CAMPAIGN
LEGAL
CENTER

September 25, 2026

Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Submitted via ECFS

MB Docket No. 26-253 (Application for Review of Public Notice Pertaining to Lowest Unit Charge Requirements)

Dear Ms. Dortch:

Campaign Legal Center ("CLC")[1] submits this comment to urge the Federal Communications Commission ("FCC") to set aside its Media Bureau's March 30, 2026, Public Notice ("Notice") pertaining to the lowest unit charge ("LUC") requirements.[2] The Notice, which purports to extend the LUC discount to (1) political party committees making coordinated expenditures with candidates, and (2) joint fundraising committees ("JFCs") in

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[1] CLC is a nonpartisan, nonprofit organization working in the areas of campaign finance, political disclosure, and election law to advance a more transparent, inclusive, and accountable democracy. Since its founding in 2002, CLC has participated in every campaign finance case heard by the Supreme Court, including the recently decided *National Republican Congressional Committee v. Brown*, No. 26-1785 (2026), pertaining to the Notice and LUC requirements. *See* Brief of *Amicus Curiae* Campaign Legal Center in Support of Respondents, *National Republican Congressional Committee v. Brown*, No. 26-1785 (Sep. 3, 2026), https://campaignlegal.org/Supreme-Court-Amicus-Brief-Brown-et-al-v-FCC. CLC also submitted an *amicus* brief in the original case before the U.S. Court of Appeals for the Fourth Circuit. *See Amicus Curiae* Brief of Campaign Legal Center in Support of Petitioners, *Brown v. FCC*, No. 26-1785 (4th Cir. July 16, 2026), https://campaignlegal.org/document/amicus-brief-brown-et-al-v-federal-communications-commission-et-al-lowest-unit-charge. Relatedly, CLC is active in rulemaking and advisory opinion proceedings at the Federal Election Commission, FCC, and other federal agencies to ensure the proper administration and enforcement of campaign finance and related political advertising laws.

[2] *See* FCC, *Media Bureau Seeks Comment on Application for Review of Public Notice Pertaining to Lowest Unit Charge Requirements (MB Docket No. 26-253)* (Sep. 15, 2026), https://docs.fcc.gov/public/attachments/DA-26-982A1.pdf; Media Bureau, FCC, *FCC Media Bureau Provides Guidance on Entitlement to Lowest Unit Charge for Legally Qualified Candidates for Federal Office and All Authorized Committees* (Mar. 30, 2026), https://docs.fcc.gov/public/attachments/DA-26-300A1.pdf (hereinafter "Notice").

which a candidate is a participant,[3] violates the clear text and purpose of the Communications Act, 47 U.S.C. § 315(b)(1), and deviates from decades of prior FCC guidance recognizing and adhering to the narrow scope of the Act.

Indeed, recent Federal Election Commission ("FEC") guidance on joint fundraising underscores the extent to which the expansive scope of the FCC's interpretation departs from the statute: Because the FEC has recently allowed candidates and super PACs[4] to band together to form JFCs that run ads, with the super PAC footing the bill, the Notice effectively extends the LUC discount to super PACs–a type of entity that the FCC has consistently stated cannot access the LUC.

As explained in detail below, the Notice's regulatory expansion of the LUC is unlawful, and the FCC must correct course by setting aside the Notice and recognizing that under the Communications Act, only candidates–acting through their campaign committees–are entitled to discounted broadcast advertisements.

I. The Notice Contravenes Federal Law

The Communications Act provides that, within the period immediately preceding a primary or general election, "[t]he charges made for the use of any broadcasting station by any person who is a legally qualified candidate . . . shall not exceed . . . the lowest unit charge of the station for the same class and amount of time for the same period."[5] The statute thus requires broadcasting stations to provide discounted ad time to "legally qualified candidate[s]" making "use" of their facilities to disseminate campaign advertising.[6]

Congress created the LUC requirement because it was concerned about the rising cost of political advertising and wanted to provide an "additional break for candidates" by ensuring that "during the pre-election period, candidates would receive . . . volume and frequency discounts regardless of the number of announcements purchased."[7] Congress decided to require broadcast stations to offer candidates their lowest available rate–rather than mandating a set rate or a specific percentage discount–to avoid imposing unreasonable and

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[3] Notice at 1.

[4] Super PACs, "independent-expenditure-only political committees," are political committees that are legally permitted–pursuant to the Supreme Court's decision in *Citizens United v. FEC*, 558 U.S. 310 (2010), and the D.C. Circuit's decision in *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010)–to raise and spend unlimited amounts of money provided they do not coordinate with any candidate or party committee and make only independent expenditures. *See* FEC Advisory Op. 2010-11 (Commonsense Ten) (July 22, 2010), https://perma.cc/Z6D3-YR2B.

[5] 47 U.S.C. § 315(b)(1).

[6] *Id.*; *see also Hernstadt v. FCC*, 677 F.2d 893, 898 (D.C. Cir. 1980).

[7] *Hernstadt*, 677 F.2d at 897, 900.

"possibly economically devastating" burdens on small stations, which might face financial hardship if they had to give away a portion of their ad inventory for a fraction of what they usually charge.[8] Congress thus sought to advance two goals in legislating the LUC: (1) making advertising affordable for candidates shortly before an election so that voters can hear their positions, and (2) ensuring broadcast stations are not substantially harmed by being required to run discounted campaign ads.

In recognition of the statutory language and Congress's two legislative goals, the FCC has for decades consistently acknowledged in formal guidance that broadcasting stations are required to offer the LUC only to candidates, and has stated explicitly that broadcasting stations do not have to offer the discount to other entities or individuals:

- Immediately following passage of the LUC, the FCC announced that "[t]he provision applies only to broadcasts by candidates for public office," not to "groups, organizations or persons other than candidates."[9]

- In guidance issued in 1991, the FCC reiterated that "only candidates," not "independent groups," are "entitled to [the] lowest unit charge benefits."[10] In a footnote, it further explained that the "legislative history of Section 315(b) clearly demonstrates Congressional effort to reduce candidates' escalating campaign costs" and thus "reiterate[d] that the lowest unit charge inures to the benefit of candidates only."[11]

- In 1992, the FCC responded to a broadcaster asking whether the LUC extends to "an independent entity [that] produces an advertisement that includes an approved appearance" by the candidate by explaining that "only candidates or their authorized campaign committees are entitled to the LUC pursuant to Section 315(b). Thus, even if an independent entity produces an advertisement that includes an appearance by a candidate, that independent entity is not entitled to the LUC."[12]

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[8] *Id.* at 898.

[9] Use of Broadcast and Cablecast Facilities by Candidates for Public Office, 37 Fed. Reg. 5796, 5802 (Mar. 21, 1972).

[10] Report & Order, *In re Codification of the Comm'n's Pol. Programming Pol'ys*, 7 FCC Rcd. 678, 686 ¶ 38 (1991).

[11] *Id.* at 685 ¶ 34 n.54 (citing S. Rep. No. 92-96, at 20 (1971)).

[12] Mem. Op. & Order, *In re Codification of the Comm'n's Pol. Programming Pol'ys*, 7 FCC Rcd. 4611, 4614 ¶¶ 18, 23 (1992).

- In 2020, the FCC issued guidance again stating that only "individuals running for public office" are entitled to the LUC.[13]

- Finally, in October 2025, the federal government told the Supreme Court—in the course of briefing *National Republican Senatorial Committee v. FEC*, 146 S. Ct. 2404 (2026)—that the LUC provision requires "low rates for candidate spending" only.[14]

However, less than a year later, the FCC published its Notice purporting to extend the statutory LUC beyond the scope of beneficiaries authorized by Congress. The Notice stated that, in addition to offering "legally qualified candidates" the LUC, broadcasters must offer the LUC to two additional classes of political advertisers: (1) political party committees making coordinated expenditures with candidates, and (2) JFCs in which a candidate is a participant.[15]

This expansion has no basis in, and is in fact contrary to, federal law. Political parties and JFCs are plainly not "legally qualified candidates." It likewise fails to advance Congress's objectives and, in fact, affirmatively undermines them: Extending the discount to these non-candidate groups does not decrease the amount of money candidates are required to spend on political advertising in the run-up to an election, while it further burdens broadcast stations, which now must offer a discount to a much greater number of advertisers.

While these reasons alone provide grounds for the FCC to rescind its erroneous Notice, a closer examination of the allowance for JFCs to access the LUC—in the context of recent FEC guidance—underscores how far the Notice departs from the statute it purports to implement.

II. The Notice, Taken Together with Recent FEC Rulings, Effectively Extends the LUC to Super PACs, Dramatically Illustrating the Notice's Impermissibly Broad Scope

Joint fundraising is a long-standing practice, authorized by FEC regulations and advisory opinions, wherein candidates and committees may "jointly" raise funds, oftentimes forming a separate political committee—a JFC—that exists "solely for the purpose of joint fundraising,"[16] *i.e.*, to collect and distribute funds raised among the participants, and finance the fundraising venture.

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[13] Public Notice, Media Bureau, FCC (Nov. 2, 2020), https://docs.fcc.gov/public/attachments/DA-20-1305A1.pdf.

[14] *See* Reply Br. for the Fed. Respondents, *Nat'l Republican Senatorial Comm. v. FEC*, No. 24-621, 2025 WL 3068193, at *23 (U.S. Oct. 29, 2025).

[15] Notice at 1.

[16] 52 U.S.C. § 30102(e)(3)(A)(ii).

Until recently, JFCs were typically a joint effort between candidates of the same political party, candidate-sponsored "leadership political action committees" ("leadership PACs"),[17] and the national and state committees of the candidates' political party.[18] But the FEC supercharged this fundraising practice in August 2024 by issuing an advisory opinion that for the first time authorized a candidate's campaign committee to participate in a JFC with a super PAC, and the JFC to disseminate public communications.[19] In evaluating another 2024 advisory opinion request, the FEC failed to prohibit JFCs from financing advertisements that expressly advocate for the JFC's participating candidates, enabling any other groups–including super PACs–participating in the JFC to effectively underwrite the costs of candidates' electoral advocacy (using JFC-funded ads that mimic campaign ads).[20]

On its face, the March 2026 Notice affirmed the FCC's longstanding recognition that independent groups are not entitled to receive the LUC,[21] but in effect it undermines that principle: Combined with these recent FEC proceedings, the Notice effectively allows super PACs to take advantage of the LUC by financing and disseminating broadcast ads through the framework of a JFC.

A. The FEC has allowed JFCs to run campaign-style ads that are largely financed by super PACs.

On June 12, 2024, Team Graham, Inc.–the late Senator Lindsey Graham's campaign committee–submitted an advisory opinion request asking the FEC whether it could form a JFC that would be made up of the campaign committee, Graham's leadership PAC, Fund for America's Future, the National Republican Senatorial Committee ("NRSC"), and an unnamed super PAC.[22] The request explained that the JFC would disseminate "public communications in the form of solicitations" as part of its fundraising efforts.[23]

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[17] A leadership PAC is "a political committee that is directly or indirectly established, financed, maintained or controlled by a candidate for Federal office or an individual holding Federal office but which is not an authorized committee of the candidate or individual." 11 C.F.R. § 100.5(e)(6). Historically, officeholders use leadership PACs to make contributions "to other Federal candidates to gain support when . . . seek[ing] a leadership position in Congress." Leadership PACs, 68 Fed. Reg. 67013, 67014 (Dec. 1, 2003).

[18] 11 C.F.R. § 102.17; *see* FEC Advisory Op. 2007-24 (Burkee) (Dec. 10, 2007), https://perma.cc/PL9D-R2K7.

[19] *See* FEC Advisory Op. 2024-07 (Team Graham, Inc.) (Aug. 29, 2024), https://perma.cc/25AR-CNMH.

[20] *See infra* Part II.A.

[21] *See* Notice & n.7.

[22] Advisory Op. Request at 1, Team Graham, Inc. to FEC (June 12, 2024), https://perma.cc/BRU9-MBKV.

[23] *Id.* at 2.

On August 29, 2024, the FEC issued an advisory opinion permitting the campaign and super PAC to jointly participate in the proposed JFC.[24] The FEC concluded that the JFC's communications would not be treated as coordinated communications, which super PACs are legally prohibited from making with candidates under the federal campaign finance laws.[25] The opinion concluded that as long as the JFC limited contributions to the super PAC to $5,000 (the annual limit for contributions to traditional PACs), as well as barring contributions from sources not allowed to give money to candidates, like corporations and unions, Team Graham would not run afoul of federal campaign finance laws.[26]

The following month, the FEC received an advisory opinion request asking whether a JFC could "run television advertisements that primarily advocate for the election" or defeat of a federal candidate "but also contain a brief fundraising solicitation at the end of the advertisements."[27] The requesters–the Democratic Senatorial Campaign Committee ("DSCC") and the principal campaign committees for then-Senator Jon Tester and then-Representative Ruben Gallego–proposed that each candidate would form a JFC with the DSCC, and the first two thirds of incoming contributions would be allocated to the DSCC and the final third to the candidate.[28] Each JFC would then use the money to finance television ads that advocated the candidate's election and showed "a QR code during the final few seconds that, when scanned, link[ed] to an online fundraising page" along with "a brief oral solicitation."[29] Despite the ads being almost fully dedicated to candidate advocacy–and never mentioning the DSCC–the DSCC would pay for two thirds of the ads' costs and each candidate would pay the remaining one third.[30]

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[24] FEC Advisory Op. 2024-07 (Team Graham, Inc.).

[25] *Id.* at 6-8. This conclusion defied common sense, as the campaign and super PAC would be working together–coordinating–to develop the JFC's public communications.

[26] *Id.* at 4-6.

[27] Advisory Op. Request at 1, Democratic Senatorial Campaign Committee ("DSCC"), Montanans for Tester & Gallego for Arizona to FEC (Sep. 18, 2024), https://www.fec.gov/files/legal/aos/2024-13/202413R_1.pdf.

[28] *Id.* at 2.

[29] *Id.*

[30] *See id.* JFCs are required to establish an allocation formula that controls how contributions received, and expenses paid, are divided between the participants. 11 C.F.R. § 102.17(c)(1), (c)(6)(i). For example, three political committees could form a JFC and determine that Committee A (super PAC) gets the first cut of each contribution (up to its legal limit), Committee B (leadership PAC) gets the next cut (up to its legal limit), and Committee C (candidate's campaign committee) gets whatever is left (up to its legal limit). Under such a formula, Committee C may not get much money from the venture but would also end up paying little of the JFC's expenses, including its advertising costs.

The FEC split 3-3 on whether the proposed JFC ads and cost allocations were lawful.[31] Since then, party committees, presumably reading the Commission's split as tacit permission,[32] have engaged in the very conduct described in the advisory opinion request.

Numerous elected officials and candidates in the 2026 election cycle have already formed JFCs with allied super PACs; this development opens the door to the possibility that super PAC-funded JFC ads will largely supplant campaign advocacy, a trend that would be exacerbated if super PACs could exploit the LUC for this purpose.[33] Thus, as a result of these FEC actions, JFCs are now poised to disseminate ads that feature and expressly advocate for candidates, yet are paid for and speak on behalf of super PACs and any other committee participating in the JFC.

Using JFCs to finance campaign-style ads presents undeniable advantages to JFC participants and their donors, particularly in light of the FEC's and FCC's recent guidance. But even if JFC ads feature and expressly advocate for a candidate, they are fundamentally distinct—both in how they are funded and whose political speech they represent—from ads paid for and disseminated by a candidate's campaign committee. A JFC's allocation formula can be structured to ensure that the participating non-candidate groups pay all or most of the cost for the JFC's advertisements.[34] And unlike with campaign ads, which are funded by

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[31] *See* Certification, FEC Advisory Op. 2024-13 (DSCC, Montanans for Tester & Gallego for Arizona) (Oct. 10, 2024), https://perma.cc/8R8N-E75K.

[32] The FEC has six Commissioners, and issuing an advisory opinion requires the affirmative vote of at least four Commissioners. 52 U.S.C. § 30106(a)(1), (c). Likewise, in the enforcement context, it takes at least four votes to initiate an investigation, enter into a conciliation agreement to resolve a violation, or institute a lawsuit seeking a civil penalty against a party. *Id.* §§ 30106(c), 30109(a)(2), (a)(4)(A)(i), (a)(6)(A). Because of this structure, if the Commission deadlocks 3-3 on an advisory opinion, there is unlikely to be the 4-vote majority needed to initiate an enforcement action against the requester or a similarly situated party. The regulated community is aware of this and, accordingly, regularly engages in conduct that has failed to gain the required four-vote approval in the advisory opinion context.

[33] For example, Senator Graham—pursuant to the FEC's Team Graham advisory opinion—amended the statement of organization for his pre-existing JFC, Graham Majority Fund, to include his campaign, leadership PAC, the NRSC, and a super PAC named Security is Strength PAC. Similarly, Texas Senator John Cornyn created the Cornyn Victory Committee, which included his campaign committee and leadership PACs, the NRSC, and the super PACs "Conservative Majority Project Super PAC" and "Texans for a Conservative Majority." Maine Senator Susan Collins created the Collins Victory Committee, whose participants include Collins's campaign committee, her leadership PAC, the NRSC, and a super PAC called Pine Tree Results PAC. Rep. Ritchie Torres has a JFC, the Torres Victory Fund, which includes his campaign committee, leadership PAC, the New York State Democratic Committee, and two hybrid PACs: Equality PAC and Equality Project PAC. And Rep. Max Miller's "Max Miller Victory" JFC is comprised of his campaign committee, his leadership PAC, the Ohio Republican Party State Central and Executive Committee, a multicandidate PAC, and the super PAC "Jobs & Prosperity PAC." *See Campaign Finance Data*, FEC, https://www.fec.gov/data/ (last visited Sep. 24, 2026) (making available each JFC and participating committee's statement of organization).

[34] *See supra* note 30.

and speak solely for a candidate, JFC advertisements speak for *all* the JFC participants–a wide array of perspectives that, in the examples discussed above, include candidates, party committees, leadership PACs, and even "soft money"[35] committees like super PACs and hybrid PACs. It is therefore untenable to conclude, as the Notice does, that the resulting JFC ads are entitled to a discounted rate that, under the law, is reserved exclusively for "use" by "candidates."[36]

B. Extending the LUC to JFCs comprised of candidates and super PACs underscores how drastically the Notice contradicts the plain language and purpose of the Communications Act.

The FCC's move to make the LUC available to JFCs with a candidate participant is unsupported by the law, as underscored by super PACs' newfound ability to participate in JFCs with candidates. The Communications Act extends the LUC for the "use of any broadcasting station by any person who is a legally qualified candidate," and not other groups, including JFCs, that also spend money on advertising in connection with an election.[37] Neither the text nor purpose of the statute supports making the LUC discount broadly available to *any* group in which a candidate participates, or for the dissemination of *any* communication that a candidate authorizes or approves–and especially not to political committees that are legally required to remain independent of candidates.

A simple hypothetical perfectly illustrates the flaw in the FCC's reasoning: Three super PACs and one candidate could form a JFC with an allocation formula dictating that incoming contributions (up to the prevailing PAC contribution limit of $5,000) will flow to each super PAC before even a penny reaches the candidate's campaign committee. If every donor to this JFC gave $15,000 or less, the campaign would receive no money from the JFC distributions–all of the donors' funds would go to the three super PACs (receiving $5,000 each) under the JFC's allocation formula.[38] Then, the JFC could use the proceeds to place ads expressly advocating for the participating candidate, who would not be required to pay anything for the JFC's ads because their campaign did not receive any money from the JFC's distributions. The resulting ads would be subject to the approval of all the JFC participants, including the non-candidate-authorized super PACs–not just the candidate. Yet per the Notice, the JFC would be able to place those ads, which represent the views of and were wholly paid for by super PACs, at the LUC. That absurd, deeply problematic, and yet

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[35] "Soft money" committees are PACs that raise money outside of the contribution limits and source prohibitions listed in the federal campaign finance laws.

[36] *See* Notice.

[37] *See* 47 U.S.C. § 315(b)(1).

[38] Considering donors turn to super PACs when they have already made the maximum contribution to the candidate, it would not be unusual for a supporter to contribute just to the participating super PACs.

entirely plausible outcome is unsupported by the law and undermines Congress's basic legislative purpose in enacting the LUC.

This hypothetical JFC's advertisements—which are in no part financed by a candidate or their campaign, and which "speak" on behalf of one or more super PACs legally barred from spending money on elections "in cooperation, consultation, or concert with" a candidate or their campaign[39]—plainly do not amount to "use of [a] broadcasting station by" a "legally qualified candidate," within the meaning of a statutory provision designed to reduce the cost of political advertising *for campaigns*.[40]

The FCC has itself recognized that super PACs spending on electoral ads from their own accounts would not be entitled to the LUC as super PACs are obviously not "candidates."[41] That admission should resolve the question here, as the same result must hold for super PACs (and other, similarly unauthorized groups) spending on electoral ads through a JFC.[42] The Notice allowing such committees to air ads at the LUC is unlawful and threatens to severely harm both our electoral system and broadcasters, who will be forced to provide discounted ad time to a far wider swath of political groups than Congress ever intended.

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[39] 52 U.S.C. § 30116(a)(7)(B).

[40] 47 U.S.C. § 315(b)(1).

[41] *See* FCC Notice; *see also* Report & Order, *In re Codification of the Comm'n's Pol. Programming Pol'ys*, 7 FCC Rcd. 678, 685 ¶ 34 n.54 (1991).

[42] It is no answer to say that this problem arises from the FEC's regulation of joint fundraising, not the FCC's Notice. The Notice expressly extends the LUC provisions to JFCs, which, by definition, are multi-member operations. A JFC's "membership" thus inherently extends beyond the candidate's campaign committee to include *other* committees—which are not entitled to LUC rates under the Communications Act. Accordingly, even if the FEC were to reconsider its recent opinions allowing super PACs to participate in candidate joint fundraising, the Notice would still extend the LUC to entities not entitled to receive it under the statute and the FCC's past guidance.

Accordingly, for the reasons stated herein, the FCC must set aside the Notice and reaffirm that broadcasters are required to offer the LUC only to "legally qualified candidates," not to party committees or JFCs.

Respectfully submitted,

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