



Welcome to

Political Broadcasting 2012

A Refresher Course

**The program will start shortly. Please make
sure that the volume on your computer's
speakers is turned up.**



Fletcher, Heald & Hildreth

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presents

Political Broadcasting 2012

A Refresher Course

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Legally Qualified Candidate

- **Must have announced intention to run**
- **Must be qualified under state law to hold the office**
- **Must be qualified under state law to be on the ballot or a write-in candidate**
- **Presidential candidates must be qualified in the state or in ten states**
- **Check with governmental officials**

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

- A “use” must include a candidate appearance in an *identifiable* voice or picture
- Any “positive” appearance by a candidate is a “use”
- The appearance does *not* have to be controlled or approved by the candidate
- “Use” triggers “equal opportunity” for opponents of that candidate

Candidate Access: Two Different Standards

- **Federal Candidates - have “reasonable access” rights**
- **State and local candidates – Only “access” at station discretion**

Federal Candidates Are Entitled to Reasonable Access

- Applies to candidate “uses” (see definition) during entire campaign period
- Stations cannot set flat “limits” on amount or type of spots/program time that candidates can buy
- But Stations may reject unreasonable requests and negotiate with candidates
- Stations need not respond to “blind” requests for avails or time

Continued . . .

Federal Access *(Continued)*

- **Must be offered prime time, program time**
- **May be excluded from news**
- **May *not* be excluded from any other category of programs**
- **Do not have a right of access to any particular program, day or day-part**
- **Note: non-commercial “educational” stations (FCC reserved channels) are exempt from “reasonable access” concerns by Section 312(a)(7)**

Reasonable Determinations by Stations

Station's "reasonable determination" consider:

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

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
- Stations must make all “discount classes” available
- Equal Opportunities, Lowest Unit Charge and No Censorship apply

Equal Opportunities

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

Exempt Programs

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



Political Rates

- Apply to all races - federal, state & local during “windows”
- Lowest unit charge applies 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





Lowest Unit
Charge
WINDOWS
2012

Lowest Unit Charge

- The lowest unit charge (“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/preemptible/ROS etc.)
- Same “amount of time” (30/60+etc.)
- Same “period” (prime time, drive time, etc.)

Charges Inside the Political Window

- **Maxim:** The political advertiser received the benefit of all discounts, frequency & otherwise, offered to the most favored commercial advertiser for the same class & amount of time for the same period without regard to the frequency of use by the candidate.
- **Example:** even though buying only a small dollar value & number of spots, candidate gets volume discount applicable to most favored commercial advertiser.

Bipartisan Campaign Reform Act (“BCRA”)

Federal Candidate Certification

- **To be entitled to LUC, a Federal Candidate “must certify” to Station that “if” the candidate’s on-air material refers to an “opponent” (negative or positive) that certain required language will be inserted into the audio & video message.**
- **This requirement is for “federal candidates” only.**
- **Can deny LUC if the candidate does not certify.**

Package Plans

Package plans or bonus spots are *not* considered a separate class.

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

Preemptible Time

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

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

What to Exclude From the LUC

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

Continued . . .

What to Exclude From the 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)
- 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.

Make Goods

- If value same as other spots in time period broadcast, then no effect. But, if make good spot lower than other spots, make good lowers LUC.
- 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.

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 year preceding.

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 Contents

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

Continued . . .

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.

Sponsor Identification

- All spots must have a proper sponsor ID
- Must use “paid for” or “sponsored by”
- Spots paid for by someone other than the candidate must state whether they are authorized by the candidate
- TV - Four second; four percent of screen height (20 scan lines)
- BCRA adds requirement for federal candidates if mention an opponent.

BCRA Sponsor ID Requirement for Federal Candidates

Federal candidate certification that “if”
mention opponent will add certain language:

- TV: image of candidate, identifying him/herself, & stating he/she authorized ad; plus text stating authorized ad & candidate/his/her campaign committee paid for ad. See specs for size on screen etc.

Continued . . .

BCRA Sponsor ID Requirement for Federal Candidates *(continued)*

- AM/FM: candidate's voice identifying him/herself, office sought, & that he/she approved the ad.

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

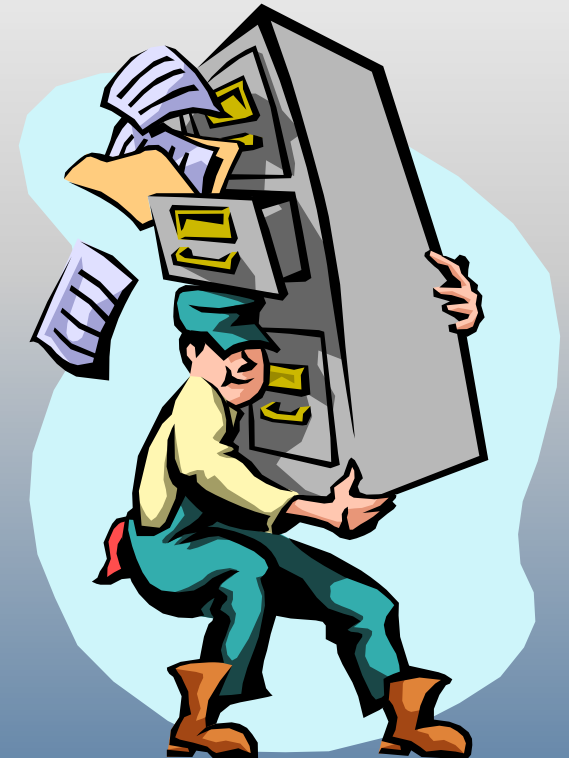
Credit Must Be Offered If . . .



- 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

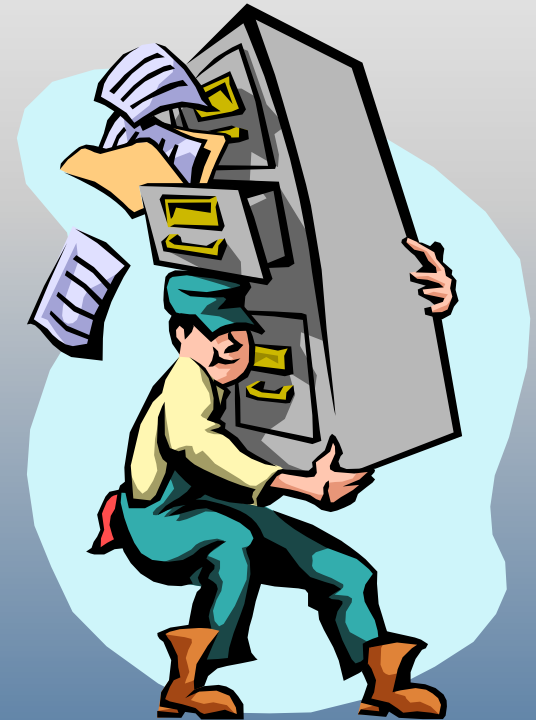
- The name of the candidate requesting time (not rate inquiries), details of who/entity placed order, names, telephone/address, etc.
- Nature and disposition of request, schedule provided, class of time, rate, when aired.



Continued . . .

Political File *(continued)*

- Information as to all other non-exempt uses
- Keep information for two years
- Note new BCRA requirements



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:

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

Questions? Thank you.

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