

GUIDE TO
POLITICAL BROADCASTING RULES



LERMAN SENTER PLLC
2001 L Street, NW – Suite 400
Washington, DC 20036
(202) 429-8970
www.lermansenter.com

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This guide provides an overview of federal laws and regulations of the Federal Communications Commission concerning the sale and carriage of political advertising on radio and television stations.

These laws and regulations impose a number of requirements on broadcast stations. Stations must:

- Fully disclose their political advertising policies to candidates.
- Sell time to political candidates at the “lowest unit rate” 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.
- Maintain a political file, available for inspection by the public and by other candidates.

Other federal election laws impose sponsorship identification requirements.

As discussed below, these laws and regulations are different for digital advertising.

I. Mandatory Disclosure of Political Advertising Policies.

The FCC’s rules require all broadcast stations to prepare a political disclosure statement which explains 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 on political spot or program availability.

The disclosure statement must include:

- A description of the different types of time sold on the station to commercial advertisers – for example, non-preemptible, preemptible, run-of-schedule – and any special political advertising opportunities or restrictions.

- The current calculation of the lowest unit rate (“LUR”) for each class of time, and a description of the carriage rights and 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, under what conditions, the station sells preemptible time.
- An estimation of the likelihood that a spot will be preempted under each class of preemptible time sold at the quoted lowest unit rate.
- If relevant, a description of the station’s sales practices based on audience delivery, such as guaranteed ratings points.
- A statement that the station or market requires all candidates to comply with all applicable disclosure requirements imposed under federal, state or local laws.

The disclosure statement must cover, and as necessary, be updated to reflect, all policies relating to the sale of political advertising and programming. Most importantly, the station must adhere to those policies. The FCC has the power to order rebates to candidates and to impose fines for violations of its political rules.

A station must inform the candidate or the candidate’s representative of the station’s rates and policies when first contacted, and also must advise each candidate who has contacted the station of any changes in rates or selling practices that occur during the course of a campaign period.

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

II. **Definitions.**

Broadcasters need to recognize and understand the following terms:

A. 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 inclusion on the ballot is considered equivalent to a public announcement of candidacy.
- Meet the qualifications to hold the office being sought (for example, age and residency requirements). In some states, a candidate will not be considered to have met this requirement until the relevant election board or commission 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 where 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, among other things, establishing a campaign headquarters, making campaign speeches, issuing press releases, establishing a campaign website or a social media presence for the purpose of promoting or furthering a campaign for public office, and carrying on a campaign throughout the jurisdiction served by the office sought. A campaign website and social media presence are not determinative factors of a *bona fide* candidacy, but are additional indicators that, when combined with other activities commonly associated with campaigning in substantial portions of the relevant geographic area, can help demonstrate a “substantial showing.” In states with party caucuses, conventions, or nominating procedures other than primary elections, a write-in candidate must make a substantial showing of his or her candidacy and demonstrate eligibility under applicable laws.

In states holding caucuses and conventions, except for candidates for President or Vice-President, no one seeking nomination to a public office will be deemed to be a legally qualified candidate 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 as well. Contact our office if you have questions about whether a particular candidate for president has met the qualifications to be entitled to lowest unit rates.

B. 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 program for purposes of the “equal opportunities” requirement (see Section V on page 9 of this guide) is also considered a use. If a candidate’s appearance is only “fleeting,” it may not qualify as a use.

C. Pre-Election Lowest Unit Rate Time Periods. During the 45 days before a primary election or caucus and the 60 days before a general election, the rate charged to a candidate may not exceed the rate charged to the station’s most favored commercial advertiser for the same amount and class of time aired during the time period when the political announcement is carried. The maximum price that may be charged for a qualifying political spot under the LUR rules depends on the date that the political advertisement is broadcast, not the date when the candidate’s campaign committee submits an order for the purchase of the spot. LUR rates may change during pre-election periods based on other contracts for time sold by the station.

D. Class 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 clearly 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.

E. Amount of Time. The “amount” of time of a spot or a program refers to the duration of its running time, whether it is 15 seconds, 30 seconds, a minute, five minutes, etc. Each different length spot can have its own LUR, based on a station’s agreements with other advertisers that are in effect.

F. Period of Time. The “period of time” of a spot generally refers to the program or daypart in which the spot or programming runs – for example, “drive time” or “prime time” – and whether a spot runs on a particular daily or weekly rotation.

III. Comparable Rates and Lowest Unit Rates.

The FCC’s rules regulate the prices at which political advertising time may be sold. Generally, a station may not charge a legally qualified candidate more than the rate it charges its commercial advertisers for a “comparable use” of the station. However, during the 45 days before a primary election, caucus, or run-off election, and during the 60 days before a general election, rates charged to legally qualified candidates may not exceed the lowest unit rate charged 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 for public office, not only to candidates in federal primaries, caucuses, or elections.

The FCC’s rules requiring sales of political time at lowest unit rates do not apply to digital-only advertising time sold by a broadcaster. Broadcasters should be careful to distinguish between sales of digital-only advertising time and sales of over-the-air advertising time, especially if an advertising package includes both (for example, if a contract provides banner ads on the station’s web site or other digital ads to over-the-air advertisers who purchase a certain advertising package). As explained below, combination packages such as these may create special obligations for a station with respect to political advertising sales.

Stations that do not sell a class of fixed or non-preemptible time to commercial advertisers may offer a “candidate-only non-preemptible” class of time in certain limited circumstances. For example, if a station generally sells time on an auction basis and can determine its “effective selling level” – that is, a rate for spots that are preemptible but still highly likely to clear – it may establish a fixed class of candidate-only political time at a rate that is higher than the LUR for preemptible time, but lower than the station’s effective selling level. The 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 (meaning that the “premium” charged 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) no commercial advertiser can 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.

A. 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 complex task.

Generally, the LUR of a particular spot is the lowest price that any advertiser is currently paying for the same class and length of spot that has cleared during the same daypart or time period when the candidate's spot runs.

Example: A radio station sells preemptible time in weekly rotations, Monday – Friday, during morning drive time. 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 lowest unit rate period. If the station runs a preemptible 30-second spot during morning drive that week for which a commercial advertiser paid \$180, and this is the lowest rate any advertiser paid for a preemptible 30-second morning drive spot which actually ran that week, the station would have to give the candidate a \$20 rebate or credit for the political spot.

The 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. If a station has an annual contract with an 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 annual contract will likely be the station's LUR for as long as that contract remains in effect. After a contract that establishes the LUR ends, a "new" LUR is determined by the then-current contract with the lowest unit rate for the same class and amount of time which is clearing. If a station has a particular advertising contract that creates an extremely low rate at the beginning of an LUR period, after the contract expires, the LUR rate does not need to stay at that same low level throughout the entire 45- or 60-day period.

A station may elect not to sell political advertising time during news programs. However, if it sells political time adjacent to news programs, it may not charge candidates in those adjacent periods more than the LUR for commercial advertisers whose spots run during the news program.

The 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 is 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, make-goods offered to compensate for shortfalls in ratings point guaranteed contracts are only relevant if a candidate elects to purchase time on a ratings point guarantee basis as well.

A station should not consider the value of trade or barter deals, per-inquiry advertising, or ads placed through a network in computing its LUR. Promotional merchandise or other noncash value-added incentives offered as part of an advertising package are also not included in the determination of a station's LUR. However, these noncash incentives or opportunities must generally be made available to candidates on the same basis as they are to any commercial advertisers; the only exceptions are where the association of the station promotional material with the politician would imply an endorsement of that candidate by the station, or if the value of the merchandise is *de minimis*, such as a coffee mug, poster, or bumper sticker.

Station "Cluster" Rates.

Groups of two or more stations, whether or not commonly-owned or serving the same market, may 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. 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 Apply to Spots for Political Purposes.

The right to purchase time at the LUR is "personal" to a candidate and can only be used in connection with the candidate's campaign. For example, if a candidate is a local car dealer who buys time on a station to personally advertise his dealership, he is not entitled to the LUR for those spots. But if the candidate's voice or picture appears and is identifiable in the ad for the car dealership, that appearance – even though it is entirely unrelated to the campaign – would constitute a "use" and would provide any legally qualified opponents of the car dealer/candidate with the ability to request "equal opportunities." (See Section V on page 9 of this guide). If the ad ran within a relevant pre-election window, those "equal opportunity" spots would be entitled to LUR privileges even though the spot of the car dealer was carried at full commercial rates.

LUR Does Not Apply to Issue Ads.

Spot announcements in favor of, or opposed to, ballot issues or other "issue oriented" advertising, including ads sponsored by independent political action committees ("PACs"), are not entitled to LUR charges even when a candidate's picture or voice is included in the spot. A station may charge market-based rates for such announcements. Generic announcements designed to turn out the vote for all candidates of a particular party may be sold at commercial rates. In recent years, "coordinated" spots – which are paid for by political parties but

coordinated with a campaign or candidate – have become more common. As long as these spots comply with Federal Election Commission (“FEC”) regulations, they are entitled to LUR. However, we recommend that you contact our office if you have questions about coordinated buys.

B. Timely Payment of Rebates. If a lower priced spot clears when a candidate’s advertisement runs, a station may need to provide a rebate to the candidate. Station traffic logs or reports should be reviewed on at least a weekly basis during a lowest unit rate period to determine whether rebates to candidates are required under the LUR principles. Any rebates must be made promptly, and the station should make every effort to provide them before the election. If acceptable to the candidate, a rebate may be provided in the form of a credit for additional purchases.

C. Special Federal Candidate “Stand By Your Ad” Certification and LUR. Under the Bipartisan Campaign Reform Act (“BCRA”), to benefit from a station’s LUR, a federal candidate is required to provide a written certification to the station that the advertisement will not refer to an opponent 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” (which is known as the “stand by your ad” disclaimer).

The written certification from a federal candidate should be made at the time the candidate purchases an advertisement. The contents of this required disclosure for radio broadcasters are detailed in Attachment A to this guide, and for television broadcasters in Attachment B. 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 in Section VII on page 12 of this guide.

To facilitate frequent purchases of advertising time by federal candidates, we recommend that stations require each candidate for federal office to provide a certification, signed by the candidate or an officer of the candidate’s campaign committee, that affirms that all spots purchased on the station will comply with BCRA. A form for this certification is included as Attachment C. It is also included on the PB-19 Form which can be obtained from NAB.

IV. **Reasonable Access.**

All commercial broadcast stations are required to sell or otherwise provide 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.

A. Scope of “Reasonable 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 apply:

- 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 only 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 may not refuse to make program time available for use by federal candidates during drive time hours, in prime time, or in other high-demand programming such as sports, absent highly unusual circumstances.
- In making a judgment whether adequate "reasonable access" has been afforded to a particular federal candidate, a station is entitled to 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.

As a general rule, once there is a legally qualified candidate for an office, no matter how far in advance of the election, the campaign is considered to be underway and candidates are entitled to begin to exercise their reasonable access rights.

During recent election cycles, the FCC responded to several complaints that tested the limits of "reasonable access." During one election, a self-declared federal candidate was not permitted to purchase campaign ads during the Super Bowl broadcast and filed a complaint with the FCC. In its decision, the FCC emphasized that a legally qualified candidate is not entitled to a particular placement of advertising spots on a particular program during a station's broadcast schedule. Broadcast events that are unique and take place once a year, such as the Super Bowl, may have limited spot inventory that would not allow reasonable access to all eligible federal candidates who request time during that broadcast. Also, given the lack of equivalent broadcasts, it would be reasonable for the station to conclude that it would be impossible to provide "equal opportunities" to opponents of candidates whose spots aired during the program. If your station has any similar unique events and is faced with a candidate's request for political time, we recommend that you contact our office.

In some instances, stations receive requests to carry advertisements from federal candidates running in districts that make up only a small portion of a station's total coverage area, raising questions about the extent to which the reasonable access rules require that such requests be accepted. For example, a legally qualified candidate for President in West Virginia filed a reasonable access complaint with the FCC against the licensee of a television station in

the Washington, D.C. market. The Commission ruled that a station's digital noise limited service contour ("NLSC") establishes the relevant service area for the purpose of determining a station's reasonable access obligations, and held that the Washington, D.C. station was obligated to provide access to the candidate. The station's NLSC covered 3% of the population of West Virginia, which the Commission determined is more than *de minimis*.

B. State and Local Races. State and local candidates do not have a statutory right to access, and a station is not legally required to sell them any time. As long as all candidates for the same office are treated equally, a station may impose restrictions on the maximum number of spots sold to any particular state or local candidate during any given time period, may exclude state and local candidates entirely from certain dayparts, and may even decide to accept only spots from candidates for one or more particular state or local race and not for others. At the primary or caucus stage, candidates running for the nomination of different parties are not considered to be running for the same office (but instead are running for their party's nomination), and may be treated differently as a consequence. That a station carried announcements for a state and local primary race does not require the station to carry spots for candidates for that office in the general election. However, if a station decides to allow access for a particular state or local race, all candidates in that race are entitled to buy all classes of time offered by the station (and, during relevant pre-election periods, are entitled to LUR pricing for those spots), have equal opportunity rights with respect to purchases of uses made by their opponent(s), and are protected against censorship if the spot qualifies as a use.

C. Access During the Weekend Before an Election. 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 candidates for federal office on the weekend preceding an election. State and local candidates are not entitled to this privilege, but if it is provided to one candidate, the station must treat all of the opposing candidates in that race in the same manner.

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" can be in a political spot or in other programming, such as an appearance by a candidate in a commercial spot for the candidate's business, or the appearance by a station announcer who is running for political office in a regular station program. If a candidate makes a request within one week following the non-exempt use by an opponent, equal opportunity rights entitle the candidate to an equivalent amount of time in a daypart or program that normally has a comparable audience.

Exempt Programs.

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

- Newscasts.

- Regularly scheduled news interviews, which a station airs based on its good faith journalistic discretion rather than with the intent to advance or harm a candidate’s campaign.
- News documentaries, if the appearance by the candidate is incidental to the presentation of the subject covered by program.
- Live on-the-spot coverage of news events, including coverage of events such as political conventions and related activities (for example, preliminary delegate selection).
- Candidate debates or presentations that are not used to promote or disparage the candidacy of any particular individual, including debates sponsored by the station, whether carried live or on a delayed basis.

Note Regarding the News Interview Exemption.

For decades, the FCC interpreted the news interview exemption broadly and tended to defer to a licensee’s good faith judgment in determining whether a specific news interview show met the criteria for the exemption. For example, the FCC applied the exemption to the interview portions of what are not, strictly speaking, news programs, such as *Entertainment Tonight*, *The Tonight Show* and *The Howard Stern Show*. However, in January 2026, the FCC issued a Public Notice signaling that reliance on the bona fide news interview exemption will now be scrutinized more carefully, and that programs “motivated by partisan purposes” will not qualify for the exemption. As has been covered widely in the press, based on this Public Notice, the appearance of a Texas senatorial candidate on the *Steven Colbert Show* was not permitted by CBS. In addition, the FCC is investigating an appearance of a candidate on *The View*. If you have questions about how the recent Public Notice would apply to a particular news interview show, please contact us.

Stations Do Not Need to Notify Candidates of a Use by an Opposing Candidate.

A station is not required to provide notice of a 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 Must be Requested Within 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." For example: assume that 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 equal opportunities request until February 10. Although C was a legally qualified candidate on February 1, C is not entitled to equal opportunities. Even though C's 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 ensures that each political use creates only a single right to equal opportunities, and that a single broadcast does not give rise to an endless string of equal opportunities demands.

VI. **Censorship of a Political Use Is Not Permitted.**

The Communications Act prohibits broadcast licensees from censoring any material that qualifies as a use. Stations are prohibited 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 false or defamatory. If one candidate demands that a station stop broadcasting another candidate's ad because the ad is false or libelous, the station must continue to air the ad without editing. Because of the no-censorship rule, broadcast licensees are protected against libel or other legal actions based on candidates' uses, and cannot demand that a candidate sign an indemnification agreement in these circumstances.

A station may not "channel" political uses to safe harbor hours (10 p.m. to 6 a.m.) if they believe that a candidate's spot is "indecent" or contains graphic or offensive content. But a station can take measures to protect children, avoid viewer backlash, and mitigate audience losses. A station can include an advisory before an advertisement in one of two ways:

(i) A station may air a brief statement immediately before the spot, informing viewers that "the following announcement is a paid political advertisement and this station is required to carry it by federal law" (or similar words to that effect). But the station must then insert the same neutral warning before all candidate spots for that office, regardless of their content.

or

(ii) A station may carry a neutral advisory alerting parents that "the following program or advertisement may not be suitable for children" (or similar words to that effect). In this case, a station would only need to "tag" those spots the station believes are inappropriate for children.

A station can also carry news stories and public affairs programming about the controversy and discuss its legal obligations regarding political advertising.

Stations Are Subject to Liability For Defamation For Statements in Issue Ads.

If a candidate appears on air but in a context that is not a use, such as an exempt news interview program, or if a candidate runs a political ad that does not qualify as a use, such as a digital-only ad, the no-censorship rule does not apply and a licensee is not protected against liability for the broadcast of defamatory, libelous, or other unlawful programming. As a consequence, a station may limit the broadcasts of these non-use spots in any manner it chooses, including refusing to carry the spot entirely or insisting on appropriate changes before agreeing to accept it.

A station may also be held liable for false or defamatory claims made in political commercials purchased by non-candidates, PACs or Super-PACs. Stations are just as liable in these situations as they would be for the broadcast of regular commercial spots or any other false or defamatory programming. As the number of ads sponsored by independent third-party organizations has increased dramatically in recent elections, stations receive challenges with increasing frequency from candidates and political organizations who are attacked in advertisements that do not qualify as uses, and who threaten legal action against the station unless a spot is pulled.

To protect against liability when a spot is not entitled to protection under the no-censorship rule, a station should (i) require that non-candidate spots be acknowledged as such, and not assume that the spot is a “use,” (ii) evaluate non-candidate ads closely, (iii) request substantiation of any controversial factual claims made, and (iv) request detailed explanations and evidence from any third party that demands that these commercials be withdrawn. In general, if a station, based on its good faith judgment, decides that a challenged spot is reasonably substantiated, the spot can continue to run as scheduled. In some cases, however, a station may need to suspend the schedule pending further documentation or substantiation.

Candidate appearances in spots or display ads that appear on a station website or online programming stream, but are not broadcast over-the-air, do not qualify as uses and are not protected by the no-censorship principle, since these platforms are not subject to FCC political rules.

VII. **Sponsorship Identification.**

Under the FCC’s rules, 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 political ad 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” before or after the announcement. If a spot does not contain proper sponsorship identification, the station should ask 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. Sponsorship identification is so important to the FCC that where the spot is a candidate use, and the no-censorship rule applies, a station is allowed to insert the necessary sponsorship identification even if it obscures a part of the candidate’s message.

Unlike in other advertisements, the 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. 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. This is a serious matter. For example, a large radio broadcaster aired numerous issue ads promoting a company’s controversial proposed hydroelectric project. The ads referenced the name of the project but did not include “paid for” or “sponsored by” the name of the utility company. The FCC determined that this violated the sponsorship identification requirement, and the broadcaster paid a \$540,000 penalty.

When a corporation or other organization pays for or furnishes material for broadcast involving a political campaign for a federal office or a controversial issue of public importance, the station must obtain a list of the officers, executive committee members, or directors of the corporation, committee, or association, and place the list in the station’s political file, where it should be retained for a period of two years. Stations should pay close attention to the sponsorship identification requirements for “Super-PAC” advertisements because the sponsors may not be evident from the spot itself. During recent elections, the FCC has clarified that broadcast stations must make reasonable efforts to obtain the required information if they think the information provided is incomplete. For example, if an issue advertiser provides the name of only one officer or director, the station must ask the advertiser, or agency or buyer acting on the advertiser’s behalf whether there are additional officers or directors.

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 to this guide. Unlike with the FCC’s sponsorship identification requirements, under these BCRA requirements, candidates, rather than broadcasters, must ensure compliance with these disclosures. However, we recommend that if a spot clearly omits the BCRA disclosures, the station should advise the advertiser and request that a new spot be provided.

VIII. **Maintaining the Political File.**

Each station must maintain a political file within its online public inspection file. The political file must contain 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 is an issue ad sponsored by a PAC or other third party that relates to a political matter of national importance. Information regarding issue ads relating to state or local issues must be included in a separate section of the online public inspection file (not the political section).

The political file must contain:

- A record of each request to purchase time, and its disposition. This includes requests for an advertising schedule that is not yet a confirmed order or does not result in a buy.

- A schedule of the advertising or program time provided to candidates and issue advertisers – this is usually reflected in an order that is uploaded to the file.
- 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. Because the specific times spots air are sometimes different than those specified in an order, stations typically use invoices to show the dates and times spots aired. Stations that generate invoices on a biweekly or monthly basis are not required to upload a separate document indicating the exact times that political spots aired. However, if a station does not immediately place such information in its political file, it should include a statement in the file that station personnel will assist candidates in determining actual air times, and provide contact information.
- Documentation of any rebates issued.
- The name of the candidate that is referenced in each announcement and the office that candidate is seeking, and also any issue(s) which are referenced in the announcement.
- The name of the purchaser and the name, address and phone number of a contact person for the purchaser. If the purchaser is the candidate and/or the candidate's authorized committee, the committee treasurer's name must also be listed.
- For candidate and issue advertisements sponsored by corporations, parties, PACs, associations or other entities, a list of the chief executive officers, or members of the executive committee or board of directors of the sponsoring entity.
- In recent guidance, the FCC stated that the file must include a list of the issues addressed in an issue ad. This list can be included on the NAB's form for issue advertisers. Stations can also include a transcript of an issue ad. If ad copy is revised and additional or different issues are addressed in the revised ad, a station should include a new NAB form or a new transcript.
- If a station provides free time – such as an appearance on a non-exempt program – a statement regarding the appearance, including the length of the appearance.

Much of the information listed above can be provided on NAB PB-19 forms for candidates and issue advertisers. The FCC reviews stations' online political files and strictly enforces the requirement to place information in the political file "immediately." The FCC expects requests for political time and/or orders to be uploaded within one business day after they are received. Invoices should also be uploaded as soon as they are prepared. Political file materials must be maintained for two years. Stations should delete (or toggle-off) materials that are outside the two-year retention period.

Because political files are available online, there is an increased risk for complaints from candidates and the public and for enforcement actions by the FCC. Failures or delays in maintaining and updating political files are clear because date stamps show when a document has been uploaded. All stations should review their recordkeeping procedures and make certain that all employees involved in political ad sales and maintenance of the political file understand the FCC's requirements.

Broadcasters are required to keep backup copies of their online political files so that the information is available to candidates and the public if the FCC's online file hosting system is not available. The backup file can be maintained electronically or in paper form.

Information to be Maintained for Political Advertising Covered by BCRA.

Under BCRA, broadcasters are required to maintain information in their political files for (1) requests for advertising made by or on behalf of legally qualified candidates, and (2) issue advertisements which communicate a message relating to political matters of national importance. The FCC has advised that the requirements with respect to candidates apply only to ads that reference legally qualified candidates for federal office—that is, President, Senate, and House of Representatives. In addition, the FCC clarified that for each request for issue advertising time, the information uploaded to the political file must include the names of federal candidates (and the offices the candidates are seeking), as well as all federal elections and all national legislative issues referenced in the ad. The FCC said that one ad can refer to both a candidate and an issue, or an election and an issue. The FCC also warned that stations that fail to comply with the BCRA disclosure obligations will be subject to enforcement actions.

In addition to identifying federal candidates, elections, and national legislative issues of political importance, the materials uploaded to the political file must include:

- A record of each request to purchase time and whether the station accepted or rejected the request.
- The rates charged.
- The date and time advertisements aired.
- The class of time purchased.
- The name of the purchaser, the name, address and phone number of a contact for the purchaser, and a list of chief executive officers/directors of the purchaser.

IX. Digital Advertising.

Money spent by candidates and issue advertisers on digital advertising is continuing to increase significantly. As a result of the growth in digital political advertising, there is an increased focus on disclosure requirements for sponsors. Currently, there are no federal laws or regulations that impose specific disclosure requirements related to charges or access for digital advertising.

Online platform advertising sales that are not connected to over-the-air broadcast sales have no effect on a station's lowest unit rate. Similarly, ad sales on on-demand programming that is exclusive to digital streaming services or set-top boxes are outside the FCC's jurisdiction and have no effect on a station's lowest unit rate.

Several states have passed laws seeking to increase transparency around online political advertisements and have enacted certain disclosure requirements. California, New Jersey, New York, Washington, and Maryland have laws with sponsorship disclaimer and recordkeeping requirements. Other states have laws with sponsorship disclaimer requirements. Stations selling advertising on their digital platforms should contact our office with any questions about potential state laws that could impact political advertising.

X. **Disclosures of AI Used in Political Ads.**

Currently there are no federal laws that address the use of generative AI in political ads. A couple of years ago the FCC proposed to require broadcasters to transmit an on-air notice to identify ads created using AI; however, that proposal appears to be stalled. However, many states have passed laws that require disclosure if generative AI is used to manipulate the content of a political ad. Although stations are prohibited from censoring candidate ads and are insulated from liability for deceptive content that appears on-air, this insulation does not apply to issue ads or to candidate ads distributed on digital platforms. Therefore, we recommend that broadcasters adopt policies prohibiting the use of undisclosed generative AI and include language in their political disclosure statements (see section I on page 1) requiring political candidates and issue advertisers to comply with all applicable state laws.

If you have questions about any aspect of the political broadcasting rules and policies, contact an attorney in our [Media Practice Group](#).

ATTACHMENT A

RADIO-SPECIFIC FEDERAL CANDIDATE BCRA DISCLOSURE REQUIREMENTS

Candidate Certification:

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

- identifies who the candidate is,
- discloses the office being sought, and
- states that the sponsoring candidate has approved the broadcast.

Sponsorship Identification:

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

- identifies who the candidate is,
- discloses who paid for the broadcast (in most cases the candidate or the candidate’s committee), and
- states that the sponsoring 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:

- an audio statement disclosing that no federal candidate authorized the announcement, and
- 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” and also refers to an opposing candidate must include:

- a statement identifying the sponsoring candidate and stating 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, and
- a clearly legible printed statement in letters no smaller than four percent of the vertical picture height appearing for a minimum of 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 that is produced or authorized by a federal candidate (or the candidate’s authorized committee) that advocates the election or defeat of a federal candidate or solicits any political contributions must include:

- a statement that (1) identifies the sponsoring 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 sponsoring candidate that occupies at least 80 percent of the vertical screen height, and
- 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, and
- 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: _____