even if you merely state who is the sponsor of a paid political announcement, this will be sufficient, provided that you identify yourself by name or your voice is so well known that the audience will recognize it.

A personal appearance by you on any of the following kinds of programs *does not* require that equal opportunities be given to your opponents:

- (1) newscast;
- (2) a bona fide news interview program (e.g., "Meet the Press");
- (3) news documentary—"if the appearance of the candidate is incidental to the presentation of the subject covered by the news documentary"; and
- (4) on-the-spot coverage of news events.

If the station interviews you or uses an excerpt from a speech by you in any of these kinds of programs, Section 315 of the Communications Act will not require the station to provide equal opportunities to your opponents. However, the fairness doctrine, discussed below, may require that that station devote some time to the campaign of the other candidates.

In 1975, the Commission overruled earlier rulings and held that under certain circumstances the broadcast of debates between political candidates and the broadcast of their press conferences could be considered exempt from "equal opportunities" as on-the-spot coverage of bona fide news events. Generally, the matter must be outside the control of the broadcaster, not take place at the broadcaster's studios, be broadcast live (or no later than one day after the taping) and in its entirety and the event must be newsworthy in the good faith judgment of the licensee.

C. Are you a legally qualified candidate?

Whether or not you are a legally qualified candidate for FCC purposes depends on a number of factors:

- (1) First, you must be *eligible* under the law to hold the office if elected to it. Eligibility is governed by local, state or Federal law depending upon the office which you are seeking.
- (2) Second, you must *publicly announce* that you are a candidate for nomination or for election.
- (3) To be a legally qualified candidate for *election* to office, you must either qualify for a place on the ballot under the applicable law or must publicly commit yourself to seeking election as a write-in candidate and be eligible under state law to be voted on by this method. Write-in candidates must also make a "*substantial showing*" that they are serious candidates for office. The term substantial showing is defined in Section 73.1940(a)(5) of the Commission's Rules governing broadcasts by political candidates, which is reprinted in Appendix A. Generally speaking, the Commission is looking for substantial evidence of those activities which are commonly associated with political campaigns including speeches, distribution of campaign literature, issuance of press releases and the establishment of campaign committees and campaign headquarters.
- (4) A candidate for *nomination* to office is subject to the same rules as for candidates for election if he is running in a *primary election*. If you are seeking your party's *nomination* at a party *convention* or *caucus*, you must make a substantial showing that you are a serious candidate for the nomination.
- (5) Special rules apply to election or nomination of candidates for the *presidency* or *vice presidency*. The same rules apply to them in *individual states* as apply to candidates for election to other offices. The Commission recently concluded that a candidate will be considered legally qualified in all states if he or she has qualified as a candidate for president or vice president in ten or more states. A candidate could be considered a legally qualified candidate for *nomination* in all states if he or she has qualified in at least ten states.

As a candidate, the burden will be on you to establish that you are legally qualified. Make a record of when and how you publicly announce your candidacy and be prepared to establish your qualifications under the applicable law. At the same time, you should know whether your opponents have taken all steps necessary to become legally qualified, and if you find deficiencies, you should be prepared to raise them with stations.

Broadcasters may not refuse you equal opportunities because they believe that you have no possibility of being elected or nominated. On the other hand, you are not entitled to equal opportunities on stations whose service area does not extend to the area which you would serve as a public official. Nor are you entitled to equal opportunities in response to candidates for the same office but who are seeking the *nomination* of a *different*

party. (You should not be confused by the FEC's definition of a "legally qualified candidate" which is less rigid than the FCC's standard. Thus, even though you may not be entitled to "equal opportunities" under the Communications Act, you may be required, as a legally qualified candidate as defined by the Federal Election Campaign Act, to file statements with the FEC. If in doubt, check with the FEC or your attorney.)

D. What constitutes "equal opportunities"?

Equal opportunities means more than "equal time." For example, a station may not charge you more than another candidate or sell your opponent so much time that there is none left for you.

The rules do *not* require a station to sell or give you any particular time, or even to make available exactly the same time period that was sold or given to your opponents. The station must, however, make periods that normally have *comparable* audience available to competing candidates.

Consistent with the equal opportunities requirement, a station may offer free time to all candidates on condition that those who choose not to use their free time will waive their rights to equal opportunities. If any nonparticipating candidates refuse to waive their equal opportunities rights, the broadcaster may withdraw the offer of free time to the other candidates.

E. What steps must you take to preserve your rights to "equal opportunities"?

If you want equal opportunities, you must make your request within *one week* of the day in which your opponent made his or her broadcast. This rule applies only to persons who are legally qualified candidates at the time one of them makes a broadcast or a cablecast. If "A" is a legally qualified candidate on August 1 and makes a broadcast, and "B" does not become a legally qualified candidate until August 2, "B" is not entitled to equal opportunities, no matter how quickly he files his request. If "A" makes a second broadcast on August 3, however, "B" is entitled to equal opportunities if he files his request by August 10.

When a station sells or gives time to your opponent, it need not notify you. It is up to you to keep track of what your opponents are doing. You can do this by having your campaign workers monitor stations within your campaign area and make frequent inspections of the public files of these stations. Stations must keep a record of all requests by candidates for free or paid time and what results from the request, including the rates charged for the time if it is sold. The Commission's Rules state that the material must be placed in the political file "as soon as possible." This requirement, which was recently added to the rule, will no doubt be interpreted in light of the burden on you to make your request within seven days of the prior use.

II. Candidate's Right No. 2—"The Lowest Unit Rate"

A. When applicable

The rate a station may charge you depends in part on how near to election day your broadcast will be made. If it falls within 45 days of a primary or primary runoff election or within 60 days of a general or special election, the most that a station may charge is its "lowest unit charge... for the same class and amount of time for the same period."

During these pre-election periods, you are entitled to a station's quantity discount rates even if you only buy a single spot. For example, a station sells fixed-position, one minute spots in prime time to commercial advertisers for \$25. It sells 500 such spots for \$5,000. The station must sell you one spot for *not more than* \$10.

On the other hand, if your spots are broadcast earlier than the 45- or 60-day period, you may be charged the same rate as a commercial advertiser—\$25 for one spot. Outside of the pre-election periods, you may be charged *no more* than the station would charge a commercial advertiser which is promoting its business in the same area as that in which you are running for office.

You are entitled to a station's lowest unit rate if the following three circumstances all apply:

- (1) The use must occur within 45 days of a primary, or 60 days of a general, election;
- (2) The broadcast must involve a use—personal appearance by you through your voice or image; the lowest unit rate provision does *not* apply to spokespersons; and
- (3) The use must be in connection with your campaign; Congress apparently did not intend that the provision apply to advertisements for a candidate's business in which the candidate happens to appear for a noncampaign purpose.

B. Computing the lowest unit rate

The lowest unit rate is that charge made to the most favored commercial advertiser on the station "for the same *class* and *amount* of time for the same *period*:"

- (1) The term *class* refers to fixed position, pre-emptible, ROS or packages as those terms are defined above.
- (2) *Amount* refers to 30-second spots, 60-second spots, 5 minutes, 15 minutes, half-hour, or one-hour programs.
- (3) *Period* means prime time, drive time, Class A, Class B or other day parts as designated by the station.
- (4) *Lowest unit* means that you earn all discounts, frequency and otherwise, offered for the same class and amount of time for the same period, without regard to the frequency which you use the time. The lowest unit rate is available to *all candidates, local, state and federal*. It does *not*, however, apply to candidates for nomination by a convention or caucus since the lowest unit provision, by its terms, applies only to elections.

The lowest unit rate must be determined by whatever method will give the lowest rate for the same class and amount of time during the same period of the day. The station's lowest unit rate

may appear on its published rate card. If, however, the station actually charges any commercial advertiser a lower rate, it must make that rate available to political candidates. This agreement with the advertiser and not the rate card will apply. If, on the other hand, the rate card produces a lower rate, it will govern.

Many radio stations have special "package" plans which offer advertisers a discount if they buy, for example, 12 spots a day, of which three are in morning "drive time," three are mid-day, three are in afternoon "drive time," and three in the evening. During the pre-election periods, it must make the same package rate available to you on a *proportionate* basis. If you want to buy four spots a day, one in each time period, you may buy them for one-third of the cost of the 12-spot package. However, you *cannot* get the discount package rate if you want all of your spots broadcast in the more desirable morning or afternoon "drive time." In other words, you may not use package plans to "cherry pick" attractive spot announcement times at especially low rates.

Candidates who do not use an advertising agency are entitled to any discounts which an agency would receive. For example, if a station allows an advertising agency a 15 percent discount, a candidate who does *not* use an agency is entitled to the 15 percent discount. On the other hand, if you use an agency, the agency commission may be included in the rate. In this circumstance, the agency is viewed as working for you and where you have no agency, you should not be charged for the agency fee.

Many stations also have station representatives to sell time to national or regional advertisers. These "reps" are also paid on a commission basis, but these commissions need *not* be considered in computing the station's lowest unit charge. Unlike advertising agencies, reps are considered employees of the station like the station's own sales staff.

A station's rates may of course vary with the day of the week because of the difference in the size of its audience. This is particularly common in television. A station is also free to change its rates during the 45- or 60-day pre-election periods consistent with its usual business practice.

C. What rates apply outside the 45- or 60-day periods?

At all other times, the charges made for time on the station must be no more than for a comparable use of the station by other advertisers. A station may not charge you premium rates for uses occurring outside the 45- or 60-day statutory periods. This requirement also applies to spokespersons for candidates.

In the comparable use situation, you are not entitled to quantity discounts unless you earn them, even if equal opportunities apply. For example, if "A" earns a discount rate by purchasing ten spots, "B," exercising his right to equal opportunities, is entitled to the discount rate only if he buys ten spots.

The Commission has interpreted the comparable use provision to require a station to sell spots ROS to candidates if it sells spots ROS to commercial advertisers. ROS spots may be placed wherever the station wishes and may be removed in order to make room for fixed position spots. If candidate "A" purchases ROS spots, some of which were broadcast in prime time, can-

didate "B" would not necessarily be entitled to prime time spots unless he determines to pay the higher rate charged for fixed spots. The station is, of course, expected to act in good faith and follow normal procedures in scheduling the spots.

An important distinction from the lowest unit rate situation applies to agency discounts. Unlike when lowest unit rates apply, a candidate who does not use an agency is *not* entitled to the benefit of the agency discount.

III. Candidate's Right No. 3—The Right To Access

The Commission expects broadcasters to devote substantial amounts of time to broadcasts by and about candidates for public office. In 1972, Congress amended the Communications Act to give the Commission authority to revoke a station's license for "willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of the broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy." Accordingly, while stations have an obligation to devote time to all political broadcasts, Congress gave Federal candidates special rights.

A. Nonfederal candidates

A station is not obligated to make time available to candidates in every state, county and local race. Stations are expected to devote time to campaigns of state and local candidates in proportion to the significance of the campaigns and the amount of public interest in them. In any event, the station may not refuse all requests for time simply because they do not fit into its particular format. With respect to state and local candidates, however, a station need not sell time at all if it gives candidates time. Having determined which are the significant races of greatest interest to its audience, a station may refuse to sell or give time for uses of the station by candidates for other offices.

B. Federal candidates' right to reasonable access

The reasonable access provision applies only to uses by Federal candidates and does not apply to appearances by their supporters or spokesmen. Nor does it require a station to provide free time. It only requires that a station either give "reasonable access" or sell "reasonable amounts of time."

What constitutes "reasonable access" will depend on the circumstances of each case. The amount of time that a station must afford will vary with the number of candidates and the Commission has indicated that it does not expect a station to turn over its facilities for the exclusive use of political candidates in the closing days of an election.

To aid candidates and broadcasters, the Commission has recently articulated the following principles it intends to use in

determining whether a broadcaster's judgment has been reasonable:

- (1) Unless there are unusual circumstances such as the presence during a campaign of a great many candidates, stations must make available "prime-time" program time. "Prime-time" means the evening hours on TV when the audience is usually greatest. It normally means time on radio when most people are driving to and from work.
- (2) Commercial stations must *always* make prime-time spot announcements available.
- (3) Stations may not adopt a policy of rejecting requests by Federal candidates of types, lengths and classes of time that they normally sell to commercial advertisers.
- (4) Stations must provide reasonable access at least during the 45 days before a primary election and the 60 days before a general election. The Commission will decide on a case-by-case basis whether they need to provide access before these periods. It will also decide when access must begin before a convention if candidates are to be chosen in that way.
- (5) Noncommercial educational stations have the same obligations as commercial stations. However, they need not make available lengths of program time that are not consistent with their normal program schedules, and even if they usually broadcast spot promotional or public service announcements, they generally do not need to make spot announcements available to political candidates. However, a noncommercial station may not reject anything submitted by a candidate just because it was originally prepared for broadcast on a commercial station.
- (6) A Federal candidate need not be given or sold any particular position on a station's schedule. For example, he or she need not be given a spot immediately next to the most popular program on a station. If he or she could, it might become impossible to give "equal opportunities" to other candidates for the same office if they demanded spots next to this program.

IV. Candidate's Right No. 4—No Censorship

Section 315 of the Communications Act provides that a broadcaster "shall have no power of censorship over the material broadcast" by legally qualified candidates for public office. The no-censorship provision applies only to uses by a candidate and does not cover appearances by candidates on any of the exempt news programs. The station, accordingly, may edit your speeches on a newscast or other news program. On nonexempt programs, however, the station may not edit your material in any way.

A broadcaster may not refuse to carry a nonexempt speech even if it contains libelous material, is vulgar or is in bad taste. It may not require you to appear live or on tape, or ask to preview your script or preaudition your tape. Since the station is unable to censor your speech, the station will not be held liable in a civil suit for any libelous statements that a candidate makes.

A station may ask for an advance script or tape of your speech for the limited purpose of complying with the law. For example, it may preview the material to determine whether you will take part in the broadcast so as to make it a use and therefore subject to the "equal opportunities," "no-censorship" and "lowest unit charge" provisions of Section 315.

If it is a paid appearance, the station may check to determine whether or not the announcement includes the proper sponsorship identification. Where a station is paid to broadcast any

material, it must announce that the broadcast was paid for and by whom. Federal candidates are subject to the provisions of the Federal Election Campaign Act (FECA) which requires the person buying time on a station to state whether a paid message supporting one candidate or opposing another has been authorized by the candidate. Where a program is both paid for and authorized by you or your committee, an announcement that it is paid for or sponsored by you will be sufficient to satisfy both the FECA requirements and the Commission's sponsorship identification requirements. See Appendix B, *Sponsorship Identification and Candidate Authorization Notices*, Joint Public Notice by the FCC and the FEC, June 19, 1978. If a station customarily computes the time needed for sponsorship identification as part of the time purchased by a commercial advertiser, it is allowed to follow the same practice with paid political programs or announcements.

A station may also preview an announcement or program to learn whether or not the program is longer or shorter than it is represented to be which not only affects the station's scheduling, but may affect its obligations toward your opponents as to equal opportunities, the lowest unit rate or comparable rates. Finally, a television station may preview a tape to assure that it complies with FCC technical standards for television broadcast signals.

V. Other Rules and Policies Which May Affect Political Broadcasts

A. The fairness doctrine

In accordance with the Commission's fairness doctrine, a broadcaster must devote a reasonable amount of time to the discussion of controversial issues of public importance. When a station presents one side of a controversial issue of public importance, it must give a reasonable opportunity for the presentation of contrasting views on that issue.

The doctrine does not apply to uses by a candidate, but it does apply when you appear on a news program which is exempt from the requirements of Section 315. In an exempt situation, the station must use its good faith judgment to determine whether or not it needs to give coverage to other candidates.

Under the Commission's so-called "Zapple" doctrine, if your supporters buy time to support your candidacy, the Commission will require that the station give your opponent's spokesperson substantially equal opportunities. This so-called "quasi-equal opportunities" rule applies only to major political parties.

B. Political editorials

If a licensee endorses your opponent in an editorial, it must do the following within 24 hours after the broadcast:

- (1) notify you of the date and time of the editorial;
- (2) provide you with a script or tape of the editorial; and
- (3) offer you or your spokesperson an opportunity to respond over the station.

If the station had opposed the candidacy of your opponent, it would have had to provide your opponent with the same rights.

Where the editorial is broadcast within 72 hours of election day, the station must comply with the requirements of the poli-

tical editorializing rule sufficiently far in *advance* of the broadcast of the editorial to give candidates a reasonable opportunity to prepare a response.

Since your opponents would be entitled to equal opportunities, the political editorializing rule does not necessarily require that a station provide you with time, and it may offer only to allow your spokesperson an opportunity to appear.

C. Personal attacks

The personal attack rule does not usually come into play during campaigns since it does not apply to attacks made by you or your associates on other candidates or their supporters. The rule provides that a station must undertake the following actions if an attack occurs on the "honesty, character, integrity or like personal qualities of an identified person or group" during the discussion of a controversial public issue:

- (1) notify the person attacked of the date, time and title of the program in which the attack was made;
- (2) send the person a script or tape of the attack or an accurate summary; and
- (3) offer the person attacked a reasonable opportunity to respond.

The rule does not come into play merely because a public figure is attacked. There must be some relation to the discussion of a controversial issue of public importance. If you are attacked during the discussion of a controversial issue of public importance, you would not necessarily be entitled to respond. Again, because of the equal opportunity situation, the station could offer only to provide time for your spokesperson.

VI. What to Do When Negotiations Fail

In the closing days of the campaign, when attractive advertising time becomes scarce, you may find that negotiations with stations become difficult. Of course, the best course of action is to lay out your media strategy well in advance and to make your time buys early. While you may call upon the Commission for assistance, its staff will also be under considerable pressure in the closing days of the campaign.

If you think a station is denying you your rights, or if you need an interpretation on a novel question, you should contact the Fairness/Political Broadcasting Branch of the Complaints and Compliance Division, Broadcast Bureau, Federal Communications Commission, 1919 M Street, N. W., Washington, D. C. 20554. In the closing days of the campaign, you can reach the Commission's staff by telephone at (202) 632-7586.

In making a complaint, the burden is generally on you to establish that a violation of the rules has occurred. In preparing your complaint, you should include:

- (1) call letters of the station involved and if the complaint relates to an editorial, personal attack, an appearance by one of your opponent's supporters, or the station is refus-

ing to provide you time, provide the facts in detail to the Commission;

- (2) if the complaint concerns time your opponent used and you are unable to obtain time on behalf of your candidacy, provide the following additional information:
 - (a) your opponent's name and the date of his or her appearance on the station;
 - (b) whether your opponent was a legally qualified candidate at that time;
 - (c) proof that you are a legally qualified candidate; and
 - (d) whether you made a request for time within one week after the appearance of your opponent.

A Closing Word

Any summary of an area as complex as political broadcasting tends to raise as many questions as it answers. You should, however, now be aware of some of the pitfalls and know when to seek expert guidance. In addition to your own counsel and the Commission's staff, you may find experts in your political party. Good luck!

APPENDIX A

PERTINENT PROVISIONS OF THE COMMUNICATIONS ACT AND FCC RULES

Section 315. — Facilities for Candidates for Public Office

- (a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: provided, that such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is imposed under this subsection upon any licensee to allow the use of its station by any such candidate. Appearance by a legally qualified candidate on any—
 - (1) bona fide newscast,
 - (2) bona fide news interview,
 - (3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or
 - (4) on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto), shall not be deemed to be use of a broadcasting station within the meaning of this subsection. Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.
- (b) 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—
 - (1) 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
 - (2) at any other time, the charges made for comparable use of such station by other users thereof.
- (c) For the purposes of this section:
 - (1) The term "broadcasting station" includes a community antenna television system; and
 - (2) The terms "licensee" and "station licensee" when used with respect to a community antenna television system, means the operator of such system.
- (d) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.

§73.1940 Broadcasts by candidates for public office. —

- (a) *Definitions.*
 - (1) A legally qualified candidate for public office is any person who:
 - (i) has publicly announced his or her intention to run for nomination or office;
 - (ii) is qualified under the applicable local, state or federal law to hold the office for which he or she is a candidate; and,
 - (iii) has met the qualifications set forth in either subparagraphs (2), (3), or (4), below.
 - (2) 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 subparagraph (1) above, that person:
 - (i) has qualified for a place on the ballot, or
 - (ii) 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.

Persons seeking election to the office of President or Vice President of the United States shall, for the purpose of the Communications Act and the rules thereunder, be considered legally qualified candidates only in those states or territories (or the District of Columbia) in which they have met the requirements set forth in paragraph (a)(1) and (2) of this rule: Except, that any such person who has met the requirements set forth in paragraph (a)(1) and (2) in at least 10 states (or nine and the District of Columbia) shall be considered a legally qualified candidate for election in all states, territories and the District of Columbia for purposes of this Act.
 - (3) 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)(1) above, that person makes a substantial showing that he or she is a bona fide 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.
 - (4) 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)(1) above,
 - (i) 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
 - (ii) he or she has made a substantial showing of 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 paragraph (a)(1) and (4) in at least ten states (or nine and the District of Columbia) shall be considered a legally qualified candidate for nomination in all states, territories and the District of Columbia for purposes of this Act.
 - (5) The term "substantial showing" of bona fide candidacy as used in paragraphs (a)(2), (3) and (4) above 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 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.

- (b) *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 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, and
 - (2) at any other time, the charges made for comparable use of such station by other users thereof. 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 if the candidate were a commercial advertiser whose advertising was directed to promoting its business within the same area as that encompassed by the particular office for which such person is a candidate. All discount privileges otherwise offered by a station to commercial advertisers shall be available upon equal terms to all candidates for public office.
- (3) This paragraph shall not apply to any station which is not licensed for commercial operation.
- (c) *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.
- (d) *Records, inspection.* Every licensee shall keep and permit public inspection of a complete record (political file) of all requests for broadcast time made by or on behalf of candidates 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. When free time is provided for use by or on behalf of such candidates, a record of the free time provided shall be placed in the political file. 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. See §§ 1.526-27 of this chapter.
- (e) *Time of request.* A request for equal opportunities must be submitted to the licensee within one 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 shall submit his request within one week of the first subsequent use after he has become a qualified candidate for the office in question.
- (f) *Burden of proof.* A candidate requesting equal opportunities of the licensee, or complaining of noncompliance to the Commission shall have the burden of providing that he and his opponent are legally qualified candidates for the for the same public office.

APPENDIX B

PUBLIC NOTICE

A Joint Public
Notice By The
Federal Communications
Commission
And The Federal
Election Commission



FCC 78-419
95369

June 19, 1978 - BC

SPONSORSHIP IDENTIFICATION AND CANDIDATE AUTHORIZATION NOTICES

1. Through this Joint Public Notice, the Federal Communications Commission and the Federal Election Commission intend to inform broadcast licensees and persons purchasing political broadcast time of ways of complying with both the FCC Rules concerning sponsorship identification and the FEC requirements for candidate authorization notices. 1/ Although the FCC requirements apply specifically to licensees and the FEC Rules apply to Federal candidates, their committees and other persons purchasing political broadcast time, the parties may agree between themselves to use one of the announcements listed in paragraph 4 below in satisfaction of both of these requirements. 2/

2. Under the terms of the Communications Act of 1934, as amended, 3/ and the FCC Rules, 4/ any broadcast time which is paid for or sponsored by a particular person or group must be accompanied

1/ This Notice is intended to supplement FCC Public Notice 76-731 (August 3, 1976) and FEC Notice 1976-55, 41 F.R. 45954, (October 18, 1976).

2/ Section 315 of the Communications Act provides that a licensee shall have no power of censorship over "uses" of a broadcasting station by legally qualified candidates for public office. A "use" is defined as an appearance by a candidate, either orally or visually, during which he or she is identified or identifiable to the listening or viewing audience. In light of this provision, a licensee may not demand that a proposed political broadcast on which a candidate appears comply with the FEC requirements for candidate authorization notices. Of course, if the broadcast does not contain the correct notice of candidate authorization, the candidate or other person submitting the broadcast may be subject to penalties under the Federal Election Campaign Act. An exception is made to the no censorship provision, however, to allow licensees to require that proposed broadcasts comply with FCC Rules, since liability for incorrect sponsorship identification rests with the licensee. 47 U.S.C. §317.

3/ 47 U.S.C. §317.

4/ 47 C.F.R. §73.1212.

by an announcement to that effect. In addition, any political broadcast matter, or any matter which discusses a controversial issue of public importance, which is furnished to a station as an inducement for broadcast, must contain an announcement that it was furnished and by whom. Such announcement must appear or be heard either at the beginning or at the end of the furnished broadcast matter, except that the sponsorship identification must be given at both the beginning and the end of any such broadcast which exceeds five minutes in length.

3. The Federal Election Campaign Act, as amended, 5/ and the FEC Rules 6/ provide that broadcast communications which expressly advocate either the election or defeat of a "clearly identified" candidate 7/ must announce, in a manner which will give actual notice to the listener or viewer, that the broadcast was authorized by a particular candidate or not authorized by any candidate.

4. The following authorization notices and sponsorship identification announcements, in the situations described, comply with both the FCC and FEC regulations:

I. Broadcast communication which is authorized by and financed (or furnished) by the candidate or the candidate's authorized committee:

(1) "Paid for by [Name of candidate or committee]."

or

(2) "Paid for and authorized by [Name of candidate or committee]."

or

(3) "Sponsored by [Name of candidate or committee]."

or

(4) "Furnished by [Name of candidate or committee]."

5/ 2 U.S.C. §441d.

6/ 11 C.F.R. §110.11.

7/ See 2 U.S.C. §431(q) for definition of "clearly identified" candidate.

NOTE: Where a candidate or his committee is paying for or furnishing broadcast matter, authorization by the candidate is assumed and need not be specifically stated.

II. Broadcast communication which is authorized by the candidate or the candidate's authorized committee, but financed (or furnished) by a third party:

- (1) "Paid for by [Name of third party] and authorized by [Name of candidate or committee]."

or

- (2) "Sponsored by [Name of third party] and authorized by [Name of candidate or committee]."

or (where appropriate)

- (3) "Furnished by [Name of third party] and authorized by [Name of candidate or committee]."

III. Broadcast communication which is financed by a third party 8/ and not authorized by any candidate or any candidate's authorized committee:

- (1) "Paid for by [Name of sponsor/payor] and not authorized by any candidate."

or

- (2) "Sponsored by [Name of sponsor/payor] and not authorized by any candidate."

or (where appropriate)

- (3) "Furnished by [Name of person or group furnishing broadcast] and not authorized by any candidate."

8/ If the third party is a political committee, the name of any connected organization must be included in the Notice. See FEC Notice 1976-55, 41 F.R. 45954 (October 18, 1976), Examples 3 and 5.

5. The following additional announcement is required by the FECA 9/ in any of the above situations if the communication (1) is financed by a political committee and (2) solicits political contributions:

"A copy of our report is filed with the Federal Election Commission and is available for purchase from the Federal Election Commission, Washington, D.C."

6. The notice requirements of the FECA 10/ and the FEC Rules 11/ supersede and preempt any state statute which attempts to impose additional notices on political advertising by Federal candidates or committees. 12/

7. A copy of this Public Notice is being sent to all broadcast licensees of the FCC. For further information interested parties may contact the FCC at (202) 632-7586 or the FEC at (800) 424-9530.

9/ 2 U.S.C. §435; 11 C.F.R. §102.13.

10/ 2 U.S.C. §§435 and 441d.

11/ 11 C.F.R. §§102.13 and 110.11.

12/ 2 U.S.C. §453; 11 C.F.R. §108.7; FEC Advisory Opinion 1978-24.

