

POLITICAL BROADCASTING

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Broadcasters Association

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Legally Qualified Candidate

To be a “legally qualified” candidate, an individual:

- must be qualified under applicable law for office
- must be qualified under state law to be on the ballot or an active write-in candidate
- (for Presidential candidates) must be qualified in the state or in ten states

Check with state and/or local election officials

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

- A “use” is an *identifiable* appearance by the candidate.
- Any “positive” appearance by a candidate is a “use”.
- The appearance does *not* have to be controlled or approved by the candidate.
- A “use” triggers “equal opportunity” for opponents of candidate & LUC during window periods

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Candidate Access: Two Different Standards

- **FEDERAL** candidates have “reasonable access” rights
- **STATE** and **LOCAL** candidates have “access” **only** at station discretion

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Federal Candidates Are Entitled to “Reasonable Access”

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

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Reasonable Access for Federal Candidates (*continued*)

- Drive time and program time must be offered.
- Federal candidate spots **may** be excluded from **news** but may **not** be excluded from any other category of program.
- Federal candidates do not have a right to demand specific programs or day-parts.

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Reasonable Access for Federal Candidates (*continued*)

Factors which stations may consider in determining whether a request for time is “reasonable”:

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

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State and Local Candidates

- Stations can take political ads/program from some races and not others
- Stations can limit the number of ads/programs
- Stations can restrict to certain day-parts
- Equal Opportunities, Lowest Unit Charge and No Censorship apply
- Public interest considerations

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Equal Opportunities

(applicable to **ALL** Federal, State and Local Candidates)

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

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Exempt Programs

"Equal opportunities" for opponents are **not** triggered by a candidate's identifiable appearances in the following types of program:

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

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**Bipartisan Campaign Reform Act
("BCRA")**


Recent *Citizens United* Supreme Court decision tosses out BCRA prohibition as to "electioneering communications" by corporations/labor unions, but otherwise has little practical effect on broadcaster obligations.

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Bipartisan Campaign Reform Act *(continued)*

Various BCRA provisions still in effect following *Citizens United*:

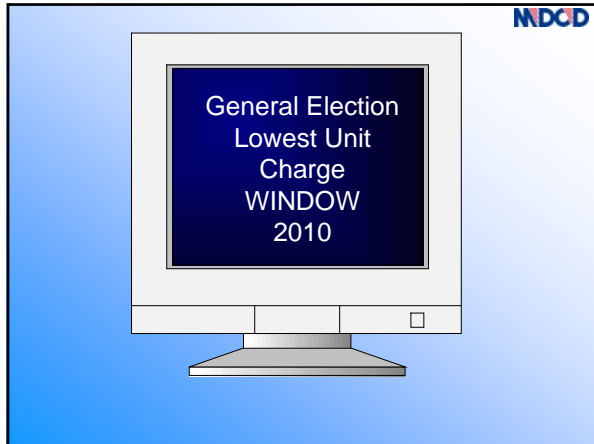
- federal candidate ad certifications as to mention of opponent (which affects LUC)
- sponsorship ID
- public file and recordkeeping requirements.



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Political Rates

- Lowest unit charge applies to candidate "uses" during political "windows":
 - 45 days before a primary or caucus
 - 60 days before a general or special election
- "Use" must be in connection with the campaign



GENERAL ELECTION

- November 2, 2010
- LUC Opens September 3, 2010

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Charges Inside the Political Window

Maxim

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

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Lowest Unit Charge (“LUC”)

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

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Lowest Unit Charge *(continued)*

Under BCRA, to be entitled to LUC, a federal candidate “must certify” that, “if” the candidate’s on-air material refers to an “opponent” (whether in a negative or positive manner), certain required language will be inserted into the audio message. If the candidate does not so certify, the station may deny LUC.

This requirement applies to federal candidates only.

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Lowest Unit Charge *(continued)*

What to Include in the LUC:

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

Lowest Unit Charge *(continued)* **NDCD**

Package Plans

Package plans are **not** considered a separate class:

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

Lowest Unit Charge *(continued)* **NDCD**

Pre-emptible Time

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

Lowest Unit Charge *(continued)* **NDCD**

Make Goods

Unless runs in same price time period, a make good may set new LUC for a more expensive spots sold in a different time period.

Audience Short-Fall Make Goods: Audience information/rating may not be available before the election. Disclose this possibility. Give after election cash rebate or try offer/negotiate for make good for subsequent election.

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Lowest Unit Charge *(continued)*

Time Sensitive Make-Goods

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

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Lowest Unit Charge *(continued)*

Types of spots which need not be included in calculating LUC:

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

(Continued on next slide)

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Lowest Unit Charge *(continued)*

Types of spots not included in calculating LUC *(continued)*:

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

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Disclosure Statement

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

Disclosure Statement *(continued)*

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Disclosure Statement Contents

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

(Continued on next slide)

Disclosure Statement *(continued)*

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Disclosure Statement Contents (continued)

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

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Sponsor Identification

- All spots must have a proper sponsor ID
- Must use “paid for” or “sponsored by”
- BCRA adds requirement for federal candidates if the spot mentions an opponent

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Enhanced BCRA Requirement as to **Federal** Candidates

- Federal candidate certification that, if the candidate’s spot mention an opponent, the spot will include certain additional language
- Candidate voice identifying him/herself, specifying the office sought, and stating that he/she approved the ad.

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Other BCRA Sponsor ID Requirements

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



Advance Payment



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



Credit

Credit must be offered if:

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



Political File

- The name of the candidate requesting time (not rate inquiries), details of who/entity placed order, names, telephone/address, etc.
- Nature and disposition of request, schedule provided, class of time, rate, when aired.
- Information as to all other non-exempt uses
- Keep information for two years
- Note new BCRA requirements

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Additional BCRA Political File Requirement

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

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

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Questions?
