

The Campaign Media Guide



This Guide provides candidates with a brief overview of the laws and regulations relating to political advertising and media coverage during election season.

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In this era of saturation political advertising, electoral success often turns on the candidate's ability to get his or her campaign message to voters. To that end, *The Campaign Media Guide* offers practical application of the rules governing political speech on radio, broadcast television, cable, and direct broadcast satellite for the 2004 federal elections. It provides an overview of the rights and obligations of candidates and broadcasters, and guidelines on how to monitor and affect political discourse. The *Guide* also provides case studies of persons seeking remedies for denial of their rights as illustrations of how to do the same.

Two years ago, the Campaign Legal Center created its first *Media Guide*. Since then, Congress has passed a sweeping campaign finance law with new disclosure and sponsorship identification requirements for political advertising. The Federal Communications Commission and the courts have also issued further decisions that have changed the advertising landscape for candidates. The *Guide* does not address every issue or answer every question that may arise during a campaign, but is designed to inform candidates of general rights and remedies. We hope that this *Guide* helps citizens and candidates to participate fully in the American political campaign arena during the 2004 elections.

Sincerely,



Trevor Potter

President and General Counsel of the Campaign Legal Center
Fmr. Commissioner and Chairman, Federal Election Commission
Fmr. Asst. General Counsel, Federal Communications Commission

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Introduction:

Political Discourse

Obligations of Licensees

Broadcasters must comply with certain laws and regulations that govern candidates' access to airwaves during election season. *Reasonable access* and *equal opportunity* provisions in the laws and regulations address political candidates' access to the broadcast airwaves, and a specific *ban on censorship* restricts broadcasters from altering any candidate-paid advertisement in which the candidate appears. Additionally, the *lowest unit charge* provisions govern the prices broadcast stations and cable systems may charge candidates immediately preceding elections. Other regulations mandating the *public disclosure* of certain purchases of advertisements by candidates provide valuable information to both candidates and the viewing public.

In 2003, the U.S. Supreme Court upheld most provisions of the Bipartisan Campaign Reform Act of 2002 (BCRA), campaign finance reform legislation (commonly known as McCain/Feingold) enacted to curtail "soft money" abuses and improve disclosure of campaign spending. Some of the provisions of BCRA address election-related advertising by candidates and other political spenders, including a provision that strengthens *sponsorship identification requirements* for general public political advertising.

The Federal Communications Commission (FCC) and Federal Election Commission (FEC) enforce these rules and ensure that broadcasters and candidates comply with their obligations. This *Guide* outlines how a candidate can best use these rules to communicate with the public during election time as well as how to seek a remedy for denial of these legal rights.

Fundamental Political Discourse Provisions

1

Reasonable Access

Broadcast stations and DBS providers must permit federal candidates reasonable access to purchase airtime. (Not applicable to cable systems)
(page 6)

2

Equal Opportunity (or “Equal Time”)

Candidates must be afforded use of broadcast, cable, and DBS facilities and airtime commensurate with that provided to other legally qualified candidates for the same office.
(page 9)

3

The Censorship Ban

Broadcast stations, cable systems, and DBS providers may not alter the content of any candidate political advertisements or programming in which the candidate appears.
(page 14)

4

Lowest Unit Charge

Broadcast stations, cable systems, and DBS providers must offer candidates the lowest rate for the same class and amount of time for the same period that they offer their most-favored advertisers during the 45 days prior to primary elections and 60 days prior to general elections.
(page 16)

5

The Public File

Broadcast stations, cable systems, and DBS providers must compile certain information on political advertising (both candidate and non-candidate advertisements) and make it publicly accessible.
(page 22)

6

Sponsorship Identification

Sponsors of political and election-related advertising must be disclosed in the advertisements at the time of airing of the advertisement.
(page 25)

See Appendix A for the statutory and regulatory sources of these rules.

Application of Rules and Regulations to Political Candidates

The reasonable access provisions apply only to federal candidates, which include those seeking U.S. President, Vice-President, U.S. Senate, or U.S. House of Representative offices. Most of the other provisions generally apply to all legally qualified candidates – federal, state, and local – but not to candidates for party convention delegations, closed caucuses, closed-party elections, union elections, Indian tribal elections, or elections in foreign countries. However, sponsorship identification requirements may apply to any sponsor of political broadcasts, regardless of candidacy or election-related status. Additionally, federal candidates must comply with certain candidate certification and sponsorship requirements under BCRA.

Legally Qualified Candidates are those who:

- have publicly announced candidacy;
- are qualified by virtue of state or federal law to hold the office being sought; and
- have met one of the following:
 - if seeking election by primary, general, or special election
 - they have qualified for the ballot, or
 - publicly committed themselves by seeking write-in votes and are eligible under applicable law to be voted for by sticker, write-in, or other method, and
 - made a substantial showing that they are *bona fide* candidates for nomination or office.
 - if seeking nomination for office (other than U.S. President or Vice President) by convention, caucus, or similar procedure
 - they make a substantial showing that they are *bona fide* candidates for such nomination, and
 - the beginning of the caucus or convention is no more than 90 days in the future.

- if seeking nomination for U.S. President or Vice President
 - they (or proposed delegates on their behalf) have qualified for the primary or Presidential preference ballot in the state or territory, or
 - they have made a substantial showing of *bona fide* candidacy for such nomination in the state.

A substantial showing of bona fide candidacy is usually made by engaging to a substantial degree in activities normally associated with political campaigning and usually includes making speeches, distributing literature, issuing press releases, maintaining a campaign committee and headquarters.

If seeking election or nomination as U.S. President or Vice President, contenders are legally qualified only in the states in which they have met the necessary requirements. But, if they have met such requirements in at least 10 states (or 9 plus D.C.), they are legally qualified for elections or nomination in all states, territories, and D.C.

1

Reasonable Access

Federal candidates are entitled to reasonable access to purchase airtime from commercial radio and television broadcast stations and DBS providers. (Not applicable to cable systems).

Definition

Reasonable access generally gives legally qualified federal candidates the right to purchase airtime from commercial radio and television stations and direct broadcast satellite (DBS) providers in an array of dayparts and units (e.g., 30 second spots) sold during their campaigns. A station does not have to provide the precise time requested by a federal candidate, but needs only to provide reasonable access to use station facilities. Whether the access provided is reasonable depends on a variety of factors, including the disruptive effect on regularly scheduled programming and the likelihood of equal opportunity requests from other candidates.



Exceptions

Television broadcasters and DBS providers may refuse to sell any political advertising time or deny use of broadcast facilities to state and local candidates. Because state and local candidates do not have reasonable access rights, stations can limit the number of spots, dayparts, or rotations provided to them should they choose to provide such access at all. However, if stations do provide reasonable access to a local or state candidate, they must provide commensurate access for all candidates for that particular office upon request.

Cable systems are not required to provide access to any candidates, including federal, but if a cable system provides access to one candidate, it must make available upon request equal opportunities for access to other candidates for the same office.

Application

Amount of Time or Access

In determining what amount of time constitutes reasonable access, broadcasters and DBS providers may consider the following factors:

- quantity of time or access already provided during the period in which a candidate is requesting time;
- disruptive effect on regularly scheduled programming;
- likelihood of equal opportunity requests from other candidates; and
- timeliness of the request.

Stations and DBS providers generally must make all dayparts available to federal candidates and may not adopt “across-the-board” or blanket limits or bans on federal candidate access with the exception of scheduling during news programming. Stations must separately evaluate each federal candidate’s request for access, but may tailor their responses to accommodate candidates based on the above factors. Broadcasters cannot automatically refuse a candidate request for a certain length of time, even if such length is not programmed or offered to other commercial advertisers. Further, broadcasters cannot require purchase of a minimum number of spots (e.g., package deals) or set up-front limits on the amount of time a candidate may purchase. If a station’s counteroffer to accommodate a request for

access is not deemed reasonable by the federal candidate and the candidate cannot further negotiate with the station, the candidate may enlist the assistance of the FCC.

When

Reasonable access rights begin when candidates become legally qualified and when the election is in full swing, usually indicated by factors such as the number of announced candidates, candidate campaign activity (e.g., speeches and fundraising), establishment of campaign organizations, and media coverage. *At a minimum, candidates should have access rights during the lowest unit charge (LUC) period (45 days prior to a primary and 60 days prior to a general election).*

Payment

Federal candidates are not required to pay for broadcast advertising more than seven days prior to the air date of their first political advertisement (see section on lowest unit charge for discussion of rates). Stations may require nonfederal candidates to pay in accord with their policies for new customers without established credit. However, advance payment policies that prohibit candidates (federal or nonfederal) from obtaining equal opportunity benefits are not permitted. Stations are also required to inform candidates of payment policies.

Enforcement

Weekend Access

Broadcast stations and DBS providers must make their facilities available to federal candidates the weekend before the election to the same extent they have allowed any commercial advertiser weekend access to their facilities in the past year. Thus, if broadcasters have permitted a commercial advertiser to change copy, purchase additional spots, or otherwise use their facilities on a weekend, they must permit federal candidates comparable access the weekend before an election. Nonfederal candidates only have weekend access rights to the extent such access is part of their exercise of equal opportunity rights. Additionally, broadcast and radio stations may not discriminate among candidates (federal or nonfederal) for weekend access.

News Programming

In order to maintain journalistic integrity of the news programming, stations may deny a federal candidate the right to buy advertising time during news programming.

If a candidate cannot obtain reasonable access to station airwaves, or a station's counteroffer for airtime is deemed unreasonable by a candidate, the candidate may contact the FCC for assistance. The Media Bureau of the FCC often can informally resolve conflicts between candidates and stations by telephone. Alternatively, a candidate can file a formal written complaint.

A candidate may also file a formal written complaint at the FEC alleging that the station is making an in-kind contribution to the candidate's opponent by granting the opponent reasonable access and refusing the same to him or her (see FCC and FEC contact information on page 36).

Case Study: Request for Live Access

During the 1992 elections, Tom Laughlin, a legally qualified presidential candidate, purchased 17 1/2 hours of programming on WMUR in Manchester, New Hampshire. One of Mr. Laughlin's one-hour blocks of time was rescheduled by one hour on the same day because the station was unwilling to preempt its already-scheduled station-sponsored live presidential Democratic candidate debate. Mr. Laughlin also had requested that he be allowed to broadcast live during that time but WMUR informed him that they would only accept his program in taped form. Mr. Laughlin filed a complaint with the FCC alleging that the station violated the reasonable access regulations.

The FCC found that WMUR did not have the right to deny Mr. Laughlin the opportunity to appear live if he was willing to pay the associated costs. The FCC noted, however, that WMUR's rescheduling of Mr. Laughlin's time was within the station's discretion because his timing request would have disrupted the regularly-scheduled programming. The FCC worked with both WMUR and Mr. Laughlin to ensure that he was able to broadcast live.

2

Equal Opportunity

Candidates must be afforded equal opportunity to use broadcast, cable, and DBS facilities and airtime commensurate with that provided to other legally qualified candidates for the same office.



Definition

Equal opportunity laws and regulations mandate that once a broadcast station, cable system, or DBS system allows a legally qualified candidate (federal, state, or local) to use its facilities, it must afford equal opportunities for purchase of the same amount of airtime and comparable use of facilities to all other legally qualified candidates for that office or nomination. A facility *use* includes any identifiable positive showing by voice, likeness or physical appearance of or by a candidate on any programming carried by that media outlet.

Because a use must be positive, advertisements in which an opposing candidate or organization uses a candidate's voice or picture in a negative manner does not trigger equal broadcast opportunity. However, other appearances by candidates, even if not related to an election (such as showing old film-star-turned-candidate movies during a campaign), are uses triggering equal opportunity. Additionally, whenever a public service announcement contains a positive appearance of a candidate that meets the definition of use of a facility or system (as defined above), the broadcaster or provider must afford equal opportunity for use of its facilities and airtime for other candidates in the same race.

Only uses by opposing candidates trigger equal opportunity benefits for candidates for the same office or nomination. Thus, candidates for another party's nomination are not considered opposing candidates during a primary election, even if a candidate making the use has no opponent. All legally qualified candidates, including independent and minority party candidates, are opposing candidates during a general election.

In certain circumstances, advertisements by unauthorized candidate supporters may give rise to a "quasi-equal opportunity" whereby opposing candidate supporters could not be refused equal time. Unauthorized candidate supporters may want to consider asking for equal opportunities under this so-called "Zapple Doctrine" when a similar group of unauthorized supporters for an opposing

candidate has broadcast advertisements obviously supporting their candidate. However, the Zapple Doctrine is not available if the advertisement contains any candidate use, as is defined above. And, to date, the FCC has limited use of the Zapple Doctrine to situations involving major political parties during formal campaign periods.

Broadcast stations, cable systems, and DBS providers that have given free airtime to one candidate (barring *bona fide* news exceptions detailed below), must give equal opportunity to all candidates for the same office who request such. Similarly, a station that permits a candidate access to its physical facilities, such as a studio for taping, must provide the same opportunities to other candidates for the same office.

Appearances by candidates (who are not presenters, anchors, disc jockeys, reporters, etc.) in the following types of news programming do not trigger equal opportunity rights:

- *bona fide newscast;*
- *bona fide news interview;*
- *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); and*
- *on-the-spot-coverage of a bona fide news event (including but not limited to debates, political conventions and related activities).*

To be qualified for an exemption, *bona fide* news programming must meet certain criteria.

For example, *interviews* (1) must be regularly scheduled, (2) the broadcaster must generally control (but does not have to produce) the programming, and (3) the program content and format decisions must be based on good faith journalistic judgment of newsworthiness (generally within broadcaster's discretion absent evidence of broadcaster intent to advance a particular candidacy). Qualifying *news events* must also be chosen based

Application

on the good faith journalistic judgment of broadcasters but can include conventions or debates in which candidates have some control of the programming content. For instance, in 1996, the FCC held that network coverage of presidential debates including only the Republican and Democratic candidates did not violate third party Ross Perot's equal opportunity rights as a candidate.

The FCC has ruled that interviews, debates, and nationally syndicated programs (or portions thereof) like *Hard Copy*, *Entertainment Tonight*, *Jerry Springer* and, most recently, *The Howard Stern Show*, may qualify for exemption from the equal opportunity requirements as *bona fide* news programming. Moreover, the FCC does not require broadcasters to formally request permission for the exemptions; instead, the FCC relies on the good faith journalistic judgment of the broadcasters in determining whether or not their treatment of an election or candidates meet the *bona fide* news exceptions.

Media outlets do not have an obligation to notify or inform a candidate of his or her equal opportunity right to purchase time. The burden is on the candidate to monitor the opponent's advertisements by reviewing the broadcast, cable, and DBS systems' political information in their public files (see chapter 5 for more discussion on public files). The political file records are maintained primarily to enable a candidate to learn of the amounts of airtime and rates the other candidates receive. A candidate must make an equal time request within *seven days* of an opponent's advertisement airing in order to take advantage of this right.

Broadcast stations, cable systems, and DBS providers may legitimately refuse or limit candidate equal opportunity in response to the following requests:

- last minute requests by a candidate who delayed exercising the right to make the comparable buy until right before the election, giving the candidate an unfair advantage over opponent(s) by advertising immediately prior to the election. Nonetheless, a

candidate may be able to get a portion of the equal opportunity time depending on the amount of time requested and number of days to the election;

- blanket requests to match all future unscheduled appearances by an opponent; and
- requests made more than seven days after the triggering advertisement appeared.

Cable and DBS Systems

As noted earlier, both the equal opportunity and lowest unit rate provisions apply to cable systems. Thus, once a cable or DBS system provides access to a candidate, comparable access to opposing candidates for the same office is required. And, the system must offer all rates and discount privileges that are available to commercial advertisers to candidates. While cable and DBS systems may not discriminate against candidates vis-à-vis commercial advertisers, they do not have to run all advertisements for all candidates on the same channel, but need only meet general audience size requirements.

Enforcement

If a candidate believes his or her equal opportunity requests for paid advertising or commensurate free airtime have been wrongfully denied by a broadcaster, cable system, or DBS provider a candidate may contact the FCC for assistance. The FCC requires that anyone seeking FCC assistance with equal opportunity rights must have requested them and been rejected by the broadcaster or system. Then, the candidate can contact the FCC with the specifics of the claim and seek assistance in ensuring compliance. If a candidate has documented evidence showing deliberate discrimination, he or she may file a formal written complaint to the FCC's Media Bureau. Further, a candidate may consider contacting the National Association of Broadcasters (NAB) and asking the association to encourage its member stations to comply (see page 36 for contact information).

Debate Regulations

Debates are *bona fide* news events that do not trigger equal opportunity requirements as long as (1) the broadcaster covers the debate live or airs it reasonably close in time to the event, (2) the broadcaster makes a good-faith determination that the debate is a *bona fide* news event worthy of coverage, and (3) that no evidence indicates broadcaster favoritism for any particular candidate. Broadcaster-sponsored debates can also be *bona fide* news events. To the extent that a debate does not meet the foregoing criteria, stations must allow equal time and commensurate use of their facilities to all opposing candidates for the same office requesting such equal time.

Debates are also subject to Federal Election Commission regulations. FEC regulations provide that, in order to comply with expenditure and contribution restrictions, sponsored debates must include at least two candidates and must be structured so that no candidate is promoted over another. The sponsor's criteria for determining which candidates will participate in the debate must be objective and created ahead of time. In the case of general election debates, the sponsor must not rely on a major political party's nomination of a candidate as the sole criterion for determining participation.

Enforcement of Debate Regulations

A candidate excluded from a debate may file a complaint with the FEC. Such a complaint would need to allege that exclusion from the debates amounts to an in-kind contribution of the broadcaster's services to the candidates that actually participated in the debate. However, the FEC usually takes several years to complete such investigations and will undoubtedly not act on the complaint prior to the election.

To the extent a candidate seeks to enforce equal opportunity benefits triggered by debate coverage, the candidate may contact the FCC's Media Bureau.

In addition to contacting the federal agencies, a candidate could issue a press release about the station's refusal to host or air a debate, which may publicize the desire for a debate and motivate a separate station to air or host one.

Case Study: Inadequate Response Time

On July 31, 1991, Jack Pratt, a legally qualified candidate for the Alabama House of Representatives, filed a complaint against an Alabama radio station alleging violation of the equal opportunity provisions and the ban on censorship. The FCC determined that the radio talk show hosts censored the appearance of Mr. Pratt and discriminated against Pratt in favor of his opponent, who had appeared earlier in the same program. The FCC found that when Pratt called the talk show, the hosts limited him to the discussion of an allegedly illegal campaign mailing, while his opponent had been permitted to speak freely on a number of issues. In addition, the hosts did not allow Pratt to fully answer questions, regularly cutting short his responses. The FCC also found that the station failed to place information regarding the appearance of these two candidates in its political file.

The FCC fined the radio station for “apparent willful violation” of the equal opportunity provisions, the censorship prohibition, and repeated violation of political file-disclosure regulations.

Case Study: Refusal to Broadcast Advertisements

In 2002, three El Paso TV stations refused to broadcast Spanish-language campaign spots as requested by Gloria Tristani, a U.S. Senate candidate in New Mexico. Tristani went public with a press release saying the stations’ “initial refusals amounted to ‘unlawful censorship.’” When contacted by the press, FCC officials said they could not comment on the case but that broadcasters generally cannot censor a federal candidate’s political advertisements. Two of the TV stations capitulated and agreed to air the Spanish-language advertisements, but the third station continued to refuse, citing its policy against Spanish-language ads.

Case Study: State Candidate Access in Previous Elections Does Not Create Equal Opportunity

Larry Harless, a candidate for governor of West Virginia, filed a complaint at the FCC stating that the stations in West Virginia violated equal opportunity obligations because the stations failed to provide him with a requested 30-minute time block before the Democratic gubernatorial primary election. The FCC denied the complaint on two grounds: (1) a station retains discretion on the quantity of time made available to state candidates; and, (2) the FCC found that Mr. Harless did not have an inherent right to receive 30 minute programming time merely because a station had given such time to state candidates in previous elections.

3

Censorship Ban

Broadcast stations, cable systems, and DBS providers may not alter the content of any candidate political advertisement or programming in which a candidate appears.

Definition

Broadcast stations, cable systems, and DBS providers are prohibited from censoring or altering a candidate campaign media spot or program when a candidate appears in the advertisement. However, broadcasters, cable systems, and DBS providers may insert proper sponsorship identification into an advertising spot or program if absent.



Application

Broadcasters, cable systems, and DBS providers do not have a right of prior approval over candidate advertisements, and they cannot mandate advance submission of candidate scripts and program tapes. Nonetheless, stations may ask for advance copies of scripts or tapes to determine compliance with technical and sponsorship standards. If a candidate advertisement lacks sponsorship identification, a station may not refuse to air the spot if the candidate is exercising equal opportunity or reasonable access rights. Rather, the station must add the proper identification and cannot be libel for claims of censorship because it does so. Stations do not have to provide additional free airtime for sponsorship identification; they may insert such identification within the advertisement itself.

Enforcement

If a station refuses to air an advertisement uncensored, candidates can contact the FCC Media Bureau and ask it to contact the station. If the station still refuses to comply with the law, a candidate may want to consider filing a formal complaint with the FCC or issuing a press release about a station's refusal to carry the uncensored campaign advertisement.

Case Study: Content Censorship

A 1996 presidential Democratic primary campaign committee filed a complaint against a New Hampshire television station that refused to air some of the committee's advertisements. The campaign committee had submitted three different 60-second commercials. The first, referred to as "Dodger," criticized then-President Clinton's AIDS policy. The second, "Needle," urged viewers not to "shoot drugs if [they] can help it," but stated that if individuals must, then at least use "clean equipment." The third, "Kiss," showed two men kissing and urged viewers to protect themselves when engaged in sexual acts. The television station asserted that "Needle" and "Kiss" were inappropriate and declined to air the commercials, substituting "Dodger" in their place.

The FCC found that the television station violated the censorship ban. Citing another similar case, the FCC stated that "once a station has committed itself to make time available to particular candidates, it cannot withdraw its commitment because of the substance of a candidate's use." The FCC admonished the television station in writing for censoring the advertisements.

4

Lowest Unit Charge

Candidates are entitled to the lowest unit charge for the same class, time, and period offered to a station or system's most-favored advertisers 45 days before a primary election and 60 days before a general election.

Definition

Lowest unit charge laws and regulations enable all legally qualified candidates to receive, immediately before both primary and general elections, the lowest advertising rate for the same class, amount of time, and daypart that a broadcast station, cable system, or DBS provider offers to its commercial advertisers. Lowest unit charge provisions are designed to enable candidates to buy advertising time at a discounted rate during peak campaign periods. To enable candidates to buy time at discount rates commensurate with rates charged to the most-favored commercial advertisers, the FCC implemented disclosure provisions requiring broadcasters, cable systems, and DBS providers to identify the conditions of each class of time. (Candidates should also review and abide by state laws addressing advertising rates and expenditures.)

During the lowest unit charge pre-election windows, candidates must receive the benefit of volume discounts without buying in volume. Beyond these windows, a broadcaster, cable system, or DBS provider does not need to offer candidates a rate reflecting volume discounts, but it may not charge candidates (and legally authorized candidate committees) higher rates than

Application

those comparable to what it charges commercial advertisers. In other words, as the FCC has stated, stations must “make advertising time available to candidates subject to the same rates, terms and conditions applied to commercial advertisers.”

Candidates may buy time in the same manner offered to commercial advertisers, which may reflect the length of the advertisement, the time of day, and the likelihood of the advertisement clearing (actually running).

- *Amount of time* refers to the unit of time being sold, e.g., a 60-second spot.
- *Daypart* is the segment of the broadcasting day such as prime time, late night, or morning drive time.
- *Class of time* identifies categories that reflect to what degree an advertisement is preemptible (can be bumped by the station). Most stations use the following FCC designations that provide a range of costs and protections against preemption:
 - Preemptible with notice
 - Non-preemptible / Fixed
 - Immediately preemptible
 - Run-of-schedule

Lowest unit charge rates are in effect:

- *45 days before a primary election*
- *60 days before a general election*

Stations cannot require candidates to purchase whole packages of multiple spots in multiple programs or dayparts in order to obtain the benefit of package discounts during the time periods noted above. Instead, stations must allocate of package fees over the term of the package and include those determinations in the LUC calculation.

Additionally, to qualify for the LUC, a *federal* candidate must provide written certification at the time of purchase that the candidate (or his or her authorized committee) will not make any direct reference (whether positive, negative or neutral) to another candidate for the same office, without complying with certain sponsorship identification requirements. Specifically, the television advertisement must include a clearly identifiable photo or similar image of the sponsoring candidate and a clearly readable printed statement indicating that this candidate approved and paid for the broadcast. This printed disclaimer must appear for at least four seconds at the end of the spot.

Similarly, radio advertising referring to an opponent must contain a personal audio statement by the sponsoring candidate, identifying the candidate and office sought and acknowledging the candidate’s approval of the broadcast. Candidates failing to meet the above requirements forfeit LUC rates for the broadcast in question and all subsequent broadcasts at that station during any portion of the 45-day and 60-day periods (see pages 30-33 for sample disclaimer statements).

Calculation of Lowest Unit Charge

The calculation of the LUC must include the value or benefit of bonus spots, make goods, and volume or package discounts. The LUC calculation does not have to include non-cash promotional incentives (such as merchandise and trips) or the cost of access to station facilities so long as they are offered to candidates on the same basis as commercial advertisers. However, stations are not required to offer candidates non-cash merchandising and promotional incentives if they are *de minimus* in value (e.g., coffee mugs, billboards) or would reasonably imply a relationship with or support of the

candidate (such as bumper stickers or program sponsorships that identify both the station and candidate). Similarly, broadcasters do not have to offer paid public service announcements (PSAs) to candidates, but, because PSAs are more than *de minimus* in value, they must be treated as bonus spots for purposes of determining the LUC.

The FCC has determined that stations can recalculate the LUC during the election cycle as long as the recalculation is based on normal business practices (intended to be unrelated to a pending election, but addressing variations in audience ratings or seasonal changes). Candidates should be prepared for increased costs in advertising throughout the election, in part based on the LUC recalculation.

Station Obligations in Selling a Candidate Time

Candidates need rate, discount, and class of time information to make fully informed decisions about advertising purchases and to ensure equal treatment with commercial advertisers. Thus, while not required to be included in the political files, broadcast stations, cable systems, and DBS providers must disclose certain information regarding rates and advertising sales practices. In addition to defining each class of time, the LUC, and related privileges for each class of time offered to commercial advertisers, stations must describe methods for selling preemptible time and the likelihood of preemption. Stations and systems may use their own discretion regarding how to disclose this information and, and some stations may maintain written documentation verifying the disclosures. Further, stations must negotiate in good faith to sell time to candidates according to their disclosed practices.

If a station permits candidates to buy time or use its facilities, it cannot force candidates to buy only one class of time or discriminate against a candidate in favor of a commercial advertiser. Although stations may set certain purchasing restrictions when selling to nonfederal candidates, stations must nonetheless make “run-of-station” and other preemptible terms available to nonfederal candidates when such terms are offered to others making similar use of the station’s facilities. Additionally, broadcasters, cable systems, and DBS providers must maintain current records of political advertising sales in their public file for candidate and public review (see chapter five on the public file).

Required Price and Sales Disclosures to Candidates

- Definitions of available classes of time complete enough to convey to candidates the specific attributes that differentiate each class;
- Description of the LUC and associated privileges (i.e., priority against preemption, time-sensitive make goods);
- Description of station's selling method based on advertiser demand and a stipulation that candidates can purchase at the same rates and in the same manner as commercial advertisers;
- Comparable rates for candidate advertisement purchases outside the LUC windows;
- Likelihood of preemption for each kind of preemptible time slot;
- Explanation of sales practices, if any, based on audience delivery and a stipulation that candidates can purchase in the same manner as commercial advertisers;
- Rates, terms, and conditions associated with all value-enhancing discount privileges and advertising spots offered to commercial advertisers (e.g., bonus spots, time-sensitive make goods, preemption priorities); and
- Make good policies provided to commercial advertisers.

Preempted Advertisements

Make Good

If a station or system preempts or bumps a candidate advertisement, a station may offer a candidate certain remedies:

A station can provide a *make good* – an offer to run a candidate’s advertisement at a different time. If a station has provided a time-sensitive make good in the same class of time to any commercial advertiser during the year preceding the pre-election period (which is almost always the case), the station must offer and run a make good prior to the election if the candidate chooses such option. In addition, if a station runs a make good for another candidate or commercial advertiser in a more valuable program or daypart, the value of that make good must be reflected in the LUC ultimately charged to opposing candidates.

Rebate

In the rare situation when a time-sensitive make good is not the remedy, a station can provide a *rebate*, or refund, of the money a candidate would have spent on the preempted advertisement. Stations are required to promptly provide candidates’ rebates – prior to the election when possible. Stations must also rebate candidates the amount of any payments exceeding the LUC, particularly those that were based on estimated LUC calculations at time of purchase.

“ Political broadcasting obligations are imposed upon station licensees, not on candidates and their representatives. The representatives’ or candidates’ knowledge, or lack thereof, does not replace the broadcaster’s obligation to offer candidates the benefits of the lowest rates and any associated discount privileges for the various classes and lengths of time and time periods. It is thus incumbent upon the broadcaster to disclose to candidates all information concerning the lowest unit charges made available to commercial advertisers, together with the discount privileges associated by the broadcaster with those rates. The absence of such full disclosure hampers candidates’ ability to evaluate what is being made available to them and is inconsistent with Congress’ intent to place candidates on par with favored commercial advertisers.”

Codification of the Commission’s [FCC’s] Political Programming Policies, January 3, 1992, 57 F.R. 189.

Enforcement

A candidate may contact the Media Bureau at the FCC (see page 36 for contact information) for assistance in obtaining the required pricing for advertising time during the election season. Alternatively, a candidate can choose to file a formal complaint with the FCC against a station for enforcement of the LUC on the basis of the rates charged during the election season. Candidates should file complaints within one year of the alleged violation and must compile all necessary documentation showing a violation of the LUC provisions.

Case Study: Station Negligence No Defense

Despite station claims of unintentional violations and inexperience in selling to candidates, the FCC issued a \$10,000 fine to a television station for discriminating between candidates and violating the lowest unit charge regulations 12 separate times in 1992. The FCC found that the station repeatedly overcharged candidates for their use of the broadcast facilities within the pre-election periods. In addition, the station failed to make available to candidates all discount privileges that it offered to commercial advertisers, specifically the right to purchase all levels of immediately preemptible time. The Commission noted that licensees are expected to know and comply with the regulations, and would not be excused absent clear, mitigating circumstances.

Case Studies: Overcharge

In 1989, then-Congressman Beryl Anthony, Jr. filed a complaint against an Arkansas television station for overcharges during the 1988 elections. Anthony argued that the station's sales sheets showed that another candidate purchased 42 separate 30-second spots at a rate of \$3.50 each for the week before the election. During the same period, Anthony paid \$7.00 per spot for 72 separate 30-second spots. The FCC found the station had violated the law and gave the station 20 days to refund the sales overcharges as well as show proof that the station adjusted its policies and procedures to reflect fair application of the LUC provisions.

Similarly, in 1992, a group of state candidates from California jointly filed a complaint at the FCC against a Los Angeles television station for overcharging them. The candidates compared the published political rate card in the political file to the published market industry projections and found that the rates on the political rate card were higher than the commercial average in many instances. The FCC found that the station did not fully disclose to candidates all the privileges and discount rates available to commercial advertisers, and the FCC encouraged the station and the candidates to settle the overcharge issue.

S

Public File

Broadcast stations, cable systems, and DBS providers must compile certain information on political advertising (both candidate and non-candidate advertisements) and make it publicly accessible.

Definition

Station and system public files are a valuable source of public information that can provide information on the advertising of candidates, political parties, or other groups. The political file portion of the public file must contain information on requests for purchase of advertisement time:

- made by or on behalf of a legally qualified candidate; or
- that communicates a message relating to any political matter of national importance, including:
 - a legally qualified candidate;
 - any election to federal office; or
 - any national legislative issue of public importance.



Application

Specifically, stations and systems must maintain records of the following details in the political portion of their public files:

- whether the request to purchase broadcast time is accepted or rejected by the licensee;
- the rate charged for the broadcast time;
- the date and time on which the communication aired;
- the class of time purchased;
- the name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable);
- in the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee; and
- in the case of any other request, the name of the person purchasing the time, the name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or the board of directors.

The political records in the public file are a candidate's primary resource for determining his or her equal opportunity rights. In addition, as described in the section on the lowest unit charge, the file may provide information on the policies and sales practices of the broadcaster.

Because timeliness of the information inserted in the political file is essential to opposing candidates seeking equal opportunity, stations must place candidate related information in the file immediately, absent unusual circumstances. Stations must maintain the records for two years. Political file information can reveal any disparity of sales treatment in the prices charged different candidates and details on how a station or cable system has been responding to equal time requests.

Accessing Public and Political File Information

The station must make the public file available at its main office during regular business hours, Monday - Friday (see Appendix B for a copy of the public notice detailing rights of access to the public file, page 39). A candidate does not need to schedule an appointment, but making one may prove helpful and expedite file review.

Special Rules for DBS Providers

In general, DBS providers must maintain political file records similar to those required of cable systems and broadcasters. However, recognizing that the offices of nationally-based DBS providers may be inaccessible to most of the public, the FCC directed DBS providers to make their political files available upon telephone or electronic request, which is not currently required of broadcast stations or cable operators. Access may be permitted by fax, e-mail, Internet website, or mailing photocopies. And, although DBS providers may charge for the copies, they must pay for postage. In addition, DBS providers must prominently disclose the toll-free telephone number and e-mail address to contact for political record requests on their website or as part of the "phone tree" from published toll-free numbers for the provider.

Candidates must first make requests for access to public files with individual stations and systems. To the extent that a station or system has failed to maintain its files or provide sufficient access, candidates may request either the FCC or the National Association of Broadcasters (NAB) to inform the station of the possible consequences of failure to comply: a costly fine or a challenge to a license renewal (see page 36 for contact information).

Alternatively or additionally, a candidate may file a complaint with the FCC and issue press statements concerning noncompliance with public file obligations. The complaint should

include the call sign and location of the station, along with the address of where the complainant attempted to view the public file. The complaint should describe the circumstances surrounding the inability to gain access to the station's public file, or to access or obtain copies of documents required to be maintained in that file, including the date and time the complainant attempted to inspect the file and the specific documents that the complainant was unable to view or obtain.

As recently as October 2003, the FCC fined 28 radio stations \$3,000 each for noncompliance with public file requirements. Thus, the FCC is showing an increasing interest in pursuing fines for violations of these regulations.

In 2002, a broadcast station did not allow academics researching campaign spending to photocopy the station public file contents. Instead, a researcher's only option was to take handwritten notes on the file contents. The Campaign Legal Center wrote a letter on behalf of the academics and called the station regarding its obligations to provide access to photocopy the contents of the public file at a reasonable charge. Within a few days, the station made the contents of the public file available for photocopying.

6

Sponsorship Identification

Sponsors of political and election-related advertising must be disclosed in the advertisements at the time of airing of the advertisement.



All political programs or advertisements must contain truthful sponsorship identification. The FCC and the FEC have separate sponsorship identification regulations, and candidates must meet the specific requirements outlined by each agency. Compliance with one agency's regulations will not necessarily mean compliance with the other agency's requirements.

When a broadcast station or cable system accepts payment (or promises of payment) or other consideration for airing of any material, FCC regulations require disclosure of the true sponsor or payor at the time the material is aired. The FCC also requires additional identification and public file disclosure for certain broadcasts or transmissions involving discussion of controversial issues of public importance or political matters. (The FCC has not specifically ruled that all sponsorship requirements apply to DBS providers.)

The FEC imposes specific sponsorship identification requirements for certain "public communications" and election-related advertising. Specific requirements vary depending on whether the communication was paid for or authorized by a federal candidate. (The FEC has applied FEC related sponsorship requirements to DBS providers.)

FCC Radio and Television Advertising and Programming Disclosure Requirements

As noted above, broadcast stations and cable systems must announce that a broadcast or transmission was paid for and the identity of the payor at the time of airing any program, spot, or advertisement for which the station or system received any payment or promise of payment. Thus, all paid programs or political advertisements from candidates, parties, PACs, interest groups, individuals, and others must contain an announcement stating who paid for the material. The announcements must “fully and fairly disclose the true identity of the person or persons, or corporation, committee, association or other unincorporated group, or other entity.” (47 C.F.R. §73.1212 (e)). Consequently, advertisements purchased or furnished by someone else on behalf of a candidate or group must disclose the identity of the entity on whose behalf the advertisement was purchased, not merely the name of the agent who purchased or placed the advertisement. Political advertisements on television must contain visual sponsorship announcements, and those concerning candidates must have an on-screen tag line of at least four percent of the picture height for at least four seconds (see pages 30-33 for disclaimer statement examples).

With respect to political matter or matter involving the discussion of controversial issues of public importance for which a film, record, transcription, talent, script or other material or service is furnished as an inducement for broadcasting the material, the sponsorship announcement must be at both the beginning and end of each piece or spot. (For spots under five minutes, the announcement may be at either the beginning or end).

Additionally, if a corporation, committee, association, or other entity pays for or furnishes political matter or matter involving the discussion of controversial issues of public importance, stations and systems must require that a list of the chief executive officers or members of the executive committee or of the board of directors of that entity be placed in the station’s or system’s public file for two years.

If a station inadvertently runs an advertisement without a sponsorship announcement, possibly during the first airing of a spot received on tape from a candidate, the station or cable system may insert a sponsorship tag line for future broadcasts without violating the censorship ban.

Enforcement of FCC Radio and Television Advertising Requirements

If a candidate questions the true sponsorship of an advertisement, upon presentation of credible, unrefuted evidence of a discrepancy in the sponsorship identification, he or she can ask the station to investigate. If the station fails to respond to the candidate, the candidate may then ask the FCC for assistance. The candidate may also publicize the issue in the press or file a formal complaint with the FCC (see contact information on page 36).

The FCC has not specifically ruled that all sponsorship requirements apply to DBS providers.

States may impose additional sponsorship identification requirements, so candidates should check with a local regulatory commission and local broadcast stations for additional information on state regulations.

Case Study:
Senator McCain Files
Complaints in 2000

During the 2000 presidential primaries, Senator John McCain and Governor George W. Bush were vying for the Republican party nomination. By the end of February, the race was a statistical dead heat. The week before the “Super Tuesday” primaries on March 7, 2000 – a crucial day of seven primaries in the west and north – \$2.5 million in advertisements appeared in three states. The advertisements were paid for by an unknown organization:

“Republicans for Clean Air.” The group attacked Senator McCain’s record on the environment and touted Governor Bush’s policies. Because Republicans for Clean Air was a newly incorporated entity with no IRS or FEC filings and only a mail drop as a location, little information was available about the advertisement sponsors or the organization. As a result of intensive media investigative reporting, a wealthy Texan, Sam Wyly, eventually stepped forward and acknowledged responsibility for the advertising.

The McCain campaign filed a complaint with the FCC asking that it forbid stations from airing the Republicans for Clean Air advertisements (which were still running in Super Tuesday primary states) absent proper disclaimer identifying the true funders of the advertisement, believed to be Sam and

Charles Wyly. The campaign alleged that Republicans for Clean Air was merely a front group and corporate shell and not the real sponsor of the advertisement. The FCC gave 45 stations that ran the advertisement less than a week to submit information explaining what actions the stations took to discover the true identity of the group and reminded the broadcasters in question of their obligation to identify the true sponsor of all advertisements run by their stations.

At the time of the publication of this Guide, the FCC still has not ruled on Senator McCain’s complaint. Nonetheless, due in part to his actions, the public learned the true identity of the individuals that organized and funded the Republicans for Clean Air, and Congress passed legislation to create disclosure regulations for political organizations (section 527 organizations) like Republicans for Clean Air. As part of the new law, political organizations have to register with the IRS within 48 hours of their formation and disclose their officers, donors and expenditures (see IRS “527” database website address on page 35). However, advocacy organizations (501(c)4s), trade associations (501(c)5s) and labor entities (501(c)6s) are not currently subject to the same regulations.

FEC Sponsorship Identification Rules for Election-Related Advertising Paid for or Authorized By Federal Candidates

General

When federal candidates disburse funds from their authorized campaign committees for public communications, they must comply with FEC sponsorship identification requirements. For purposes of these FEC sponsorship identification requirements, public communications include broadcast, cable or satellite communications, communications by means of newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, political committee Internet websites accessible to the general public and unsolicited e-mails of more than 500 substantially similar communications. All public communications financed with candidate campaign funds must include disclaimers stating that they have been paid for by the authorized campaign committee.

Moreover, certain *public communications* paid for by other persons or groups but authorized by federal candidates must include a disclaimer. This requirement applies to such public communications which:

- are financed by political committees registered with the FEC;
- expressly advocate the election or defeat of a clearly identified federal candidate;
- solicit federal campaign contributions; or
- are *electioneering communications* as defined in FEC

regulations (i.e., broadcast, cable or satellite communications which refer to a clearly identified candidate for federal office, are aired within 60 days of the candidate's general election or 30 days of his or her primary and are targeted [see FCC Electioneering Communications Database <http://gallfoss2.fcc.gov/ecd>] to the candidate's electorate).

Regardless of the medium used (print, radio, television, etc.), the disclaimer must state who paid for the communication and identify the candidate who authorized it. These disclaimers must be presented in a clear and conspicuous manner. If the placement is easily overlooked, or the disclaimer is difficult to read or hear, it will not comply with the clear and conspicuous presentation requirement. Disclaimers in printed public communications must appear in sufficient type size to be clearly readable (e.g., 12-point type for signs and posters measuring no more than 24 by 36 inches), with a reasonable degree of color contrast from the background and in a printed box set apart from other contents of the communication.

Additional Special Rules for Radio and Television Advertising

If distributed through radio or television, the public communications described above must also comply with special sponsorship identification rules specified in FEC regulations:

Radio

The candidate must deliver an audio statement identifying the candidate and state that he or she approved the advertisement.

Television, cable, or satellite

The candidate must deliver a statement identifying himself or herself and state that he or she approved the advertisement. The candidate statement must be conveyed through a full-screen view of the candidate speaking it, or a voice-over accompanied by a clearly identified photographic or similar image of the candidate occupying at least 80 percent of vertical screen height. A similar statement must also appear in writing at the end of the advertisement for a minimum of four seconds, in letters at least four percent of vertical picture height and with a reasonable degree of color contrast from the background (see pages 30-33 for disclaimer statement examples).

FEC sponsorship identification requirements (see page 26) apply in addition to these heightened FEC requirements.

FEC Sponsorship Identification Rules for Election-Related Advertising Not Paid for or Authorized By Federal Candidates

Enforcement of Candidate Sponsorship Disclaimers

Complaints against candidates for not including required disclaimers in their public communications can be filed with the FEC (see page 36 for contact information).

Public communications which are neither paid for nor authorized by federal candidates may nonetheless require a disclaimer under FEC regulations. FEC disclaimer requirements extend to public communications paid for by any person or group which meet one of the following criteria:

- is financed by a political committee registered with the FEC;
- expressly advocates the election or defeat of a clearly identified federal candidate;
- solicits federal campaign contributions; or
- is an electioneering communication as defined in FEC regulations (i.e., a broadcast, cable or satellite communication which refers to a clearly identified candidate for federal office, is aired within 60 days of the candidate's general election or 30 days of his or her primary and is targeted to the candidate's electorate).

Regardless of the medium used, the disclaimer for these public communications must clearly state the full name, permanent street address, telephone number or World Wide Web address of the person or group who paid

for the communication, and state that the communication is not authorized by any candidate or candidate's committee. The disclaimer must be presented in a clear and conspicuous manner. For printed public communications, the disclaimer must appear in sufficient type size to be clearly readable (e.g., 12-point type for signs and posters measuring no more than 24 by 36 inches), with a reasonable degree of color contrast from the background and in a printed box set apart from other contents of the communication.

Additional Special Rules for Radio and Television Advertising

If distributed through radio or television, the public communications described above must also comply with special sponsorship identification rules specified in FEC regulations. An organization that distributes public communications must also file a "Form 9" at the FEC if it spends more than \$10,000 in a calendar year on electioneering communications. This form is located at: www.fec.gov/pages/bcra/rule-makings/electioneering_communications.htm

Radio

The communication must include the following audio statement, spoken clearly: "[Name of payor] is responsible for the content of this advertising."

Television, cable, or satellite

The communication must include the audio statement required for radio communications, conveyed by either an unobscured full-screen view of a representative of the payor or in voice-over. A similar statement must also appear in writing at the end of the communication for at least four seconds, in letters at least four percent of vertical picture height and with a reasonable degree of color contrast from the background (see pages 30-33 for disclaimer statement examples).

FCC sponsorship identification requirements (see page 26) apply in addition to these heightened FEC requirements.

Enforcement of Non-Candidate Sponsorship Disclaimer

Complaints may be filed with the FEC against groups for not including a disclaimer (see page 28). For additional information on sponsorship regulations, visit the FEC website and review the "Special Notices on Political Ads and Solicitations" Report, at www.fec.gov/pages/brochures/notices.htm, or consult 11 C.F.R. § 110.11.

Sample Television Sponsorship Disclaimers for Candidate-Related Advertisements¹

Each television ad paid for and authorized by a federal candidate must contain a “statement of responsibility” from the candidate, identification of the candidate, and “paid for by” disclaimer. A television ad that is neither paid for nor authorized by a candidate must have a “statement of responsibility” and “paid for” disclaimer. The entity’s web site (or permanent street address or telephone number) is only required on communications not authorized by a candidate.²

¹ The suggested language is general in nature and not intended to be definitive guidance. Note that all political advertisements, even those unrelated to a federal candidate, require sponsorship identification. Please consult counsel with any specific questions.

² 11 C.F.R. § 110.11(b)(3).

³ See 11 C.F.R. § 110.11(c)(3)(iv).

⁴ See 11 C.F.R. § 110.11(c)(3)(ii).

⁵ See 11 C.F.R. § 110.11(b)(1). The disclaimer must appear in “clearly readable” writing at the end of the ad. The disclaimer is “clearly readable” if it appears for at least four seconds and in letters equal to or greater than four percent of the vertical picture height, and it contains a reasonable degree of color contrast between the background and text of the disclaimer (e.g., black text on a white

background). See 11 C.F.R. § 110.11(c)(3)(iii); see also 47 C.F.R. § 73.1212 and §76.1615.

⁶ See 11 C.F.R. § 110.11(c)(3)(iv)

⁷ See 11 C.F.R. § 110.11(c)(3)(ii).

⁸ See 11 C.F.R. § 110.11(d)(2), 47 C.F.R. § 73.1212 and §76.1615. The disclaimer must appear in “clearly readable” writing at the end of the ad. The disclaimer is “clearly readable” if it appears for at least

Candidate-Financed and Sponsored Advertisement

Audio, visual, and print disclaimers are all required for candidate ads.

Audio Candidate Responsibility Disclaimer

“I am Jane Jones, a Republican candidate for the United States Senate, and I approved this advertisement.”³

Visual Requirements

The disclaimer must be spoken by the candidate and conveyed in one of two ways: (1) a full-screen view of the candidate making the statement; or (2) a voice-over statement by the candidate accompanied by a photograph of the candidate that occupies at least 80% of the vertical screen height.⁴

Print Candidate Responsibility and Paid For Disclaimer

“Approved by Jane Jones and paid for by Jones for Senate.”⁵

four seconds and in letters equal to or greater than four percent of the vertical picture height, and it contains a reasonable degree of color contrast between the background and text of the disclaimer (e.g., black text on a white background). See 11 C.F.R. § 110.11(c)(3)(iii).

³ See 11 C.F.R. § 110.11(c)(4)(i).

⁴ See 11 C.F.R. § 110.11(c)(4)(ii); 67 Fed. Reg. 76967.

Candidate-Approved, but Party-Financed Advertisement

Audio, visual, and print disclaimers are all required for candidate approved ads.

Audio Candidate Responsibility Disclaimer

“My name is Jane Jones. I am running for United States Senate, and I approved this message.”⁶

Visual Requirements

The disclaimer must be spoken by the candidate and conveyed in one of two ways: (1) a full-screen view of the candidate making the statement; or (2) a voice-over statement by the candidate accompanied by a photograph of the candidate that occupies at least 80% of the vertical screen height.⁷

Print Candidate Responsibility and Paid For Disclaimer

“Paid for by the Republican National Committee and authorized by Jones for Senate.”⁸

¹¹ The disclaimer must appear in “clearly readable” writing at the end of the ad. The disclaimer is “clearly readable” if it appears for at least four seconds and in letters equal to or greater than four percent of the vertical picture height, and it contains a reasonable degree of color contrast between the background and text of the disclaimer (e.g., black text on a white background). See 11 C.F.R. § 110.11(c)(4)(iii).

Neither Candidate-Financed nor Approved Express Advocacy or Electioneering Communication Advertisement

Only the audio and print disclaimers are required.

Audio Representative Responsibility Disclaimer

“The Committee for a Better America is responsible for the content of this advertising.”⁹

Visual Requirements

The disclaimer must be spoken by the representative and conveyed in one of two ways: (1) a full-screen view of the representative making the statement; or (2) a voice-over statement by the representative that need not include a photograph of the representative. The regulations contain no specifications on who must speak the required message.¹⁰

Print¹¹ Representative Responsibility and Paid For Disclaimer

“The Committee for a Better America paid for and is responsible for the content of this advertising. Not authorized by any candidate’s committee. www.CBA.org”¹²

¹² 11 C.F.R. § 110.11(b)(3), 47 C.F.R. § 73.1212 and §76.1615. For an advertisement not paid for or authorized by a candidate, the visual disclaimer must include contact information for the group paying for the ad: the full name and permanent street address, telephone number, or a World Wide Web address.

*Sample Radio
Sponsorship Disclaimers
for Candidate-Related
Advertisements*¹³

A radio ad paid for and authorized by a federal candidate must contain a “statement of responsibility” and a “paid for by” disclaimer. A radio ad that is neither paid for nor authorized by a candidate, must have a “statement of responsibility” and a “paid for by” disclaimer. These statements may appear together or separately at sometime during the ad.¹⁴

**Candidate-Financed
and Sponsored
Advertisement**

“My name is Jane Jones. I am running for United States Senate, and I approved this message.”¹⁵
– and –
“Paid for by Jones for Senate.”¹⁶

**Candidate-Approved,
but Party-Financed
Advertisement**

“I am Jane Jones, a Republican candidate for the United States Senate, and I approved this advertisement.”
– and –
“Paid for by the Republican National Committee and authorized by Jones for Senate.”

**Neither Candidate-Financed
nor Approved Express
Advocacy or Electioneering
Communication Advertisement**

“The Democratic National Committee is responsible for the content of this advertising.”¹⁸
– and –
“Paid for by the Democratic National Committee at www.democrats.org and not authorized by any candidate or candidate’s committee.”¹⁹

¹³ The suggested language is general in nature and not intended to be definitive guidance. Note that all political advertisements, even those unrelated to a federal candidate, require sponsorship identification. Please consult counsel with any specific questions.

¹⁴ See 11 C.F.R. § 110.11(c)(3)(i).

¹⁵ See 11 C.F.R. § 110.11(c)(3)(iv).

¹⁶ See 11 C.F.R. § 110.11(b)(1), 47 C.F.R. § 73.1212 and §76.1615.

¹⁷ See 11 C.F.R. § 110.11(d)(2), 47 C.F.R. § 73.1212 and §76.1615.

¹⁸ See 11 C.F.R. § 110.11(c)(4)(i).

¹⁹ See 11 C.F.R. § 110.11(b)(3), 47 C.F.R. § 73.1212 and §76.1615.

Tracking Election-Related Communications in the Election Cycle

In addition to locating information about election-related advertising in station public files, other sources may provide information on organizations that air advertisements close to elections that promote or attack federal candidates.

Some organizations air advertisements close to elections that promote or attack federal candidates. Beyond the station's public files, a candidate may learn more about these types of groups from the following sources:

The Federal Election Commission

Electioneering Communications

All organizations and individuals which spend in excess of \$10,000 during a calendar year on electioneering communications (i.e., broadcast, cable or satellite communications which refer to a clearly identified candidate for federal office, are aired within 60 days of the general election or 30 days of his or her primary and are targeted to the candidate's electorate) must disclose such disbursements (and certain of their donors) to the FEC on the "24 Hour Notice of Disbursements for Electioneering Communications" Report (FEC Form 9).

Forms available at:
www.fec.gov/pages/electioneering.html

Independent Expenditures

Political committees registered with the FEC make *independent expenditures* (i.e., independent advertisements that expressly call for the election or defeat of a federal candidate) of \$1,000 or more with respect to a given election must disclose these disbursements to the FEC within 24 hours.

Internal Revenue Service

Political Organization records

The IRS has disclosure information on political organizations (section 527 committees), many of which are involved in running election-related advertisements during campaign season. The disclosed information includes staff and officers contact information, donor information, and may include expenditures. The IRS maintains a database of these political organizations that a candidate can utilize to learn more about an organization running issue advertisements.

Go to: <http://forms.irs.gov/politicalOrgsSearch/search/basicSearch.jsp>

Tax Returns

If a political organization, advocacy group or charity has been in existence for a few years, it will have filed a publicly accessible tax return (IRS Form 990). The IRS posts tax returns of section 527 organizations on its website, and the IRS also requires all organizations to maintain tax returns at their main office for five years and allow the public access during regular business hours. Tax returns provide information on who runs the organization, officers, directors, and expenditures, but they do not provide names of donors.

To search tax returns, go to:

- www.guidestar.org
- or
- <http://forms.irs.gov/politicalOrgsSearch/search/basicSearch.jsp?ck>

Election-Related Websites

Some organizations track groups that are politically active or have been over the past few election cycles. Their websites are useful when trying to learn about an organization that is conducting election-related activity.

- The Annenberg Public Policy Center: www.appcpenn.org/issueads/
- The Brennan Center: www.buyingtime.org
- The Center for Public Integrity: www.publicintegrity.org/527/
- The Center for Responsive Politics: www.opensecrets.org
- The Center for the Study of Elections and Democracy at Brigham Young University: <http://csed.byu.edu/>
- The University of Wisconsin Advertising Project: <http://polisci.wisc.edu/tvadvertising/Index.htm>

Public Files

Broadcast stations, cable systems, and DBS providers must keep records in their public files detailing political advertising activity (see political file chapter five).

Contact Information

Filing a Complaint with the FCC

Contact the Media Bureau to make or file a complaint. Mr. Robert Baker, assistant division chief, Policy Division, Media Bureau, may be able to assist in resolving any issue informally or in filing a formal complaint with the FCC. Send all formal written complaints to:

**Federal Communications Commission
Media Bureau
445 12 Street, SW
Washington, DC 20554**

Phone: (202) 418-1440
Fax: (202) 418-0232
Web: <http://www.fcc.gov>
Email: contactfccinfo@fcc.gov for general information; send election and political candidate inquiries and complaints to campaignlaw@fcc.gov

Filing a Complaint with the FEC

Complaints to the FEC should explain how the law may have been violated, including the specific facts and circumstances and names of the individuals or organizations responsible. A candidate's complaint should also indicate which allegations are based on personal knowledge rather than on outside sources (i.e., newspaper articles). The complaint must be in writing, notarized, and sent to:

**The Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463**

Phone: (800) 424-9530;
(202) 694-1100
Fax: (202) 501-3413
Web: <http://www.fec.gov>
E-mail: info@fec.gov (do not send complaints by e-mail)

The National Association of Broadcasters

Contact the NAB to ask it to encourage its member organizations to comply with the law:

**National Association of Broadcasters
General Counsel
1771 N Street, NW
Washington, DC 20036**

Phone: (202) 429-5300
Fax: (202) 429-4199
Web: <http://www.nab.org>
E-mail: nab@nab.org

Commonly Used Terms

Amount of time

The unit of time being sold (e.g., a 60-second spot) to advertisers.

Class of time

Categories of advertisement time.

Complaint

Formal filing with a government agency.

Daypart

A segment of the broadcasting day such as prime time, late night, or morning drive time.

Electioneering communications

A broadcast advertisement referring to a federal candidate within 30 days of a primary election or 60 days of a general election and targeted to the candidate's electorate.

Equal opportunity (equal time)

References the commensurate time or use of facilities that must be provided to all legally qualified candidates if use was provided to one such candidate. A use includes free airtime and appearances of the candidates in nonpolitical settings.

Independent expenditures

A broadcast advertisement advocating a candidate's election or defeat which is run entirely independent of a candidate's campaign.

Legally qualified candidate

Someone seeking public office who has: (1) publicly announced his or her candidacy; (2) is qualified by virtue of state or federal law to hold the office being sought; and, (3) has met other specific requirements, usually also including a substantial showing of a *bona fide* candidacy by engaging in activities commonly associated with political campaigning.

Lowest unit charge

The lowest rate for the same class and amount of time for the same period that the station offers to its best commercial advertisers that must be offered to a legally qualified candidate.

Political file

The political file is part of the public file that broadcast stations, cable systems, and DBS providers must maintain and contains records of all requests for purchase of advertisement time made by or for a legally qualified candidate or that communicates a message relating to any political matter of national importance.

Reasonable access

Commercial radio and television broadcast stations must permit federal candidates reasonable access to purchase airtime. (Not mandated for cable systems).

Section 527 Organizations

A type of political organization registered with the IRS (usually denoting political groups that have NOT registered as federal or state political action committees but whose major purpose is still political activity).

Sponsorship identification requirements

Sponsors of certain political and issue advertising must be disclosed in the advertisements at the time of broadcast.

Use

A facility use includes any identifiable positive showing by voice, likeness or physical appearance by a candidate on any programming carried by that media outlet. The FCC generally considers showings less than four seconds to be fleeting and not amounting to a use.

Appendix A:
Statutes and Regulations

Censorship ban

47 U.S.C. 315(a) and
§ 326; 47 C.F.R. § 73.1941 and
§ 25.701(b)(4)(i)

Candidate debates

2 U.S.C. 431; 11 C.F.R. § 110.13
and § 114.4(f)

**Electioneering communication
Disclosure**

11 C.F.R. § 104.20

Equal opportunities

47 U.S.C. § 315; 47 C.F.R.
§ 73.1941, § 76.205, and
§ 25.701(b)(4)(i)

**Independent expenditure
Disclosure**

11 C.F.R. § 104.4 and § 109.10

Legally qualified candidates

47 C.F.R. § 73.1940 and
§ 76.5(q)

Lowest unit charge

47 U.S.C. 315(b); 47 C.F.R.
§ 73.1942, § 76.206, § 76.1611,
and § 25.701(c)

Public file

47 U.S.C. 315(e); 47 C.F.R.
§ 73.1943, § 76.1701 and
§ 25.701(d)

Public inspection of tax returns

I.R.C. 6104(d) and (e) and Regs.
301.6104(d)(3)(d)

Reasonable access

47 U.S.C. 312(a)(7); 47 C.F.R.
§ 73.1944 and § 25.701 (b)(3)
(no cable equivalent)

**Sponsorship identification
requirements**

2 U.S.C. 441d ; 47 U.S.C.
317(a); 47 C.F.R. §73.1212 and
§ 76.1615; and 11 C.F.R. 110.11
(no DBS equivalent)

**Section 527 organization
disclosure**

26 C.F.R. § 527

Uses of a broadcast facility

47 U.S.C. 315(a); 47 C.F.R.
§ 73.1941(b) and
§ 25.701(b)(4)(ii)

Appendix B:
Public Notice on File Inspection

Public Notice

Federal Communications
Commission
445 12th St. SW
Washington, D.C. 20554

DA: 98-1895
Released: September 28, 1998

**Availability of Locally
Maintained Records for
Inspection by Members
of the Public**

In light of our recent modifications to the main studio and public inspection file rules in the Report and Order in MM Docket No. 97-138, FCC 98-175 (August 11, 1998), we take this opportunity to reissue the statement the FCC made in 1971 regarding the availability of locally maintained records for inspection by members of the public. See Public Notice dated February 23, 1971, 28 FCC 2d 71 (1971). The availability of these materials is important given that, in recent years, the FCC has increasingly come to rely on the involvement and scrutiny by members of the public to monitor broadcast licensee performance. See *Deregulation of Radio*, 84 FCC 2d 968, 1011 (1981).

With our recent decision to give stations greater flexibility about where to locate their main studios, and to drop our requirement that a station's public file be in its community of license, it is appropriate to remind licensees, permittees, and applicants of their duty to afford ready access to the public file. Thus, a station may not require that a member of the public make an appointment in advance or return at another

time to inspect the public file, or that members of the public examine the public file only at times most convenient to the licensee or its staff. We also remind all licensees, permittees and applicants that while they may require personal identification (names and addresses) of members of the public visiting the station, public file records are to be provided to them on request and without requiring that they identify their organization. See *WBRN, Inc.*, 32 FCC 2d 729 (1971). Finally, as we have in the past, we encourage stations to set aside an area with a table at which the public may inspect public file materials. Public Notice, 28 FCC 2d at 71-72.

This Public Notice is simply to reiterate the points made in the 1971 Public Notice concerning a licensee's obligation to ensure access to its public file to members of the public visiting a station in person; these obligations are separate and apart from the Commission's recently adopted requirements regarding the provision of certain information and materials to members of the public who make telephone requests for public file documents. Report and Order in MM Docket No. 97-138, FCC 98-175, at 24-26.

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The Campaign Legal Center is a nonpartisan nonprofit organization dedicated to educating candidates and the public on campaign finance and media law. The Legal Center represents the public interest in administrative and legal proceedings interpreting and enforcing campaign finance and related media laws at the Federal Election Commission (FEC), the Federal Communication Commission (FCC), the Internal Revenue Service, and in the courts.

In the area of campaign finance, the Legal Center generates legal and policy debate about disclosure, electioneering communications, contribution limits and enforcement. Most recently the Legal Center was part of the legal defense team that represented the Members of Congress who co-sponsored the Bipartisan Campaign Reform Act of 2002 (commonly called McCain / Feingold) at the District Court and Supreme Court. The Legal Center also participates in Federal Election Commission proceedings as it interprets and enforces the new Reform Act.

In the area of media law, the Legal Center focuses on the rules relating to candidate access and media public interest obligations such as standards for election news coverage and discounted advertising rates for campaign commercials. This Guide is an important part of our efforts to educate the public on candidates' and citizens' rights during election season and the obligations of broadcasters to serve the public interest.

To learn more about the Campaign Legal Center, visit our website at: www.campaignlegalcenter.org.



Campaign Legal Center

202.736.2200

www.campaignlegalcenter.org

legalcenterinfo@campaignlegalcenter.org