

POLITICAL BROADCASTING REQUIREMENTS



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This memorandum provides an overview of federal laws and the Federal Communications Commission's regulations concerning political advertising, including the Bipartisan Campaign Reform Act ("BCRA"). These laws and regulations impose a number of requirements pursuant to which all broadcast stations are obligated to:

- fully disclose each station's political advertising policies to candidates;
- sell time to political candidates at the "lowest unit rates" during specified periods before primary and general elections;
- provide "reasonable access" for advertising purposes to all legally qualified candidates for federal office;
- allow "equal opportunities" to all legally qualified candidates seeking the same office;
- air certain political advertisements without editing or censoring them;
- fully identify the sponsor of all political advertisements; and
- maintain a political file, available for inspection by the public and by other candidates.

In addition, federal election law imposes separate sponsor identification requirements and restrictions on electioneering communications of which broadcasters must be aware.

As further discussed in the memorandum, these laws and regulations differ for on-line advertising.

I. Mandatory Disclosure of Political Advertising Policies.

The FCC's rules require that all broadcast stations have a political disclosure statement to explain the types of spots and discount privileges offered to political advertisers, and the circumstances under which such sales will be offered and accepted. This disclosure statement, which is far more extensive than a simple rate card, must be provided to all candidates or their representatives who request information from the station. The disclosure statement must include:

- A description of the different types of time sold on the station to commercial advertisers, and any special political advertising opportunities;
- the current calculation of the "lowest unit rate" for each class of time; a description of the privileges associated with each class of time (for example, priorities against preemption and opportunities for timely make-goods);

- an explanation of whether, and, if so, how, the station sells preemptible time;
- the likelihood that a spot will be preempted under each class of preemptible time sold at the quoted lowest unit rate; and
- if relevant, a description of the station's sales practices based on audience delivery, such as guaranteed ratings points.

A station must inform the candidate or candidate's representative of the station's rates and policies when first contacted by a particular candidate and thereafter advise each candidate who has contacted the station of any changes in rates or selling practices that may occur during the course of a campaign. The disclosure statement must cover all applicable policies relating to the sale of political advertising and programming, and the station must adhere to the policies disclosed. The FCC has the power to order rebates and impose fines for violations of its political rules.

We strongly recommend that you send a draft of your political disclosure statement to us for review before distributing it to candidates.

II. Definitions

For purposes of better understanding, the FCC's political rules, it is important to recognize the following terms:

“Legally Qualified Candidate”. To be considered legally qualified for purposes of the political broadcasting rules, in most circumstances a candidate must:

publicly announce his or her candidacy. Filing for a place on the ballot is considered equivalent to a public announcement of candidacy.

meet the qualifications to hold the office they are seeking (for example, age or residency requirements). In some states, a candidate will not be deemed to meet this requirement until the Board of Elections has issued a list of all qualified candidates.

and either

be qualified for a place on the ballot based on the laws of the state in which the election will take place.

or

publicly announce the intention to be a candidate on a write-in basis, be eligible under applicable law, and have made a “substantial showing” that the write-in candidacy is bona fide. A write-in candidate may make a “substantial showing” by establishing a campaign headquarters, making campaign speeches, issuing press releases, etc. In states

employing party caucuses, conventions, or nominating procedures other than primary elections, a write-in candidate must make a “substantial showing” of his candidacy and demonstrate eligibility under applicable laws as above; no candidate will be deemed to be legally qualified more than 90 days before the caucus, convention, or other nominating session convenes.

Determining whether a presidential candidate is “legally qualified” for lowest unit rate purposes may depend on activity in other states. Please contact our office if you have any questions concerning candidates for president.

“Use.” A “use” of a broadcast station is a non-exempt, “positive” appearance by a legally qualified candidate, where the candidate’s voice or picture is readily identifiable. Any voluntary appearance by a candidate on a program that is not an exempt news program for purposes of the “equal opportunities” requirement (see page 9) is also considered a use. So long as a candidate’s voice is “identified or identifiable” in a political spot, the lowest unit rate requirement applies to the entire spot - even if the candidate only reads the tag line at the end of the spot. For a program to qualify as a use, however, the candidate’s appearance must be “substantial in length” and integral to the program as a whole; if the appearance is only “fleeting,” the spot may not qualify as a use.

Pre-election Time Periods. The 45-day period before a primary election or caucus and 60-day period before a general election during which the LUR rules are applicable refer to the dates that political advertisements are actually broadcast. Regardless of when a candidate's campaign committee signs a contract for the purchase of spots to be broadcast, those that run during the prescribed pre-primary or pre-election period are subject to the LUR.

“Classes” of Time. The “class” of time refers to each type of spot that a station offers, such as fixed-position, non-preemptible, preemptible with notice, preemptible without notice, or run-of-schedule. Differences between classes of time must reflect some clearly evident benefit to the advertiser/candidate, such as varying levels of preemption protection, scheduling flexibility, or time-sensitive make-good benefits. These distinctions must be both explicitly defined and applied consistently to all commercial and political advertisers alike. Stations may offer more than one class of preemptible time as long as the differences between classes are based on factors such as the availability of make-goods or different probabilities of preemption, and not simply on the rate charged for preemptible spots.

“Period of Time”. The “period of time” generally refers to the program, daypart or rotation in which the spot runs, for example, Monday - Friday 6 a.m. - 10 a.m. or prime time.

III. Comparable Rates and Lowest Unit Rate.

The FCC’s rules governing the sale of advertising time on broadcast stations regulate the price at which such time may be sold. The sale of on-line advertising time by broadcasters has created new issues which can affect sales practices.

For much of the campaign period, a station may charge a legally qualified candidate for public office not more than the rate the station charges commercial advertisers for “comparable use” of the station. However, during the 45 days preceding a primary election, caucus or run-off, and during the 60 days preceding a general election, rates charged to “legally qualified candidates” for “uses” of the station in connection with the candidate’s campaign may not exceed the “lowest unit rate” (“LUR”) provided to the station’s most favored commercial advertisers for the same amount and class of time during the same time period. This limitation applies to all legally qualified candidates to whom the station sells time for political purposes, not just to federal candidates.

The LUR requirement does not apply to Internet-only advertising time that a broadcaster sells. Broadcasters should be careful to distinguish sales of Internet-only advertising time from sales of over-the-air advertising time, especially if an advertising package includes ancillary Internet-only advertising (*e.g.*, providing banner ads to over-the-air advertisers who purchase a certain advertising package). As explained below, combination packages such as this may impose obligations on a station with respect to political advertising sales.

To qualify for a station’s LUR, federal candidates must provide a signed certification affirming that if any political advertisement authorized by the candidate makes a reference to another candidate for the same office, that advertisement will include a statement made by the candidate, identifying the candidate by name and by the office the candidate is seeking, and indicating that the candidate has approved the advertisement (commonly referred to as the “stand by your ad” requirement). Similar requirements may be imposed by individual state laws, but compliance is not required in order to qualify a state or local candidate for LUR pricing.

Stations that do not sell non-preemptible time to commercial advertisers may offer a candidate-only non-preemptible class of time in certain limited circumstances. This generally applies to stations that sell time on an auction basis and have an ascertainable “effective selling level” – that is, a rate for spots that are preemptible but are nonetheless highly likely to clear. The rate a station charges for the candidate-only non-preemptible time may be higher than the established LUR for preemptible time, but must be lower than the station’s effective selling level. In addition, a station must be able to demonstrate that (i) a commercial advertiser buying preemptible time at the same rate as the rate for the candidate-only time would run a genuine risk of preemption (that is, the “premium” for the candidate’s protection against preemption cannot be so great that a regular commercial advertiser paying the same rate would be assured that its spot would run), and (ii) commercial advertisers cannot buy any time that is, in reality, the functional equivalent of the station’s candidate-only class. If offered, the details of this candidate-only class of time must be included in a station’s disclosure statement.

Calculating the Lowest Unit Rate. Because most stations sell the majority of advertising time based on individually negotiated packages that include various classes of time, as well as bonus and discount spots, calculating the LUR for a particular class and period of time is often a very complex task.

Generally, the LUR is calculated based on the lowest price that any advertiser is currently paying for the same class and duration of spot that has cleared during the same daypart or time period when the candidate's spot is run.

Example: A station sells preemptible time in weekly rotations. A political candidate pays \$200 for a preemptible 30-second spot to run during the station's morning drive program in the third week of the pre-election period. If the station runs a preemptible 30-second spot during morning drive for which a commercial advertiser paid \$180 (after any applicable bonus spots or other discounts) and this is the lowest rate any advertiser paid for preemptible 30-second morning drive spot which actually ran during this week, the station would have to give the candidate a \$20 rebate.

LUR Calculation Is Based On Advertisements That Clear.

The LUR for a class of time is based on the "best rate" actually paid by any advertiser for spots currently running, not on the "street" rate a station is then selling. Thus, if a station has a contract with a long term advertiser at a rate that is lower than the rate the station is currently charging for spots of the same class and amount of time, the rate under the long term contract will likely be the station's LUR for as long as that long term contract remains in effect; once that contract ends, the LUR for the class of spot will be determined by other factors, and could increase.

While a station may elect not to sell political advertising time during news programs, if it does sell such time adjacent to news programs, candidates may not be charged more than the LUR for commercial advertisers whose spots run during the news program.

LUR Calculation Includes Discounts and Make-Goods, But Not Noncash Incentives.

The LUR calculation must include all discounts, based on volume, frequency or any other factor, that are offered to a station's most favored commercial advertisers for the same class and amount of time during the same period. For example, if a commercial advertiser purchases spots to run in various dayparts and the station includes several no-charge overnight spots as a bonus, the station will need to assign a value to the overnight bonus spots and deduct the total value for the overnight bonus spots from the other spots in the package on an assigned or pro rata basis. As a result, a station's LUR for a particular spot could be less than the amount a commercial advertiser actually pays for a spot. Any "make good" spots that run during the time period relevant to the candidate's purchase must also be considered in calculating the LUR.

However, since the LUR is established by spots that actually clear, once a contract or other agreement that determines the lowest unit rate ends, the new LUR is then calculated by whatever other current agreement represents the lowest unit rate. Thus, just because a particular arrangement establishes an extremely low rate at the beginning of a relevant pre-election period does not mean that the political rate stays at that same low level throughout the entire 45- or 60-day period after that contract has ended.

A station should not consider the value of trade or barter deals or per-inquiry advertising in computing the LUR. Promotional merchandise or other noncash value-added incentives offered as part of an advertising package should also not be accounted for in the determination of a station's LUR. However, these incentives or opportunities need to be made available to candidates on the same basis as they are to any commercial advertisers unless, as in the case of bumper stickers, the association of the station and the politician implies an endorsement by the station, or if the value of the merchandise is *de minimis*, such as a coffee mug or poster.

Station "Cluster" Rates.

Multiple stations, whether commonly owned or not, may decide to offer "cluster" buys allowing candidates to purchase spots on multiple stations as part of a single package. The rates at which these cluster packages are sold do not affect the LUR calculations for the individual stations, as long as the stations in the cluster continue to allow candidates to buy individual stations separately. Instead, the cluster of stations would have its own LUR structure distinct from the LUR of the individual stations that are part of the combination. The cluster's LUR can be lower or higher than the LUR of any of the individual stations.

LUR Rights Are Personal To A Candidate and Only for Political Purposes.

The right to the LUR is "personal" to a candidate and can only be used in connection with the candidate's campaign. If, for example, the candidate is a local car dealer who buys time to personally advertise his dealership, he is not entitled to the LUR to run ads for the car dealership. Note, however, that if the candidate's voice or picture appears and is identifiable in the ad for the car dealership, even though it is entirely unrelated to the campaign, the ad would provide any legally qualified opponents of the car dealer/candidate with the ability to request "equal opportunities," and, if within the relevant pre-election window, those spots may be entitled to LUR privileges despite the fact that the ad of the car dealer was carried at full commercial rates. See page 9.

In general, spot announcements in favor of, or opposed to, referendum issues or other "issue oriented" advertising are not entitled to LUR charges, nor are generic announcements designed to turn out the vote for all candidates of a particular party. Stations may charge regular commercial rates for such announcements. The LUR provision also does not apply to "independent" political action committees ("PACs") – *i.e.*, committees other than a candidate's authorized campaign committee – even where a candidate's picture or voice is included.

Impact of Internet Ad Sales Programs On LUR.

The use of on-line advertising sales programs, such as Bid4Spots, Inc., and SoftWave Media Exchange, has raised new questions as to whether and how such sales impact a station's LUR calculation. In prior elections, these Internet spot aggregators have taken the position that they are comparable to unwired networks and the rates for spots sold through an aggregator should not impact a station's LUR. The FCC initiated a proceeding in July 2007 to consider the impact of these services on a station's LUR, which remains open. If you use any of these

services, until a decision is announced by the FCC, we recommend that you contact our office to discuss the impact of spots sold through these services.

Timely Payment of Rebates. Station traffic logs or reports should be reviewed on a weekly basis during an election period to determine whether any rebates to candidates are required under the LUR principles. These rebates must be made promptly, and the station should make every effort to provide them before the election. If acceptable to the candidate, the rebate may be provided by way of a credit for additional purchases.

Special Federal Candidate “Stand By Your Ad” Certification. To benefit from a station’s LUR, a federal candidate must provide a written certification to the station that the advertisement will not refer to another candidate for the same office unless the advertisement contains a specific disclosure by the candidate purchasing the advertisement, including a statement voiced by the candidate that includes his or her name, the office sought, and a statement that the candidate has “approved this message” (the “stand by your ad” disclaimer). This written certification should be made at the time the candidate purchases an advertisement. The contents of this required disclosure are detailed in Attachment A for radio broadcasters and Attachment B for television broadcasters. These disclosures, which relate to a federal candidate’s qualification for a station’s LUR, are distinct from the FCC’s requirements that all political ads and programs include a sponsorship identification message, which is discussed on page 11 of this memo.

To facilitate frequent purchases of advertising time by federal candidates, we recommend that your station obtain a certification from each candidate for federal office signed by the candidate or an officer of the candidate’s official campaign committee, at the earliest opportunity, in which the candidate affirms that all spots purchased on the station will comply with BCRA to qualify for LUR rates. A form for this candidate certification is included as Attachment C. A question should be included on your order form requesting a confirmation that the signed certification remains valid and applies to the spots ordered for each subsequent advertising purchase. In this manner, obtaining a candidate’s signature with respect to each purchase will not be necessary.

If a spot turns out not to comply with the “stand by your ad” certification, the candidate may be disqualified from receiving the LUR on his or her future purchases, and can be charged customary commercial rates. If the candidate certification is not made, and that candidate’s spot includes a reference to another candidate for the same office, BCRA provides that the candidate and his or her authorized political committee(s) are denied the right to purchase time at LUR for the remainder of that election campaign on the station which ran the spot. Neither the FEC, nor the FCC, has announced any regulations implementing these provisions. The FCC has internally questioned the wording of BCRA and whether a station is in fact “precluded” from granting LUR rates to federal candidates when the strict requirements of BCRA are not completely satisfied by an announcement intended to comply with the law. In the 2004 election, a number of stations continued to give LUR rates to such candidates in part because it was easier to have a single rule for all candidates during the pre-election windows. Until formal rules are issued by

the FCC and/or the FEC, stations should exercise their good faith judgment in cases involving this issue. Please consult with us if this situation arises.

IV. Reasonable Access.

All broadcast stations are required to sell or otherwise afford a “reasonable” amount of program and spot time to all legally qualified candidates for federal office within the area served by the station who request time for a use. There is no such obligation with respect to state or local candidates.

Scope of Access For Federal Candidates. Federal candidates do not have the absolute right to have their spots aired at a specific time, although they do have a right of access to all dayparts and rotations. Station sales personnel must work with federal candidates to accommodate their requests. The FCC generally relies on the good faith judgment of licensees in determining how much access is reasonable in a particular situation. In reviewing the reasonableness of a station’s provision of reasonable access to federal candidates, the following principles are applicable:

- As a general matter, a station may not reject a request by a federal candidate to purchase the types, lengths, and classes of time normally sold to commercial advertisers.
- A station may not adopt a “flat ban” on purchases or scheduling requests for federal candidates, or impose any pre-set limit on the number of spots federal candidates may purchase during a particular hour, day or week. The sole exception to these principles is that a station may impose an across-the-board ban on political advertising during news programming, applicable to all candidates, whether for federal or non-federal office.
- A station cannot refuse to make program time available for use by federal candidates during drive time hours on radio, absent highly unusual circumstances.
- In making a judgment whether adequate “reasonable access” has been afforded to a particular federal candidate, a station may consider the amount of time the candidate has already bought or been furnished, the number of other candidates in the race, the total number of races which the station must cover, potential programming disruption and, for congressional races, the degree of overlap between the station's coverage area and the voting district.

Reasonable access must be provided at least during the 45 days before a primary election and 60 days before the general election. The FCC decides whether access must be provided prior to these periods on a case-by-case basis. As a general rule, once there is a legally qualified candidate for a federal office, no matter how far in advance of the election, the “campaign” is considered underway and candidates are entitled to begin to exercise their reasonable access rights.

State and Local Races. State and local candidates do not have a statutory right to access, and the station is not legally required to sell them any time. Moreover, a station may elect to sell only certain classes of time, at certain time periods, and may impose restrictions on the maximum number of spots sold to any particular candidate during any given time period; a station may even decide to accept only spots from candidates for one or more particular state or local races and not for others, as long as all candidates for the same office are treated equally. To fulfill its obligation to serve the public interest, it is advisable that a station provide some coverage to important state and local races, through the sale of time or through news and public affairs programs. If a station covers state or local races solely through news and public affairs programming, these efforts should be carefully documented contemporaneously with their occurrence, and included in the station's quarterly programming reports.

Weekend Access. If, at any time during the year prior to an election, the station has provided access to a commercial advertiser over the weekend to purchase time or change copy, it must also provide similar access to all political candidates on the weekend preceding an election.

Election Day. Stations have the option of whether to run time for any political candidates on the day of the election. If a station does air political advertisements on election day, the FCC has informally said LUR requirements would apply.

V. Equal Opportunities.

Once a station permits one legally qualified candidate to "use" the station during any federal, state, or local race, it must provide "equal opportunities" to all opposing legally qualified candidates who make timely requests. The use need not occur during a political spot, but can arise through a use during other station programming, such as an appearance by a candidate in a commercial spot for the candidate's business, or by a station announcer who happens to be a candidate. Equal opportunities entitle the requesting candidate to the equivalent amount of time in a daypart or program that normally has a comparable audience, at equal rates. To be timely, a request for equal opportunity must be made within one week of the first candidate use which gives rise to the right to equal opportunity.

Exceptions. The equal opportunities requirement does not apply to a candidate's appearance during any one of the following types of programs:

- (1) newscasts;
- (2) news interviews;
- (3) news documentaries (if the appearance by the candidate is incidental to the presentation of the subject covered by the news documentary);
- (4) live on-the-spot coverage of news events, including coverage of events such as political conventions, and related activities (for example, preliminary delegate selection); and

- (5) candidate debates or presentations that are not used to promote or disparage the candidacy of any particular individual, including debates sponsored by the station.

Stations Need Not Notify Candidates of a “Use” of Another Candidate.

A station is not required to notify opponents of a candidate’s purchase of time on the station or of any other use by a candidate. It is the opposing candidate’s responsibility to review each station’s political file or monitor its programming in order to learn of his or her opponent’s uses of the station. However, if a station chooses to notify one candidate of an opponent’s purchase of time, it must also notify all other opposing candidates for the same office.

Equal Opportunities Rights Last Seven Days.

A candidate is entitled to equal opportunities only with respect to those uses broadcast during the seven days preceding the initial request (although a candidate may make a blanket request covering all subsequent uses). For example, if Candidate A has been running announcements on the station for five weeks and Opponent B requests equal opportunities at the end of the fifth week, Opponent B is entitled to equal opportunities in terms of time, placement and cost with respect to the announcements that Candidate A ran only during the fifth week. To be entitled to request equal opportunities as a result of any of A’s broadcasts, B must have been a legally qualified candidate at the time of A’s use.

Where there are more than two candidates running for the same office, the seven-day rule applies only to the “first prior use.” Assume that on February 1, Candidates A, B and C are all legally qualified candidates for the same office, and a spot purchased by A is broadcast on February 1. On February 5, B requests equal opportunities and runs his spot on February 15. C does not submit his request until February 10. Although C was a legally qualified candidate on February 1, C is not entitled to equal opportunities; even though his request was made within seven days of B’s use, C was required to have made his request within seven days of A’s use. This requirement insures that each political use creates only a single right to equal opportunities which must be perfected by a timely request, and that a single broadcast does not give rise to an endless string of equal opportunities demands which must be honored by the station. (If C did not become a legally qualified candidate until February 2, however, then C’s right to request equal opportunities would first begin with B’s use on February 15.)

VI. No Censorship of a Political “Use”.

The Communications Act prohibits broadcast licensees from censoring any material broadcast by a legally qualified candidate in connection with the campaign that constitutes a use. This statutory prohibition precludes any station from altering not only the candidate’s own statements, but also anything else said in a spot or program that constitutes a use, even if such statements are defamatory.

If one candidate demands a station to stop broadcasting another candidate’s ad, even if it is claimed that the spot is false or defamatory, the station must continue to air the ad without

editing. Because of this no-censorship rule, broadcast licensees are by law protected against libel actions based on candidates' uses.

However, if a candidate appears in a context that is not a use, such as an exempt news interview program, or if a candidate runs an ad that does not qualify as a use, a licensee is not protected against liability for the broadcast of defamatory, libelous or other unlawful programming and may, therefore, refuse to carry the spot or may insist on editing the spot before airing.

Broadcasters may also be liable for false or defamatory claims made in political commercials purchased by non-candidates or organizations. Broadcasters often face challenges from candidates and political organizations with regard to the content of advertisements that do not qualify as uses, threatening legal action against the station unless the spot is pulled. To protect against these types of claims, broadcasters should (i) carefully evaluate non-candidate ads, (ii) request substantiation of any factual claims made, and (iii) request detailed explanations and evidence from any third party complaining of such commercials. Stations are just as liable in this situation as they would be for the broadcast of any other false or defamatory programming, including regular commercial spots. However, in general, if the challenged spot is reasonably substantiated in the good faith judgment of the station, the spot can continue to run as scheduled. In some cases, it may be appropriate to suspend the schedule pending substantiation.

A station may not "channel" political advertisements to safe harbor hours (10 p.m. to 6 a.m.) if they believe that any material contained in a candidate's use spot is "indecent" under FCC interpretations, *i.e.*, if the spot contains "patently offensive descriptions of sexual or excretory activities or organs." If a candidate submits an ad with offensive or indecent material, we recommend that you contact our office to discuss how to proceed, as even the no censorship principle may be superseded by increasingly strict enforcement by the FCC of its indecency policies.

Note that candidate appearances in spots that appear on an Internet site or stream, but do not air on a station, do not qualify as uses and are not protected by the non-censorship principle, as they are not subject to FCC political requirements. It is not yet clear whether there is any non-censorship protection for online ads contained within the stream of an over-the-air broadcast.

VII. Sponsorship Identification.

Because of the FCC's rules concerning sponsorship identification, explicit sponsorship identification of any political announcement – whether a candidate spot that qualifies for lowest unit rate or a PAC "attack" spot – is always required. The announcement must state that the program was "paid for" or "sponsored by" and must fully identify the parties paying for broadcast of the advertisement.

Compliance with the FCC's sponsorship identification rules is the station's responsibility, and a station is required to ensure that sponsorship information is provided either within a political advertisement or as a "tag" preceding or following the announcement. If a spot does not

contain proper sponsorship identification, the station should request the advertiser to insert one. If the advertiser refuses, the station may insert the required sponsorship identification in the spot, and may charge the advertiser for the production expense. The significance of sponsorship identification is so important to the FCC that where the spot is a candidate's use, and the "no censorship" principle applies, a station is allowed to insert the necessary sponsorship identification, even if it obscures a part of the candidate's message.

Unlike other advertisements, mere mention of the name of the sponsoring organization in a political advertisement, without a statement that the broadcast was "sponsored" or "paid for," is not sufficient identification under FCC rules. Furthermore, when the sponsoring party is a committee or group, the announcement must make clear that it is a legal entity, not merely an informal group of individuals.

When a corporation or other organization pays for or furnishes material for broadcast involving a political campaign or a controversial issue, the station must obtain a list of the officers, executive committee members, or directors of the corporation, committee, association, etc., and place the list in the station's political file, where it is to be retained for a period of two years.

As previously discussed on page 7 of this memo, BCRA imposes additional sponsorship identification requirements for advertisements that solicit political contributions to, or advocate the election or defeat of, a federal candidate. Such advertisements must include specific disclosures, which vary depending on whether a federal candidate (or the candidate's committee) produced or authorized the advertisement. These disclosures are further described in Attachments A and B. Unlike the FCC sponsorship identification requirements, under the additional BCRA requirements, it is the responsibility of the candidate, rather than the broadcaster, to ensure compliance with these disclosures. However, we recommend that if a spot clearly omits the BCRA disclosures, the advertiser should be advised and asked to supply a new spot.

VIII. Electioneering Communications.

BCRA defines an electioneering communication as any advertisement (1) distributed by radio or television for a fee; (2) which refers to a federal candidate; (3) is aired 30 days prior to a primary election, nominating convention or caucus or 60 days prior to a general election; and (4) reaches 50,000 or more persons in a particular Congressional district or state. Advertisers may check to see if an advertisement will reach an audience of more than 50,000 persons in the FCC's audience reach database at <http://gullfoss2.fcc.gov/ecd> and <http://svartifoss2.fcc.gov/ecd>. In addition, individuals or groups who make electioneering communications that cost more than \$10,000 to produce and air must comply with specific reporting requirements subject to oversight by the Federal Election Commission ("FEC"). Broadcast stations have no specific obligations with respect to advertisements that constitute electioneering communications, but stations will encounter these advertisements and should be generally familiar with the applicable law.

Spots which are subject to these rules must also meet general FCC sponsorship identification standards (indicate that the ad was “paid for” or “sponsored by” the party purchasing the spot) and must also indicate, under FEC rules, that the spot is not authorized by any candidate and specifically identify the purchaser as being “responsible for the content of this advertising.”

IX. Maintaining A Political File.

Each station must maintain a political file within its public inspection file containing a current, complete, well-organized and self-explanatory public record of each request for broadcast time that is made by or on behalf of a political candidate or that “communicates a message relating to any political matter of national importance,” including any issue advertisements. The political file must contain:

- A record of each request to purchase time, and its disposition;
- A schedule of the advertising or program time provided to candidates;
- The exact charges made (or a notation that free time was given);
- The class or classes of time sold;
- The dates and times the spots actually aired;
- Documentation of any rebates issued;
- The name of the candidate to which the communication refers and the office to which the candidate is seeking election or the issue to which the communication refers; and
- The name of the purchaser, the name, address and phone number of a contact person for the purchaser, and a list of the chief executive officers, board of directors, or members of the executive committee of the purchaser. If the purchaser is the candidate and/or the candidate’s authorized committee, the committee treasurer’s name must also be listed.

Although not specifically required, many licensees keep a complete set of political disclosure statements used during each election cycle in the political files as a means of establishing the use of the statement during the time periods indicated.

Much of this information has been required by the FCC for many years to be kept and made available for public inspection. The material required to be placed in the political file must be placed there as quickly as possible (the FCC instructions use the word “immediately”) and remain there for two years.

Information Must Also Be Kept For Advertising On Political Matters Of National Importance.

As a consequence of BCRA, the same information – including pricing information – needs to be kept and made available for review even for “issue” advertising that relates to “a political matter of national importance.” By way of explanation, the statute indicates that this would include messages relating to “a national legislative issue of public importance” – meaning certain issue ads such as those addressing abortion or gun control would be subject to these disclosure requirements – and to “any election to federal office” – which would apply to most soft money spots and PAC ads concerning federal elections.

The statute also applies to messages relating to a legally qualified candidate, suggesting that the disclosure rules might also be interpreted to apply even to certain state or local elections if they had “national importance.” Although there are currently no standards which flesh out this statutory requirement, we believe that the FCC expects licensees to make reasonable, good faith judgments concerning the application of this provision. While the statute requires that the rate charged for qualifying, non-use spots be made a part of the disclosure, there is no requirement that these spots be charged lowest unit rates or that other similar spots be entitled to the same rates.

Candidate Access To Political File Materials.

Candidates need to be given timely access to political file materials to enable them to exercise equal opportunities rights and determine whether a candidate is receiving equal treatment in spot placement and rates. The FCC does not expect stations that generate invoices on a bi-weekly or monthly basis to create a special document indicating the exact times that political spots aired; however, if the station does not immediately place such information in its political file, it should include a prominent statement in the file that station personnel will assist candidates in determining actual air times. Each item placed in the political file must be retained for two years. In order to ensure that your station gathers all of the required information, you should be sure to complete the attached Candidate Request for Broadcast Time, Attachment D, or Non-Candidate Request for Broadcast Time, Attachment E, for each relevant inquiry.

* * * *

If you have any questions regarding any aspect of these rules and policies, please contact Sally Buckman at (202) 416-6762, Brian Madden (202) 416-6770, or any other attorney in our office.

ATTACHMENT A

RADIO SPECIFIC FEDERAL CANDIDATE

BCRA DISCLOSURE REQUIREMENTS

Candidate Certification:

An advertisement that qualifies as a “use” that also refers to an opposing candidate must end with an audio statement voiced by the candidate that:

- (1) identifies who the candidate is,
- (2) discloses the office being sought, and
- (3) states that the candidate has approved the broadcast.

Sponsorship Identification:

An announcement advocating the election or defeat of a federal candidate or soliciting any political contributions that is produced or authorized by a federal candidate (or the candidate’s authorized committee) must include an audio statement voiced by the candidate that:

- (1) identifies who the candidate is,
- (2) discloses who paid for the broadcast (in most cases the candidate or the candidate’s committee), and
- (3) states that the candidate has approved the broadcast.

An announcement advocating the election or defeat of a federal candidate or soliciting any political contributions that is not produced or authorized by a federal candidate (or the candidate’s authorized committee) must include:

- (1) an audio statement disclosing that no federal candidate authorized the announcement.
- (2) the statement: “_____ is responsible for the content of this advertising,” where the blank is filled in with (i) the name of the political party, committee, or person paying for the broadcast, (ii) the name of any connected organization of the payor, and (iii) the permanent street address, telephone number or web address of the person who paid for the announcement.

ATTACHMENT B

TELEVISION SPECIFIC FEDERAL CANDIDATE

BCRA DISCLOSURE REQUIREMENTS

Candidate Certification:

An advertisement that qualifies as a “use” that also refers to an opposing candidate must include:

- A statement identifying the candidate and states that he or she approved the communication, which must be done through a full-screen, unobscured view of the candidate making the statement or through a voice-over by the candidate accompanied by a clearly identifiable photograph or similar image of the sponsoring candidate that occupies at least 80 percent of the vertical screen height, followed by,
- A clearly legible printed statement in letters no smaller than 4% of the vertical picture height appearing for a minimum four seconds that (1) identifies the candidate, (2) discloses that the candidate (and/or the candidate’s authorized committee) has paid for the broadcast, and (3) states that the candidate has approved the broadcast.

Sponsorship Identification:

An announcement advocating the election or defeat of a federal candidate or soliciting any political contributions that is produced or authorized by a federal candidate (or the candidate’s authorized committee), must include:

- A statement that (1) identifies the candidate, (2) discloses who paid for the broadcast (in most cases the candidate or the candidate’s committee), and (3) states that the candidate has approved the broadcast. This statement can be made either directly by the candidate, in an unobscured, full-screen view, or by a candidate voice-over with a photographic or similar image of the candidate that occupies at least 80 percent of the vertical screen height.
- A written presentation of this statement at the end of the political announcement “in a clearly legible manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least four seconds.” The written statement must occupy at least four percent of the vertical picture height.

An announcement advocating the election or defeat of a federal candidate or soliciting any political contributions that is not produced or authorized by a federal candidate (or the candidate’s authorized committee) must include simultaneously, for a minimum of four seconds:

- An unobscured, full-screen view of a representative of the political committee or other person making the statement, or by a representative of such committee or other person in voice-over.

- A written statement disclosing that no federal candidate authorized the announcement, as well as the statement “_____ is responsible for the content of this advertising,” where the blank is filled in with (1) the name of the political party, committee, or person paying for the broadcast, (2) the name of any connected organization of the payor, and (3) the permanent street address, telephone number or web address of the person who paid for the announcement. This written statement must appear at the end of the announcement for a period of at least four seconds “in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement.”

ATTACHMENT C

CANDIDATE CERTIFICATION FORM

I, _____, hereby certify that the programming to be broadcast on station _____ will comply with the requirements of the Bipartisan Campaign Finance Reform Act of 2002.

Specifically, I certify that the programming either:

_____ does not refer to an opposing candidate;

or

_____ does refer to an opposing candidate but contains the mandatory disclosure statement, consisting of an audio statement voiced by the candidate that (1) identifies him or herself, (2) discloses the office being sought, and (3) states that the candidate has approved the broadcast.

Signature of Candidate or Authorized Committee

Printed Name of Candidate or Authorized Committee

Dated: _____

ATTACHMENT D

ATTACHMENT E

NON-CANDIDATE REQUEST FOR POLITICAL BROADCAST INFORMATION OR TIME

This form must be completed for all requests for broadcast time made by anyone seeking to broadcast a message that refers (a) to a legally qualified candidate, (b) to any election for federal office, or (c) to "a national legislative issue of public importance" or a "political matter of national importance" (i.e. an issue advertisement). This form must be retained in the station's public inspection file for a period of two years.

Date of Request: _____ **Time of Request:** _____

Candidate Named in Spot: _____

Party: _____

Candidate for: _____
(Office) (Location)

Issued Referred to: _____

Name of Organization: _____

Name of Contact Person: _____

Address: _____

Telephone: _____

Chief Executive Officers, Board of Directors, or Members of the Executive Committee of the Organization
(attach a list, if necessary): _____

Agency for Organization (if any): _____

Name of Person Requesting Information/Time: _____

Information Requested: _____

- Rates for _____
- Availabilities for _____
- Other: _____

Disposition of Request:

___ Accepted ___ Rejected ___ Accepted or Rejected in part (attach explanation)

Rate Charged for Spot: _____

Class of Time Purchased: _____

Air Date and Time (attach a schedule of the advertising or program time provided, if necessary): _____

Date Public File Report Prepared: _____, 200__.

Other Information: _____

Inquiry Received By: _____