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A SUMMARY OF POLITICAL BROADCAST REGULATION FOR THE MEMBERS OF THE GEORGIA ASSOCIATION OF BROADCASTERS

Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
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FOR THE MEMBERS OF THE
GEORGIA ASSOCIATION OF BROADCASTERS**

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A SUMMARY OF POLITICAL BROADCAST REGULATION FOR THE MEMBERS OF THE GEORGIA ASSOCIATION OF BROADCASTERS

June 19, 2002

In 1991, the Federal Communications Commission adopted new rules and procedures regarding political broadcasting which superseded many previous Commission interpretations (*Codification of the Commission's Political Programming Policies*, 7 FCC Rcd 678) and asserted original and exclusive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 rules, as amended from time to time, are attached hereto. Note that the FCC rules and the law governing campaign finance and advertising will change substantially after the November 5, 2002 election when the Bipartisan Campaign Reform Act becomes effective. This primer describes a licensee's obligations under the present rules and procedures as presently interpreted.

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. The Commission will rely upon the reasonable, good faith judgments of licensees to provide reasonable access to federal candidates. What constitutes "reasonable access" is determined on a case-by-case basis and depends on the circumstances surrounding a particular candidate's request for time and the station's response to that request.

A station may not adopt a policy that flatly bans federal candidates from access to the types, lengths, and classes of time which it sells to commercial advertisers, except that it may refuse to sell spot time within news programming to candidates. Further, federal candidates are entitled to purchase non-standard lengths of air time, notwithstanding such lengths are not offered to commercial advertisers.

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

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. A station may establish a policy which refuses to sell or otherwise 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.) The FCC generally has accepted a licensee’s definition of “news programming.”

This licensee control over news programming, also permits a station to limit the number of spots a federal candidate may buy within news programming. It may also permit the sale of political spots in some news programming while prohibiting political spots in other news programming.

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, the Commission staff takes the position that, when political spot time is not sold within news programming, 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.

POD Exclusivity

Even if a station provides POD exclusivity to commercial advertisers, it need not provide such exclusivity to federal candidates.

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.

Sale of Non-Standard Length Broadcast Time

The Commission requires that a station sell non-standard length broadcast time to federal candidates. A station may not refuse to sell a 5 minute or other length program to a federal candidate because it does not make such program lengths available to commercial advertisers. A station must evaluate each federal candidate's request for time on an individualized basis.

If a station does not sell non-standard length program time to commercial advertisers, it will not have a lowest unit rate to quote a candidate and it must establish one.

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, upon request, 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**. The unrecognizable voice of a candidate does not create a use without some statement of identification.

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. 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.

Free Time

A station may provide free time to a candidate without incurring an equal opportunities obligation if the free political programming is exempt as a *bona fide* newscast, *bona fide* news interview or on-the-spot coverage of a *bona fide* news event. For example, including a five minute political free time program within the nightly news qualifies for exemption and would not trigger equal opportunities.

In the 1996 campaigns, certain broadcast companies adopted policies providing free air time to major candidates in certain elections. Because those companies did not wish to include minor or fringe candidates in their offers, they developed criteria for selection of candidates receiving free air time. Those criteria involved the use of a neutral third party to select candidates or the adoption of objective criteria to qualify for free air time. The FCC reviewed these policies and provided advance approval, concluding that the free air time was exempt from the equal opportunities requirement as on-the-spot coverage of a *bona fide* news event. As the criteria are critical for the exemption, we recommend that no offer of free air time to a candidate be offered under this exemption without prior review by counsel.

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.

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 restricted or censored. The station may not:

Delete libelous, offensive or indecent material;

Prohibit the inclusion of highly inflammatory or extremely unpopular viewpoints;

Require the candidate to sign an indemnification agreement; or

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 and, therefore, no resultant insulation from liability.

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.

Lowest Unit Charge

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. If a station uses a representative and its contract with the rep requires the payment of a commission, whether or not the time is purchased through the rep, the station may include the commission to be paid in calculating the lowest unit charge even if the candidate buys directly from the station.

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 a station rep, it is incumbent upon the station to require its rep to supply the candidate with the station's 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.

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 day-part 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.

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 within a week, the right of make good within 30 days, etc. It is critical that the terms of all such classes of time that are available be carefully and fully 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. 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:

whether the same separate classes are used year round, or were developed solely for the campaign season;

whether the station has applied the criteria used to distinguish between classes to **all** advertisers consistently and fairly;

whether the station adequately disclosed and explained the characteristics associated with each different class of time to candidates; and

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 the functional equivalent of 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."

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 a different rate, 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.¹ 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 need not be made public but it 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.

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 made available to candidates even if it is not practical for a candidate to benefit from the arrangement because the adjustment is made in a subsequent calendar quarter, which may be after the election.

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 resulting discount must be considered in computing the lowest unit charge.

On the other hand, a formula need not be used and, as described above, selected spot values may be assigned to each of the classes of time within the package. The calculated discounted price or selected price for each class of time must be considered in determining the lowest unit charge.

Merchandising Incentives, Billboards, Sponsorships and PSAs

Non-cash 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, non-cash 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

¹ 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

advertiser, such as bumper stickers which prominently identify both the station and the advertiser, need not be offered to candidates. However, if non-cash 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.

Spot Time Sold to Government or Nonprofit Entities

In calculating the lowest unit rate, a station need not consider spots sold to government or nonprofit entities at discount rates. Further, a station need not consider in calculating the lowest unit rate bonus spots included in packages sold to government or nonprofit entities. Such transactions are considered by the Commission to be outside normal business transactions with a public interest aspect not applicable to candidates.

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

show the bulk package price.

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 whose spot was made 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 day-part, 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 day-part 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 day-part 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 a 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 (e.g. cash or certified check) for advertising so long as there is no discrimination against, between or among candidates or between candidates and commercial advertisers. That is, stations may establish the same payment requirements for candidates and commercial advertisers of similar credit standing.

If political time is purchased through a station rep, delivery of payment to the rep will be considered payment to the station.

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. Few formal complaints have been filed and the FCC staff seeks to resolve conflicts through informal mediation between the parties.

Political File Requirements

Section 73.1940(d) 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, 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. 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.² 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 Agreement PB Form for Political Broadcasts, is appropriate to use for record keeping. As the NAB form is continually modified, use the latest form available.

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 spot 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 information contained in the political file need not be made available to persons over the telephone or by mail. However, if material is made available by telephone or mail, a station must not discriminate between candidates for the same office. Further, a station must provide copies of material in the political file upon request made in person but may impose a reasonable charge for copies. As the election date comes closer, a station should make copies available as soon as possible.

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.

² 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 in-person request for

Political Editorials

Section 73.1930 provides that when a station editorial endorses or opposes a political candidate, the station is required to notify the other qualified candidates for the same office or the candidate opposed within 24 hours, providing the date and time of the editorial, and an offer of free reasonable opportunity for the candidate or a spokesperson to respond. If the station editorial is broadcast within 72 hours of election day, the notification and offer must be made sufficiently in advance of the broadcast to give the candidate a reasonable chance to prepare and present the response in a timely fashion.

The Fairness Doctrine and Ballot Issues

The FCC's abolition of the fairness doctrine has been upheld by the courts. *Syracuse Peace v. Council v. FCC*, 867 F.2d 654 (D.C. Cir. 1989), *cert. denied*, 493 U.S. 1019 (1990). The Commission has held that the repeal of the fairness Doctrine "because of its chilling effect applies to the fairness doctrine's application to ballot issues as well. 7 FCC Rcd 541 (1992), *aff'd sub nom. Arkansas AFL-CIO v. FCC*, 980 F.2d 1190, *aff'd rehearing*, 11 F.3d 1430 (1993). Hence, a broadcast licensee has no obligation to broadcast programming addressing controversial issues of public importance, and, in the event it does present one side of a controversial issue, a licensee has no legal obligation to present alternative viewpoints. Similarly, a broadcast licensee has no obligation to sell commercial time with regard to ballot measures and, in the event it does sell time presenting one side of the ballot issues, a licensee has no legal obligation to sell or give time for the presentation of alternative viewpoints. Maintenance of journalistic integrity or basic fairness may, however, impose such obligations.

As with other advertising purchased by entities or persons other than candidates, lowest unit rates are not applicable and a station may charge whatever the market will bear.

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such material should go unheeded.

FCC Rules Applicable to Political Broadcast Matters

§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 paragraphs (b), (c), (d) or (e) of this section.

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

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

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

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

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

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

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

§73.1941 Equal opportunities.

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

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

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

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

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

§73.1942 Candidate rates.

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

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

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

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

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

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

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

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

(vii) [Reserved]

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

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

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

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

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

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

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

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

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

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

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

and

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

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

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

§73.1943 Political file.

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

the charges made, if any, if the request is granted. The "disposition" includes the schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased.

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

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

§73.1944 Reasonable access.

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

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

* * * *

§73.3526 Local public inspection file of commercial stations.

(a) Responsibility to maintain a file. The following shall maintain for public inspection a file containing the material set forth in this section.

* * * *

(2) Every permittee or licensee of an AM, FM, or TV station in the commercial broadcast services shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(1) through (e)(10) and paragraph (e)(13) of this section. In addition, every permittee or licensee of a commercial TV station shall maintain for public inspection a file containing material, relating to that station, described in paragraphs (e)(11) and (e)(15) of this section, and every permittee or licensee of a commercial AM or FM station shall maintain for public inspection a file containing the material, relating to that station, described in paragraphs (e)(12) and (e)(14) of this section. A separate file shall be maintained for each station for which an authorization is outstanding, and the file shall be maintained so long as an authorization to operate the station is outstanding.

* * * *

(c) Access to material in the file.

(1) The file shall 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 public inspection file shall be made available for printing or machine reproduction upon request made in person. The applicant, permittee, or licensee 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 of time, which generally should not exceed 7 days.

* * * *

(e) Contents of the file. The material to be retained in the public inspection file is as follows:

(6) Political file. Such records as are required by §73.1943 to be kept concerning broadcasts by candidates for public office. These records shall be retained for the period specified in §73.1943 (2 years).

Rules as of June 19, 2002

WAS1 #764088 v2

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POLITICAL ADVERTISING DISCLOSURE STATEMENT

[Add the current date]

The purpose of this Disclosure Statement is to make those parties who purchase political advertising and 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”) 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. The Election Period for the next primary election is from ____ to ____ and the Election Period for the next general election is from ____ to ____.

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) 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. Those words may not be abbreviated in a visual identification on television. 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. To be a “use” and in order to qualify for the lowest unit charge, a political program or spot must contain the candidates voice or picture, identified or identifiable. 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 **[or 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 within 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

During the Election Periods 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. That is, during the Election Period, candidates will be charged the “lowest unit charge” (the “LUC”) for the same class and amount of time for the same period. When a candidate purchases time outside the 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 in increments of no less than \$_____ [insert the minimum incremental increase acceptable to the station], 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

DAY PERIOD LUC CSL
[List individual examples]

Immediately Preemptible without Make Goods

DAY PERIOD LUC CSL
[List individual examples]

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.

Audit of Rates Charged

At the end of each week during the Election Periods, the station will audit the rates for all political time broadcast during the Election Periods 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]

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