

GARVEY SCHUBERT BARER

LAW

**Radio and Political Advertising:
A Handbook for
the Account Executive**

By

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For Clients of Garvey Schubert Barer

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2010

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Radio And Political Advertising: A Handbook For The Account Executive

The ABC's of Political Advertising:

From **A**ccess to **Z**apple*

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* Who/what is Zapple? See **B**, “Quasi-Equal Opportunities”

A Quick Guide To The Handbook

The Political Advertising Handbook will help you at every stage of the political advertising sales process.

- Read it to gain a **working overview** of the essential concepts of political advertising.
- Consult it to **evaluate compliance** with FCC and FEC requirements.
- Use it in **day-to-day** dealings with political advertisers.

Here's how to get started quickly:

If you're new to the world of political advertising, skim **Part B** *Political Advertising: A High Altitude Survey*, to identify the major subject areas. Then consult **Part J** *Statutes and Rules on Candidate Appearances & Advertising*, for a more in-depth review of the principles and law of political advertising.

If you need to review and evaluate how well your house is in order, get out **Part C** the *Pre-Election Political Advertising Compliance Checklist* and **Part I** *Table of Lowest Unit Charge Periods*, to begin your pre-election review; then use **Part D** *Internal Political Advertising Checklist* and **Part G** *Political File Checklist*, and consult **Part H** *Sample Political Disclosure Statement*.

If you've "been there, done that," go straight to **Part D** the *Internal Political Advertising Checklist (Pre-Buy, Buy & Post-Buy)*, and check **Part I** to see when *lowest unit charge* applies to your elections.

If you've received a request for time, print **Part E** for a supply of the form of *BCRA Political Record* for each request for time, along with **Part F** *Certification of Federal Candidate Responsibility*, and **Part D** *Internal Political Advertising Checklist (Pre-Buy, Buy & Post-Buy)*.

Political Advertising: A High-Altitude Survey

State and federal laws regulate political advertising – on radio, in print, and on the internet.

Here is an outline of basic legal concepts and principles drawn from regulations administered by the Federal Communications Commission (FCC) and the Federal Election Commission (FEC). Bear these in mind when dealing with candidates for public office. Beware: this overview touches only the high points of the federal law of political advertising. You will need to contact counsel for help with particular situations in this complex area of law.

Major Subject Areas: The Big Three

Much of the law of political advertising falls into three major subject areas:

- **lowest unit charge**
- **reasonable access**
- **equal opportunities**

These requirements apply only to the “use” of a station by a candidate for public office. They do not apply to “issue” advertising, nor do they apply to internet advertising sold by a broadcast station.

A “use” is any positive appearance of a candidate, whose voice or likeness is either identified or is readily identifiable in the broadcast material.

Lowest unit charge and *equal opportunities* requirements apply to candidates for all public offices (federal and non-federal). *Reasonable access* is a right enjoyed only by federal candidates.

Because non-federal candidates do not have a right of access to a station, broadcasters have much more latitude in setting political advertising policy for such candidates than for federal candidates. They can limit the class, type, and number of spots. They can decline altogether to offer political advertising to races for selected non-federal offices, although as public trustees, broadcasters should consider allowing some access for major races such as governor or mayor.

Here is a closer look at these and other subject areas of political advertising.

Lowest Unit Charge

During the 45 days prior to a primary and the 60 days prior to a general election (the pre-election window), all candidates to whom broadcast time is sold are entitled to the lowest unit charge for the class and amount of time they wish to purchase.

Candidates are entitled to the benefits of a package or volume discount without having to purchase a package. Candidates can pick the spots within packages and receive the volume discount with the purchase of one spot.

To determine the lowest unit charge for each class of time offered, you should review every package, promotion, or contract that will air during a pre-election window. Your review should include sales of unsold or remnant spot inventory through the internet or other means, and whether at a set price or auction.

The lowest amount shown in the contract for a type of spot will determine the lowest unit charge for that class of time. Be sure to assign a value to every spot within a given contract at the time it is entered into, including bonus spots, or otherwise zero-value bonus spots may cause your lowest unit charge for an entire class of spots to be valued at zero.

Note that even if none of the bonus spots airs during a pre-election window, the lowest unit charge is affected by the bonus spots if any portion of the contract airs during a pre-election window.

Exceptions: Spots placed by third party committees not “authorized” by a candidate are not entitled to the lowest unit charge even if the candidate appears in the spot. Bonus spots provided to a nonprofit organization as part of a paid-for spot package do not count in calculating the lowest unit charge.

Federal Candidate Certification for Lowest Unit Charge

For *federal* candidates to receive a station’s lowest unit charge, they must either (1) provide the station with a written certification that the advertisement or programming does not refer to an opposing candidate; or (2) if it does refer to an opposing candidate, state in the written certificate that the advertising or programming also includes a specific audio statement by the candidate personally identifying himself and stating that the candidate has approved the broadcast.

Comparable Rates

A candidate for any public office buying time outside a pre-election window is entitled to comparable rates on the station, that is, what an ordinary commercial advertiser would pay for the same class, amount, and period of time.

The FEC prescribes a “comparable rate” requirement for print media. A question exists whether that requirement would be extended to internet advertising. The FEC has not addressed this issue.

Commissionable Rates

A candidate for any public office who buys time through an advertising agency may be charged a rate that includes the agency commission. A candidate who buys time directly from a station that offers agency rates may not be charged the commissionable rate. If station policy grants free production facilities for agency spots only, the station need not offer free production for a direct candidate buy.

Station Rep Commissions

Unlike an advertising agency commission, a station representative’s commission is treated like employee compensation and need not be deducted from a station’s lowest unit charge.

Network Buys

Commercial time purchased by advertisers on the station as part of a network buy (wired or unwired) is not considered in calculating a station’s lowest unit charge.

Internet Sales Programs

Commercial time purchased by advertisers through sales programs offered on the internet such as Bid4Spots may fall under the prior FCC rulings regarding network buys and, therefore, are not considered in setting the lowest unit charge. Due to uncertainty, however, in 2007 the state broadcasting associations sought a declaratory ruling from the FCC. The request is pending at this writing.

Billboards and Sponsorship

Stations need not make billboards, promotional incentives (e.g., coffee mugs), or program sponsorships available to candidates.

Time Brokerage

Generally, rates charged by time brokers do not affect a station’s lowest unit charge. Once a broker sells time to candidates, however, the station is obligated to provide equal opportunities (see below) to the candidate’s opponents. If a broker refuses to honor an opponent’s request for equal opportunities, the station must satisfy the equal

opportunities request, and must do so at the station's lowest unit charge. In any event, the station may charge the candidate no more than the time broker charged the initial candidate.

Credit Policy

A station may not treat candidates seeking credit any differently than it treats similarly situated commercial advertisers. A station that requires cash in advance from a new commercial advertiser may require the same from a newly-formed campaign committee. If it is a reasonable certainty that a campaign committee will go out of business after the election, cash up-front may be required. Stations may not require cash in advance from federal candidates more than seven days before the first spot airs.

Political advertising contracts for federal candidates that are not entered into for cash up-front may cause problems down the road. If the contract is not paid and the broadcaster ultimately writes off the debt, the write-off could be construed as a campaign contribution that may violate federal law. Moral: get cash up front.

News Access

Stations do not have to allow candidates for political office to buy spots during the news. If a station does not permit candidates to buy during the news, but it offers a news adjacency class of time, federal candidates must be permitted access to news adjacencies. The lowest unit charge for a candidate who buys during the news adjacency is what the lowest unit charge would be for the news.

Legally Qualified Candidates Only

Access to a broadcast station, to the station's lowest unit charges, and to equal opportunities, extends only to legally-qualified candidates. The burden of proving that a candidate is legally-qualified is on the candidate or their representative. If a station questions the *bona fides* of a candidate, the candidate must provide proof that he or she is qualified under that state's law. Legal qualification is usually shown by indicating the candidate is on the ballot or has done what is necessary in that state to be a write-in candidate.

Reasonable Access

The Communications Act requires licensees of commercial stations to provide *federal candidates* with "reasonable access" to a broadcast station. Thus, stations may not turn away candidates running for federal offices (President, Senate, House of Representatives) and must provide them with some access in attractive dayparts. Stations may decline to carry ads for local and state races (e.g., city council or county clerk) because candidates for those races have no statutory right to reasonable access. Access for significant non-federal races (e.g., governor) should be considered under the general public interest standard, however.

No Blanket Prohibition and Non-Standard Lengths

Commercial stations may not have blanket prohibitions on the number of spots *federal candidates* may purchase or the time slots in which they may purchase time. Nevertheless, a station does not need to provide the spot time a candidate requests for the exact schedule the candidate demands. The touchstone is whether the station has provided the federal candidate reasonable access. Whether the station has provided reasonable access will depend on all the facts and circumstances concerning the candidate's request for access, the station's efforts to provide such access, and the particular race in which the candidate is involved.

Stations may limit the number of spots local and state candidates may purchase, and may limit political advertising for local and state candidates to given day parts or rotations.

Broadcasters may not automatically reject "non-standard length" commercials (e.g., five minutes) for federal candidates. Broadcasters must balance the following factors in each instance of a request made for non-standard length time:

- 1) how much time was previously sold to the candidate;
- 2) the potentially disruptive impact on the station's regular programming;
- 3) the likelihood of equal opportunity requests by opposing candidates; and
- 4) the timing of the request.

The second factor cannot dominate the analysis to the exclusion of the other factors. The FCC said, "broadcasters must cite a realistic danger of substantial program disruption – perhaps caused by insufficient notice to allow adjustments in the schedule – or of an excessive number of equal time requests."

The Commission will generally defer to a licensee's discretion, and will overturn a decision only if the licensee has acted unreasonably pursuant to the established guidelines.

Presidential Candidate Access

To be entitled to reasonable access to a station, a candidate for President must either make a substantial showing of candidacy or must be on the ballot in the state in which access to a station is sought. Even if the candidate is not on the ballot in the state in which access is sought, the candidate is entitled to access if on the ballot in at least ten other states (including DC), has made a substantial showing of candidacy in ten other states (including DC), or is on the ballot in a neighboring state that falls within the station's principal service area (*i.e.*, 1 mV/m contour for FM, 0.5 mV/m for AM).

Noncommercial Stations

Noncommercial educational broadcast stations do not have to provide reasonable access to federal candidates. If they do allow access to a candidate, then they must comply with the equal opportunity rule for all other candidates for that particular office.

Equal Opportunities – When Do They Arise?

Generally, when a candidate for public office “uses” a station, the appearance creates an equal opportunity for his or her opponent to “use” the station to reach a similarly-sized audience at a similar rate. This is true regardless whether the appearance is made to advance his or her candidacy, and regardless whether it is controlled, sponsored or approved by the candidate. Any legally-qualified opponent of the candidate may assert an equal opportunity right to appear on the station even if the first use of the station was not to promote a candidate’s candidacy.

When to Assert?

Legally qualified opponents must assert their equal opportunities within seven days of the “use” by the first candidate. As a result, it is critical that the record of any “use” made of the station by a candidate is placed in the political file as soon after the appearance as possible. The station has no obligation to advise candidates of their right to assert equal opportunities.

Exempt Appearances

Bona fide newscasts, news interviews, news documentaries, and on-the-spot coverage of news events are exempt from equal opportunities requirements. A candidate’s appearance in these programs is not a “use,” and thus does not trigger equal opportunity or access obligations.

No Discrimination

Stations may not discriminate among opposing candidates at any time. Although candidates for the same race must receive the same treatment, stations may treat different races differently, such as offering more time to the mayor’s race, and no time to the school board race.

Stations that sell internet advertising in combination with broadcasting contracts should be prepared to offer internet advertising space to all candidates for a public office, if space is sold to one candidate for that office.

Disclaimers and Recordkeeping

Two other areas of detailed regulation by the FCC and the FEC affect political advertising practices.

Disclaimers are required for broadcast advertising and for internet advertising.

Both the FCC and the FEC require broadcasters to maintain specific *records* of political advertising.

Disclaimers – Look Who’s Talking

The FCC and the FEC each prescribe elements of a required disclosure for a political advertisement. There are separate and specific requirements for broadcast and for internet advertising. The FCC’s rule springs from the sponsorship identification requirements of the Communications Act of 1934, as amended, which is based on the principle that the listener is entitled to know the identity of the person whose views are being expressed. For political advertising, additional disclaimer requirements were enacted as part of the Bipartisan Campaign Reform Act of 2002 (BCRA).

Sponsor Identification

A complete sponsor identification must be included in each advertisement a station broadcasts. Stations may insert the sponsor ID into any advertisement that fails to include it even if the insertion causes the spot to be modified. If time prohibits adding the ID, the licensee may air the spot without the proper identification, so long as the ID is added before the next airing. The identification must appear at the beginning and end of any sponsored political program longer than five minutes.

“Paid for By Friends of....”

A sponsorship identification is insufficient unless it fully and fairly discloses the true identity of the person, corporation, committee, association, or other unincorporated group that paid for the advertisement. “Friends of” could suggest a loosely-knit group of people, not necessarily an organized entity. Such an identification may not satisfy the rule, even if that is the official registered name of the entity. In addition, the person or entity identified as the sponsor must be the one paying to buy the time. Stations need not be private investigators, but where the question arises, they should use reasonable diligence to confirm that the sponsor identified is truly the entity that purchased the spot.

FEC Sponsorship Identification Requirements

The FEC requires spots by federal candidates supporting their candidacy or opposing another’s candidacy to include an audio statement by the candidate identifying himself/herself and the office sought, and stating that the candidate approved the broadcast.

Broadcasters are not required to assure candidate compliance with FEC rules. However, we recommend that broadcasters be familiar with them, for two reasons. First, the BCRA requires federal candidates to certify FEC compliance to broadcasters. Second, a federal candidate is not entitled to the lowest unit charge unless he or she certifies compliance with FEC requirements.

Internet Advertising

The FEC's federal campaign regulations extend to paid internet advertising. Political advertising on the internet must be accompanied by a disclaimer similar to disclaimers required in print advertisements.

The regulations affect commercial website advertising sold by broadcasters, regardless whether it is sold in conjunction with the sale of broadcast time. The regulations apply to all forms of website advertising, such as banner advertisements, streaming video, pop-up advertisements, and directed search results.

Internet Advertising Defined

"Public communications" require a disclaimer under FEC regulations. A communication placed on another person's website for a fee by an individual, political committee, labor organization, or corporation, is a "public communication," and therefore requires a disclaimer.

Requirements of Disclaimer

If the communication is paid for and authorized by a candidate, or his/her authorized committee or agent, it must clearly state that the communication was paid for by the authorized political committee.

If the communication is authorized, but is paid for by any other person, the disclaimer must clearly state that the communication is paid for by such other person and is authorized by the candidate, authorized committee, or agent.

If the communication is not authorized, the disclaimer must clearly state the full name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication, and that the communication is not authorized by any candidate or candidate's committee.

The internet disclaimer must be clearly readable. Twelve-point type size is sufficient. It must be contained in a printed box set apart from the other contents of the communication. It must have a reasonable degree of color contrast.

Responsibility for Posting

The responsibility for posting a disclaimer is on the person or entity purchasing the advertising. It is not the responsibility of the website operator. Nevertheless, a familiarity with FEC requirements in this area and the ability to evaluate whether internet

advertising complies with them, reduces the risk of involvement in a complaint or enforcement action against the advertiser.

Sample Disclaimers

Here are three examples of the types of disclaimers the FEC requires to be posted with commercial website advertising on the internet for federal elections and candidates. A disclaimer must be displayed on all forms of internet advertising, such as banner advertisements, streaming video, pop-up advertisements, and directed search results, which expressly advocate the election or defeat of a clearly identified candidate.

Authorized and paid for by a candidate:

This communication was paid for by The Elect Joe Doaks to Congress Committee.

Authorized but not paid for by a candidate:

This communication was paid for by Citizens for Congressman Doaks, and is authorized by The Elect Joe Doaks to Congress Committee.

Not authorized and not paid for by a candidate:

This communication was paid for by John Doe, 1234 First Street, Anytown, Anystate, 876-555-1212 [www.johndoe.name], and is not authorized by any candidate or candidate's committee.

Recordkeeping and Disclosure Statements

Political File

Each station must maintain a political file in its local public inspection file. The political file must contain all requests for time made by or on behalf of a candidate for political office, together with a notation showing the licensee's disposition of the request, the rates quoted or charged (including gifts of time), whether the spots were actually aired, and rebates if any. Additionally, the political file must contain written certifications by federal candidates of their compliance with FEC disclaimer requirements.

The political file must also contain all requests for time by a non-candidate to advertise a legally-qualified candidate for federal office, or a national legislative issue of public importance. In addition to disposition of the request and details of the time sales order, the record must show the name of the candidate to which the advertising refers, the office the candidate is seeking, and the election or issue to which the ad refers. It must

also show the name of the person purchasing the time, the name, address, and phone number of a contact person, and a list of the chief executive officers or governing board.

Information should be placed in the file as soon as possible after a request for time or use by a legally-qualified candidate. The NAB Agreement Form for Political Candidate Advertisements, Form PB-16, should be completed for each purchase of time.

A political disclosure statement should also be kept in the public file. Any member of the public may review the public file during normal business hours. Note, however, unlike the general public file rule, stations do not have to mail the political file upon request.

Political Disclosure Statements

Stations must disclose material rates and terms of advertising to candidates. The best way to ensure compliance with the requirement is to prepare a political disclosure statement. It should contain a description of each class of time available to commercial advertisers, a description of the lowest unit charge and related privileges for each such class of time, a description of the station's method of selling pre-emptible time based upon advertiser demand (*i.e.*, selling level), an approximation of the likelihood of preemption for each kind of pre-emptible time class, and an explanation of the station's sales practices if based on audience delivery. The political disclosure statement should be kept in the station's political file (see below) and must be provided upon a request for advertising availabilities for political advertising.

Other Political Advertising Issues

The legal and regulatory arena of political advertising includes these additional items:

Issue Advertising

Issue advertising is not entitled to the lowest unit charge. Issue spots must contain the proper sponsorship identification, and a list of officers of the sponsor must be placed in the local public inspection file. Stations should carefully review issue ads sponsored by an entity other than a candidate's authorized committee. If such ads include an appearance by a candidate (and are not sponsored by supporters of the candidate's opponents), they will trigger opposing candidates' rights to equal opportunities, and must therefore be noted in the station's political file. For additional recordkeeping rules for national legislative issues, see *Political File*

Indecent Matter

Even if a broadcaster determines that a candidate spot is indecent, it may not channel the spot to the indecency "safe harbor" period between 10 p.m. and 6 a.m. A broadcaster may, however, reject or channel an issue ad in which a candidate does not appear. Broadcasters may also precede either a political spot or an issue ad with a neutrally-worded viewer advisory that the program's graphic content may be disturbing to children.

PSAs

The 2009 decision of the U.S. Supreme Court in *Citizens United v. FEC* struck down the FEC ban on corporate and union campaign contributions for electioneering communications. This appears to have invalidated the FEC rule prohibiting the broadcast within 30 days of a primary election and within 60 days of a general election of any PSA featuring a federal candidate, although at this writing the FEC has not addressed the issue.

Political Editorials and Personal Attacks

The FCC formerly had rules outlining broadcasters' responsibilities when broadcasting an editorial in support of or against a candidate for public office, or when an attack was made on a person or group's honesty, character or integrity. The rules were struck down by the U.S. Court of Appeals.

Quasi-Equal Opportunities (The "Zapple" Doctrine)

When a station sells or gives time during a campaign to a supporter such as an independent political committee or spokespersons of a candidate, the "quasi-equal opportunities" doctrine would require the licensee to afford comparable time to the spokesperson or supporters for an opponent. The requirement applies only to the major candidates and does not apply to exempt appearances by a supporter or spokesperson, such as in a newscast. The doctrine came to be known as the Zapple Doctrine, named for the Chief Counsel of the Senate Communications Subcommittee, Nicholas Zapple, who sought a ruling from the FCC on the subject.

The Zapple Doctrine was an outgrowth of the Fairness Doctrine, which the Commission repealed. Therefore, its continuing vitality is subject to question.

Caveat

Political advertising has become an increasingly complex area of the law, especially in view of twin regulation by the FCC and the FEC, the BCRA overhaul of campaign spending laws, the gloss placed on those laws by the courts, and the constant of technological change, notably the commercial use of the internet. The laws and rules applicable to political advertising should be revisited and reviewed each political season to ensure ongoing compliance.

PRE-ELECTION POLITICAL ADVERTISING COMPLIANCE CHECKLIST

The following is a checklist of steps which might be taken prior to a primary, general or special election to make sure that your station complies with the FCC's political broadcasting laws:

The Political File

- Review your station's political broadcast file.
 - the file must contain all requests for free and paid political time and their disposition, including the schedule of the time provided or purchased, the dates and specific times the spots actually aired, the rates charged, the classes of time purchased, the length of each spot, and documentation of any rebates provided, including the amount and date of the rebate. Under the Bipartisan Campaign Reform Act of 2002, a record of requests for non-candidate-sponsored and "national issue" advertising must also be kept.
 - the FCC has stated that it is "advisable" (translated: do it) that the station's written political broadcast disclosure statement be placed in the political file.
 - the political file does not need to contain, and should not contain, any information regarding the purchase of *internet* advertising. It is not publicly available information.
- Make sure that the records in the file are maintained in an "orderly" manner so that they may be easily accessed.
- Purge the political file of any records over two years old which are not the subject of a pending dispute.
- Instruct station personnel to permit access to the political file upon request by candidates, their representatives and members of the public, and to place all records required to be placed in the political file as soon as possible (immediately, absent special circumstances).
 - Requests and dispositions of requests for political time must be available for public inspection and copying during normal business hours in accordance with the FCC's public file rules.

Political Rate Disclosure Statements

- Make sure that your station's political rate disclosure forms contain the following information:
 - A description/definition of each class of time available to commercial advertisers sufficiently detailed to allow candidates to identify and understand the specific attributes of each class of time.
 - The lowest unit or "comparable" rate charged or estimated to be charged for each class of time. "Comparable" rates are those available to commercial advertisers outside the 60-day (general election) and 45-day (pre-election) lowest unit charge periods.
 - A description of your station's method of selling preemptible time - e.g., grid, demand-driven "current selling levels," fluctuating levels, etc. (candidates must be able to purchase preemptible time at these demand-generated rates on the same basis as commercial advertisers).
 - Preemption likelihood - an approximation of the likelihood of preemption for each class of preemptible time.
 - Sales practices that affect rates including audience delivery guarantee arrangements and preemption priorities.
 - Make good policy (the FCC defines "make goods" for this purpose as spots which are rescheduled as a result of technical difficulty or preemption).
 - Discounts and value-added privileges, if any.
 - Rotations (all rotations offered to commercial advertisers must be offered to candidates).
 - **Optional:**
Any other information which might be of value to candidates (*e.g.*, the station's policy concerning the production of candidate spots or programs, acceptance of material which does not contain proper sponsorship identification, procedure for ordering spots, internet advertising rates, policies and procedures, etc.).
- Provide a copy of your station's political rate disclosure forms to your national reps and make sure that your rep provides the necessary disclosures to candidates.
- Attach a copy of the station's political rate disclosure forms to any avail sheets provided to political advertisers (it is important to keep written records of when and to which candidates disclosure statements have been provided).

Advertising Rates and Policies

- Prepare a memo evidencing your station's credit policy (such a policy might state that credit will not be extended for the advertising of one-time events or to advertisers who contemplate terminating operations within one year; keep in mind that a station cannot insist on payment more than seven days in advance).
- Review "make good" activity of your station during the preceding 12 months (a station must provide make goods to candidates, before the election if it has provided time-sensitive make goods to any commercial advertiser purchasing the same class of time during the 12 months preceding the election).
- Allocate rates in pre-existing packages (the rates of all spots in packages must be allocated for lowest unit charge purposes). Such an allocation must be made on the contract, on the invoice or in a separate, contemporaneous document that is kept with the contract. The allocation must be made when the contract is entered.

Access

- Review weekend sales order activity of the station during the preceding 12 months (a station or its sales personnel must be open or available for candidate business the weekend before an election only if the station has been similarly open or available for any other advertising the year prior to the election).
- Review the FCC's rules and policies on mandatory "reasonable access" for federal candidates and adopt, for in-house use by station staff, a station policy on access for federal candidates and their supporters. For example, a station may adopt a policy of refusing to sell advertising time during all news programs, some news programs, or during any portion of a specific news program.
- Decide whether you will make your facilities available to candidates for nonfederal offices. (Stations are not required to sell any advertising to candidates for nonfederal offices.)
 - Determine what your criteria will be for making such time available (for example, the importance of the office, public interest in the campaign, the number of candidates and the amount of time likely to be requested).

Getting Your "House in Order"

- Review the 16th edition of the *NAB Political Broadcast Catechism*, and be sure your station's sales staff, who will be handling political buys, is familiar with the political broadcasting regulations and has copies of documents required to purchase time (e.g., the latest edition (Form PB-16) of the NAB Political Agreement Form).

- Obtain an up-to-date copy of your state's election laws (such laws may have special provisions governing sponsorship identification and campaign spending which will impact your operations).
- Review the station's rate listings that may have been published, to make certain they are current.
- Establish a procedure for (a) the weekly review of logs and other records and (b) the provision of rebates on a timely basis.

INTERNAL POLITICAL ADVERTISING CHECKLIST (PRE-BUY, BUY, AND POST-BUY)

Pre-Buy

- _____ Purge Local Public Inspection File (remove any records over two years old which are not the subject of a pending dispute)
- _____ Review station rate cards and current orders for consistency as to quoted advertising rates
- _____ Determine station's lowest unit charge during the applicable 45-day pre-primary period or the 60-day pre-election period, taking into account any normal seasonal rate adjustments that may occur
- _____ Prepare memo evidencing the station's credit policy (such a policy might state that credit will not be extended for the advertising of one-time events or to advertisers who contemplate terminating operations within one year)
- _____ Instruct National Rep on disclosure requirements (provide Rep with a copy of the station's Political Disclosure Statement)
- _____ Review "make good" activity of the station during the preceding 12 months
- _____ Review weekend sales order activity of the station during the preceding 12 months
- _____ Establish weekly log review/rebate procedure
- _____ Allocate rates in pre-existing packages (the rates of all spots in packages must be allocated for lowest unit charge purposes; the allocation must be made on the contract, on the invoice, or in a separate, contemporaneous document that is kept with the contract)

Buy

- _____ Complete and attach BCRA Political Record to all avail submissions
- _____ If federal, complete and attach Certification of Federal Candidate Responsibility
- _____ Code all contracts by class of time
- _____ Code Political spots
- _____ Allocate the value of all spots by class of time
- _____ Be prepared to quote the likelihood of preemption
- _____ Attach sales order to BCRA Political Record
- _____ List all applicable rates and "LUC" on avail sheet for each class

- _____ Obtain "Section 315" certificate from federal candidate in order to receive LUC
- _____ Require NAB Political Agreement Form PB 16 to be completed and signed
- _____ Place order/BCRA Political Record/NAB Political Agreement Form in the Local Public Inspection File as soon as possible (maintain a separate file for each candidate)
- _____ Decide whether you will make your facility available to candidates for nonfederal offices (stations are not required to sell any advertising to candidates for nonfederal office)
- _____ Obtain payment

Post-Buy

- _____ Review spots to ensure "use"/ID compliance
- _____ Be prepared to indicate variance from order on request (arrange for someone to check logs on a daily basis)
- _____ Review logs weekly; issue rebate; credit as appropriate
- _____ Attach invoice for order
- _____ Make sure that all records in the Local Public Inspection File are maintained in an "orderly" manner so that they may be easily accessed.

BCRA POLITICAL RECORD

This Political Record is required by the Bipartisan Campaign Reform Act of 2002 (BCRA) to be completed every time a request is made to purchase *broadcast* time that (1) is made by or on behalf of a legally-qualified candidate for public office, or (2) communicates a message relating to any political matter of national importance, including a legally-qualified candidate, any election to federal office, or a national legislative issue of public importance. The Political Record is *not* required for requests to purchase *internet* advertising. Once completed, the Political Record must be placed in the station's local public inspection file and must be retained for two years.

This Record is for	<input type="checkbox"/> a candidate request <input type="checkbox"/> an election message request * <input type="checkbox"/> an issue request *	The request was	<input type="checkbox"/> accepted # <input type="checkbox"/> rejected
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Candidate Named in Message:

Office Being Sought:

Election or Issue Referred to:

Sponsor (or authorized candidate committee):

Treasurer of authorized candidate committee:

Person Ordering Advertising:

* An "election message request" is a request made by anyone to broadcast a message that refers either to a legally-qualified candidate or to any election to federal office.

An "issue request" is a message related to a national legislative issue of public importance or a political matter of national importance.

If the request is accepted, attach the sales order showing the rate charged, the date(s) and time(s) the message is aired, and the class of time purchased. For an issue request, also attach the name, address, and phone number of a contact person, and a list of the chief executive officers or members of the executive committee or of the board of directors of the sponsor.

**CERTIFICATION OF
FEDERAL CANDIDATE RESPONSIBILITY
FOR RADIO ADVERTISING**

The undersigned hereby certifies that the broadcast matter to be aired pursuant to the agreement to which this certification is attached either (1) does not refer to an opposing candidate, or, if it does, (2) contains a personal audio statement by the candidate that identifies the candidate, the office being sought, and that the candidate has approved the broadcast.

Signed: _____

Printed: _____

Date: _____

This certification must be signed by the candidate or authorized signatory of the candidate's authorized committee or its agent. Without this certification, the candidate is not entitled to the station's lowest unit charge. The certification is not required for non-federal candidates.

POLITICAL FILE CHECKLIST

For Each Candidate

- BCRA Political Record and Certification of Federal Candidate Responsibility
- Acknowledgment of political disclosure statement or confirmation that disclosure was provided
- Initial order or inquiry
- Response to initial order or inquiry (contract, change order, etc.)
- Subsequent orders or inquiries and responses
- Contracts
- Actual scheduling information
- Invoices
- Rebate information
- Information concerning sponsors (officers, directors, members of the executive committee)
- Description of any appearances on non-exempt programs
- Description of any free time provided to candidates.

Note: Class of time must be shown on orders, contracts, invoices, etc.

Sponsors of Controversial Issue and Non-“Use” Political Advertising

- BCRA Political Record
- Initial order or inquiry
- Response to initial order or inquiry (contract, change order, etc.)
- Subsequent orders or inquiries and responses
- Contracts
- Actual scheduling information
- Invoices
- Rebate information
- Information concerning sponsors (officers, directors, members of the executive committee)

Note: Class of time must be shown on orders, contracts, invoices, etc.

Retention Period: Two years.

**SAMPLE DISCLOSURE STATEMENT
REGARDING POLITICAL SALES PRACTICES
FOR RADIO STATIONS**

**[NOTE: The sample statement needs to be customized
to describe how your station sells time.
Note especially terms in brackets and in bold face.]**

**STATION [CALL LETTERS]
POLITICAL ADVERTISING DISCLOSURE STATEMENT**

EFFECTIVE ON AND AFTER [DATE]

The following practices apply to purchases of advertising time for “use” by legally-qualified candidates for public office. In order to qualify for this treatment, candidates or their representatives may be asked to demonstrate that they are legally-qualified. This Disclosure Statement is provided for general information as required by the rules and regulations of the Federal Communications Commission (“FCC”), and is not intended to be a part of any advertising sales contract, which is governed by applicable law and its own terms. Practices described herein are subject to change at the Station’s discretion, to the extent permitted by law.

Legally qualified federal candidates are entitled to purchase time on the Station during their election campaigns. The Station will consider all requests for such time and will make reasonable accommodations to meet such requests. Although a federal candidate has the right to “reasonable access” to the facilities of the Station for the airing of political advertisements, the Station retains the right to limit the amount of time sold to a candidate and has ultimate discretion with respect to the placement of political advertisements. The Station will grant access to specified state and local candidates based, in the station’s sole discretion, on the public interest in the election and inventory. For a determination as to whether the Station will make time available for sale for certain local or state races, see Station Contact below.

During the 45 days preceding a primary election and the 60 days before a general election, the Station charges candidates in the respective elections the “lowest unit charge” for an advertisement if the advertisement constitutes a “use” of the Station’s facilities, as defined by the FCC. During any time outside of the 45-day and 60-day periods, the charges for political advertisements constituting a “use” are set so as to be no higher than those charged other advertisers for comparable use of the Station’s facilities. Any political advertisement that is not a “use,” including any advertisement purchased by a non-candidate or any advertisement dealing with non-candidate ballot issues, is sold at prevailing commercial rates. If a political advertisement constitutes a use, the Station will provide opposing candidates with “equal opportunities,” as

established by federal law, to use the facilities of the Station. No candidate will be offered the station's lowest unit charge unless the candidate provides the station with a certification that the candidate will not make any direct reference to another candidate for the same office in any broadcast unless the broadcast complies with §315(b)(2)(D) of the Communications Act, as amended by the Bipartisan Campaign Reform Act of 2002.

The terms and conditions applicable to political advertising on the Station are as follows:

1. Rates. The Station sells 30-second spots from 6 AM to Midnight as reflected on the attached rate card. **[modify as appropriate for your station]** Most rates for both commercial and political advertising time sold on the Station are arrived at on an individually negotiated basis. Individually negotiated spot packages are equally available for purchase by political candidates. Negotiated buys may, for example, include spots in a number of different rotations or dayparts and combinations of different classes of spots. Rates for most classes of time vary on a **[daily]** **[weekly]** basis, based on supply and demand. The classes of advertising time offered to commercial advertisers are:
 - a. Immediately Preemptible Spots Aired During Specific Rotations
[for any preemptible class of spot, provide percentage estimate of chance of clearing]
 - b. Fixed-Position Spots
 - c. ROS (Run-of-Schedule) Spots
 - d. Package Plans
2. Identification. All ads must comply with the identification requirements of §317 of the Communications Act. The Station reserves the right to insert such identification into any advertisement that fails to include the requisite identification even if the insertion of the identification causes a portion of the advertisement to be deleted. For a candidate to receive the lowest unit charge for the class of time purchased, all ads that refer to opposing candidates must contain a statement that is read by the candidate which identifies the candidate, states that the candidate approved the broadcast, and states that the candidate or the candidate's authorized committee paid for the broadcast.
3. Credit. Cash at least three businesses days in advance is required unless the order is being placed by an agent or other entity with a proven credit history with the station. This agent or entity must accept full responsibility for all air time and production charges.
4. Political Agreement. A signed Agreement Form for Political Broadcasts (PB-16) must accompany any time order. This form must list the directors or officers of the political entity purchasing the time.

5. Proof of Candidacy. The Station, at its option, may require the candidate to produce proof that he/she is a legally-qualified candidate.
6. Notice and Weekend Access. Orders must be placed at least three business days in advance of start. Copy changes or cancellations require one business day's notice. Tapes and written instructions must be delivered to the station in advance of the scheduled air date. Deadlines for contract changes and commercial materials are: **[modify as appropriate]**

4pm Thursday for Monday's Log	4pm Tuesday for Thursday's Log
4pm Friday for Tuesday's Log	2pm Wednesday for Friday's Log
4pm Monday for Wednesday's Log	
7. Production Facilities. The Station's production facilities reasonably will be available to produce commercials for political advertisers on the same terms as provided to commercial advertisers. On-air personalities may not voice political spots.
8. Schedules. Although the rates charged by the Station are based upon the use of 30-second spots, the Station will also try to accommodate requests for advertisements of non-standard lengths.
9. Make Good Policy. In the event of a missed spot, the Station will make good in the same daypart within 3 days. If time prohibits making the spot good (e.g., missed on last day before election) the Station will refund the cost of the missed spot to the purchasing entity within 10 working days.
10. Election Day Orders. Political advertising will be accepted for broadcast on election day, depending on available inventory.
11. Rebates. If a new lowest unit charge is established after a political advertiser's purchase has been made or run, the Station will rebate the overcharge to the political advertiser within 10 days or will credit the overcharge to the candidate's future time purchases, as the candidate directs.
12. Local Public Inspection File. The rules and regulations of the FCC require that each station maintain and permit public inspection of a complete record of all requests for broadcast time made by or on behalf of a candidate for public office, together with an appropriate notation showing the disposition made by the licensee of the requests, including whether such requests were granted and the amount charged. The disposition also includes the schedule of time purchased when the spots aired, the rates charged, and the classes of time purchased. Whenever free time is provided to a candidate, a record of the free time provided is placed in the local public inspection file. This information is retained in the Station's local public inspection file for two years. The local public inspection file for the Station is maintained at the Station's studios at **[insert Station studio address]**. Any member of the public, including opposing candidates, is entitled to inspect the materials placed in these files

during regular business hours. No telephone, facsimile or mail request for local public file information will be accepted.

13. Station Contact. Any of the Station's personnel will take questions and messages from candidates and their representatives, but in order to provide maximum service to candidates and their representatives, the Station seeks to provide sales services through one and only one sales person at the Station. At the Station, actual time buys and responses to questions will be handled by **[name of contact persons]** who can be reached at **[telephone]**.
14. Newscasts/ News Adjacencies. The Station permits political advertising within, and adjacent to, all the Station News programming.

Lowest Unit Charge Periods

The NAB compiled the following list of preliminary state and Congressional Dates. Broadcasters are advised to consult with their local and state election officials to verify all election dates. Stations should also consult with counsel to obtain information on party caucuses to determine if the lowest unit charge (“LUC”) window applies.

The General Election will be held on **TUESDAY, NOVEMBER 2, 2010.**

The LUC window for the General Election will open **FRIDAY, SEPTEMBER 3, 2010.**

State	Statewide/ Congressional Primary LUC Window Opens	Statewide/ Congressional Primary Date	State	Statewide/ Congressional Primary LUC Window Opens	Statewide/ Congressional Primary Date
Alabama	Saturday 4/17	Tuesday 6/1	Nebraska	Saturday 3/27	Tuesday 5/11
Alaska	Saturday 7/10	Tuesday 8/24	Nevada	Saturday 4/24	Tuesday 6/8
Arizona	Saturday 7/10	Tuesday 8/24	New Hampshire	Saturday 7/31	Tuesday 9/14
Arkansas	Saturday 4/3	Tuesday 5/18	New Jersey	Saturday 4/24	Tuesday 6/8
California	Saturday 4/24	Tuesday 6/8	New Mexico	Saturday 4/17	Tuesday 6/1
Colorado	Saturday 6/26	Tuesday 8/10	New York	Saturday 7/31	Tuesday 9/14
Connecticut	Saturday 6/26	Tuesday 8/10	North Carolina	Saturday 3/20	Tuesday 5/4
Delaware	Saturday 7/31	Tuesday 9/14	North Dakota	Saturday 4/24	Tuesday 6/8
D.C.	Saturday 7/31	Tuesday 9/14	Ohio	Saturday 3/20	Tuesday 5/4
Florida	Saturday 7/10	Tuesday 8/24	Oklahoma	Saturday 6/12	Tuesday 7/27
Georgia	Saturday 6/5	Tuesday 7/20	Oregon	Saturday 4/3	Tuesday 5/18
Guam	Wednesday 7/21	Saturday 9/4	Pennsylvania	Saturday 4/3	Tuesday 5/18
Hawaii	Wednesday 8/4	Saturday 9/18	Puerto Rico	n/a	n/a
Idaho	Saturday 4/10	Tuesday 5/25	Rhode Island	Saturday 7/31	Tuesday 9/14
Illinois	Saturday 12/19	Tuesday 2/2	South Carolina	Saturday 4/24	Tuesday 6/8
Indiana	Saturday 3/20	Tuesday 5/4	South Dakota	Saturday 4/24	Tuesday 6/8
Iowa	Saturday 4/24	Tuesday 6/8	Tennessee	Monday 6/21	Thursday 8/5
Kansas	Saturday 6/19	Tuesday 8/3	Texas	Saturday 1/16	Tuesday 3/2
Kentucky	Saturday 4/3	Tuesday 5/18	Utah	Saturday 5/8	Tuesday 6/22
Louisiana	Wednesday 7/14	Saturday 8/28	Vermont	Saturday 7/31	Tuesday 9/14
Maine	Saturday 4/24	Tuesday 6/8	Virgin Islands	Wednesday 7/28	Saturday 9/11
Maryland	Saturday 7/31	Tuesday 9/14	Virginia	Saturday 4/24	Tuesday 6/8
Massachusetts	Saturday 7/31	Tuesday 9/14	Washington	Saturday 7/3	Tuesday 8/17
Michigan	Saturday 6/19	Tuesday 8/3	West Virginia	Saturday 3/27	Tuesday 5/11
Minnesota	Saturday 7/31	Tuesday 9/14	Wisconsin	Saturday 7/31	Tuesday 9/14
Mississippi	Saturday 4/17	Tuesday 6/1	Wyoming	Saturday 7/3	Tuesday 8/17

STATUTES AND RULES ON CANDIDATE APPEARANCES & ADVERTISING

Communications Act of 1934, as amended (47 USC §____)

- §312 Administrative sanctions
- §315 Facilities for candidates for public office
- §317 Announcement with respect to certain matter broadcast
- §335 Direct Broadcast Satellite service obligations
- §399 Support of political candidates prohibited *[non-commercial broadcast stations]*
- §399B Offering of certain services, facilities, or products by public broadcasting stations
[political advertising on non-commercial broadcast stations]

Federal Communications Commission Rules (47 CFR §____)

For Broadcast Stations

- §73.1212 Sponsorship identification
- §73.1940 Legally qualified candidates for public office
- §73.1941 Equal opportunities
- §73.1942 Candidate rates
- §73.1943 Political file
- §73.1944 Reasonable access

For Cable Television Systems

- §76.205 Origination cablecasts by legally qualified candidates for public office; equal opportunities
- §76.206 Candidate rates
- §76.1611 Political cable rates and classes of time
- §76.1615 Sponsorship identification
- §76.1701 Political file

For Direct Broadcast Satellite Service

- §25.701 (portions) Public interest obligations

Federal Election Campaign Act, as amended (2 USC §____)

- §431 Definitions
- §441d Publication and Distribution of Statements and Solicitations

Federal Election Commission Rules (11 CFR §____)

- §100.26 Public Communication
- §110.11 Communications; advertising; disclaimers

Relevant Sections of the Communications Act of 1934

Section 312 [47 U.S.C. §312] ADMINISTRATIVE SANCTIONS

- (a) The Commission may revoke any station license or construction permit –
 - (7) for willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station, other than a non-commercial educational broadcast station, by a legally qualified candidate for Federal elective office on behalf of his candidacy.
- (f) For purposes of this section:
 - (1) The term “willful”, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States.
 - (2) The term “repeated”, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

Section 315 [47 U.S.C. §315] FACILITIES FOR CANDIDATES FOR PUBLIC OFFICE

- (a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: *Provided*, That such licensee shall have no power of censorship over the material broadcast under the provision of this section. No obligation is hereby imposed under this subsection upon any licensee to allow the use of its station by any such candidate. Appearance by a legally qualified candidate on any –
 - (1) bona fide newscast,
 - (2) bona fide news interview,
 - (3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or
 - (4) on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto),shall not be deemed to be use of a broadcasting station within the meaning of this subsection. Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.
- (b) CHARGES
 - (1) IN GENERAL. – The charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election, to such office shall not exceed –

- (A) subject to paragraph (2), during the forty-five days preceding the date of a primary or primary runoff election and during the sixty days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period; and
- (B) at any other time, the charges made for comparable use of such station by other users thereof.

(2) CONTENT OF BROADCASTS –

IN GENERAL. – In the case of a candidate for Federal office, such candidate shall not be entitled to receive the rate under paragraph (1)(A) for the use of any broadcasting station unless the candidate provides written certification to the broadcast station that the candidate (and any authorized committee of the candidate) shall not make any direct reference to another candidate for the same office, in any broadcast using the rights and

- (A) conditions of access under this Act, unless such reference meets the requirements of subparagraphs (C) or (D).
- (B) LIMITATIONS ON CHARGES. – If a candidate for Federal office (or any authorized committee of such candidate) makes a reference described in subparagraph (A) in any broadcast that does not meet the requirements of subparagraph (C) or (D), such candidate shall not be entitled to receive the rate under paragraph (1)(A) for such broadcast or any other broadcast during any portion of the 45-day and 60-day periods described in paragraph (1)(A), that occur on or after the date of such broadcast, for election to such office.
- (C) TELEVISION BROADCASTS. – A candidate meets the requirements of this subparagraph if, in the case of a television broadcast, at the end of such broadcast there appears simultaneously, for a period no less than 4 seconds –
 - (i) a clearly identifiable photographic or similar image of the candidate; and
 - (ii) a clearly readable printed statement, identifying the candidate and stating that the candidate has approved the broadcast and that the candidate's authorized committee paid for the broadcast.
- (D) RADIO BROADCASTS. – A candidate meets the requirements of this subparagraph if, in the case of a radio broadcast, the broadcast includes a personal audio statement by the candidate that identifies the candidate, the office the candidate is seeking, and indicates that the candidate has approved the broadcast.
- (E) CERTIFICATION. – Certifications under this section shall be provided and certified as accurate by the candidate (or any authorized committee of the candidate) at the time of purchase.
- (F) DEFINITIONS. – For purposes of this paragraph, the terms 'authorized committee' and 'Federal office' have the meanings given such terms by section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431).

- (c) DEFINITIONS. –
For purposes of this section –
(1) the term “broadcasting station” includes a community antenna television system;
and
(2) the term “licensee” and “station licensee” when used with respect to a community antenna television system mean the operator of such system.
- (d) RULES AND REGULATIONS. –
The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.
- (e) POLITICAL RECORD. –
(1) IN GENERAL. – A licensee shall maintain, and make available for public inspection, a complete record of a request to purchase broadcast time that –
(A) is made by or on behalf of a legally qualified candidate for public office;
or
(B) communicates a message relating to any political matter of national importance, including –
(i) a legally qualified candidate;
(ii) any election to Federal office; or
(iii) a national legislative issue of public importance.
- (2) CONTENTS OF RECORD. – A record maintained under paragraph (1) shall contain information regarding –
(A) whether the request to purchase broadcast time is accepted or rejected by the licensee;
(B) the rate charged for the broadcast time;
(C) the date and time on which the communication is aired;
(D) the class of time that is purchased;
(E) the name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable);
(F) in the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee; and
(G) in the case of any other request, the name of the person purchasing the time, the name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person.
- (3) TIME TO MAINTAIN FILE. – The information required under this subsection shall be placed in a political file as soon as possible and shall be retained by the licensee for a period of not less than 2 years.

SECTION 317 [47 U.S.C. §317] ANNOUNCEMENT WITH RESPECT TO CERTAIN MATTER BROADCAST

- (a)
(1) All matter broadcast by any radio station for which any money, service, or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person: *Provided*, That “service or other valuable consideration” shall not

include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification in a broadcast of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast.

- (2) Nothing in this section shall preclude the Commission from requiring that an appropriate announcement shall be made at the time of the broadcast in the case of any political program or any program involving the discussion of any controversial issue for which any films, records, transcriptions, talent, scripts, or other material or service of any kind have been furnished, without charge or at a nominal charge, directly or indirectly, as an inducement to the broadcast of such program.

SECTION 335 [47 U.S.C. §335] DIRECT BROADCAST SATELLITE SERVICE OBLIGATIONS

- (a) **PROCEEDING REQUIRED TO REVIEW DBS RESPONSIBILITIES.** – The Commission shall, within 180 days after the date of enactment of this section, initiate a rulemaking proceeding to impose, on providers of direct broadcast satellite service, public interest or other requirements for providing video programming. Any regulations prescribed pursuant to such rulemaking shall, at a minimum, apply the access to broadcast time requirement of section 312(a)(7) and the use of facilities requirements of section 315 to providers of direct broadcast satellite service providing video programming. Such proceeding also shall examine the opportunities that the establishment of direct broadcast satellite service provides for the principle of localism under this Act, and the methods by which such principle may be served through technological and other developments in, or regulation of, such service.

SECTION 399 [47 U.S.C. §399] SUPPORT OF POLITICAL CANDIDATES PROHIBITED

No noncommercial educational broadcasting station may support or oppose any candidate for public office.

SECTION 399B [47 U.S.C. §399B] OFFERING OF CERTAIN SERVICES, FACILITIES, OR PRODUCTS BY PUBLIC BROADCASTING STATIONS.

- (a) For purposes of this section, the term “advertisement” means any message or other programming material which is broadcast or otherwise transmitted in exchange for any remuneration, and which is intended –
 - (1) to promote any service, facility, or product offered by any person who is engaged in such offering for profit;
 - (2) to express the views of any person with respect to any matter of public importance or interest; or
 - (3) to support or oppose any candidate for political office.
- (b)
 - (1) Except as provided in paragraph (2), each public broadcast station shall be authorized to engage in the offering of services, facilities, or products in exchange for remuneration.
 - (2) No public broadcast station may make its facilities available to any person for the broadcast of any advertisement.

Relevant Sections of the FCC's Rules Dealing with Broadcast Stations (47 CFR § ____)

§ 73.1212 Sponsorship identification; list retention; related requirements.

(a) When a broadcast station transmits any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such station, the station, at the time of the broadcast, shall announce:

(1) That such matter is sponsored, paid for, or furnished, either in whole or in part, and

(2) By whom or on whose behalf such consideration was supplied: *Provided, however,* That "service or other valuable consideration" shall not include any service or property furnished broadcast unless it is so furnished in consideration for an identification or any person, product, service, trademark, or brand name beyond an identification reasonably related to the use of such service or property on the broadcast.

(i) For the purposes of this section, the term "sponsored" shall be deemed to have the same meaning as "paid for."

(ii) In the case of any television political advertisement concerning candidates for public office, the sponsor shall be identified with letters equal to or greater than four percent of the vertical picture height that air for not less than four seconds.

(b) The licensee of each broadcast station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any matter for broadcast, information to enable such licensee to make the announcement required by this section.

(c) In any case where a report has been made to a broadcast station as required by section 507 of the Communications Act of 1934, as amended, of circumstances which would have required an announcement under this section had the consideration been received by such broadcast station, an appropriate announcement shall be made by such station.

(d) In the case of any political broadcast matter or any broadcast matter involving the discussion of a controversial issue of public importance for which any film, record, transcription, talent, script, or other material or service of any kind is furnished, either directly or indirectly, to a station as an inducement for broadcasting such matter, an announcement shall be made both at the beginning and conclusion of such broadcast on which such material or service is used that such film, record, transcription, talent, script, or other material or service has been furnished to such station in connection with the transmission of such broadcast matter: *Provided, however,* That in the case of any broadcast of 5 minutes' duration or less, only one such announcement need be made either at the beginning or conclusion of the broadcast.

(e) The announcement required by this section shall, in addition to stating the fact that the broadcast matter was sponsored, paid for or furnished, fully and fairly disclose the true identity of the person or persons, or corporation, committee, association or other unincorporated group, or other entity by whom or on whose behalf such payment is made or promised, or from whom or on whose behalf such services or other valuable consideration is received, or by whom the material or services referred to in paragraph (d) of this section are furnished. Where an agent or other person or entity contracts or otherwise makes arrangements with a station on behalf of another, and such fact is known or by the exercise of reasonable diligence, as specified in paragraph (b) of this section, could be known to the station, the announcement shall disclose the identity of the person or persons or entity on whose behalf such agent is acting instead of the name of such agent. Where the material broadcast is political matter or matter involving the discussion of a controversial issue of public importance and a corporation, committee, association or other unincorporated group, or other entity is paying for or furnishing the broadcast matter, the station shall, in addition to making the announcement required by this section, require that a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association or other unincorporated group, or other entity shall be made available for public inspection at the location specified by the licensee under § 73.3526 of this chapter. If the broadcast is originated by a network, the list may, instead, be retained at the headquarters office of the network or at the location where the originating station maintains its public inspection file under § 73.3526 of this chapter. Such lists shall be kept and made available for a period of two years.

(f) In the case of broadcast matter advertising commercial products or services, an announcement stating the sponsor's corporate or trade name, or the name of the sponsor's product, when it is clear that the mention of the name of the product constitutes a sponsorship identification, shall be deemed sufficient for the purpose of this section and only one such announcement need be made at any time during the course of the broadcast.

(g) The announcement otherwise required by section 317 of the Communications Act of 1934, as amended, is waived with respect to the broadcast of "want ad" or classified advertisements sponsored by an individual. The waiver granted in this paragraph shall not extend to a classified advertisement or want ad sponsorship by any form of business enterprise, corporate or otherwise. Whenever sponsorship announcements are omitted pursuant to this paragraph, the licensee shall observe the following conditions:

(1) Maintain a list showing the name, address, and (where available) the telephone number of each advertiser;

(2) Make this list available to members of the public who have a legitimate interest in obtaining the information contained in the list. Such list must be retained for a period of two years after broadcast.

(h) Any announcement required by section 317(b) of the Communications Act of 1934, as amended, is waived with respect to feature motion picture film produced initially and primarily for theatre exhibition.

Note: The waiver heretofore granted by the Commission in its Report and Order adopted November 16, 1960 (FCC 60-1369; 40 F.C.C. 95), continues to apply to programs filmed or recorded on or before June 20, 1963, when § 73.654, the predecessor television rule, went into effect.

(i) Commission interpretations in connection with the provisions of the sponsorship identification rules are contained in the Commission's Public Notice, entitled "Applicability of Sponsorship Identification Rules," dated May 6, 1963 (40 F.C.C. 141), as modified by Public Notice, dated April 21, 1975 (FCC 75-418). Further interpretations are printed in full in various volumes of the Federal Communications Commission Reports.

[40 FR 18400, Apr. 28, 1975, as amended at 46 FR 13907, Feb. 24, 1981; 49 FR 4211, Feb. 3, 1984; 49 FR 33663, Aug. 24, 1984; 50 FR 32417, Aug. 12, 1985; 57 FR 210, Jan. 3, 1992; 57 FR 8279, March 9, 1992]

§ 73.1940 Legally qualified candidates for public office.

(a) A legally qualified candidate for public office is any person who:

- (1) Has publicly announced his or her intention to run for nomination or office;
- (2) Is qualified under the applicable local, State or Federal law to hold the office for which he or she is a candidate; and
- (3) Has met the qualifications set forth in either paragraph (b), (c), (d), or (e) of this section.

(b) A person seeking election to any public office including that of President or Vice President of the United States, or nomination for any public office except that of President or Vice President, by means of a primary, general or special election, shall be considered a legally qualified candidate if, in addition to meeting the criteria set forth in paragraph (a) of this section, that person:

- (1) Has qualified for a place on the ballot; or
- (2) Has publicly committed himself or herself to seeking election by the write-in method and is eligible under applicable law to be voted for by sticker, by writing in his or her name on the ballot or by other method, and makes a substantial showing that he or she is a bona fide candidate for nomination or office.

(c) A person seeking election to the office of President or Vice President of the United States shall, for the purposes of the Communications Act and the rules in 47 CFR chapter I, be considered legally qualified candidates only in those States or territories (or the District of Columbia) in which they have met the requirements set forth in paragraphs (a) and (b) of this section: Except, that any such person who has met the requirements set forth in paragraphs (a) and (b) of this section in at least 10 States (or 9 and the District of Columbia) shall be considered a legally qualified candidate for election in all States, territories, and the District of Columbia for the purposes of this Act.

(d) A person seeking nomination to any public office, except that of President or Vice President of the United States, by means of a convention, caucus or similar procedure, shall be considered a legally qualified candidate if, in addition to meeting the requirements set forth in paragraph (a) of this section, that person makes a substantial showing that he or she is a bona fide candidate for such nomination: Except, that no person shall be considered a legally qualified candidate for nomination by the means set forth in this paragraph prior to 90 days before the beginning of the convention, caucus or similar procedure in which he or she seeks nomination.

(e) A person seeking nomination for the office of President or Vice President of the United States shall, for the purposes of the Communications Act and the rules thereunder, be considered a legally qualified candidate only in those States or territories (or the District of Columbia) in which, in addition to meeting the requirements set forth in paragraph (a) of this section:

(1) He or she, or proposed delegates on his or her behalf, have qualified for the primary or Presidential preference ballot in that State, territory or the District of Columbia; or

(2) He or she has made a substantial showing of a bona fide candidacy for such nomination in that State, territory or the District of Columbia; except, that any such person meeting the requirements set forth in paragraphs (a)(1) and (2) of this section in at least 10 States (or 9 and the District of Columbia) shall be considered a legally qualified candidate for nomination in all States, territories and the District of Columbia for purposes of this Act.

(f) The term "substantial showing" of a bona fide candidacy as used in paragraphs (b), (d) and (e) of this section means evidence that the person claiming to be a candidate has engaged to a substantial degree in activities commonly associated with political campaigning. Such activities normally would include making campaign speeches, distributing campaign literature, issuing press releases, maintaining a campaign committee, and establishing campaign headquarters (even though the headquarters in some instances might be the residence of the candidate or his or her campaign manager). Not all of the listed activities are necessarily required in each case to demonstrate a substantial showing, and there may be activities not listed herein which would contribute to such a showing.

[43 FR 32795, July 28, 1978, as amended at 43 FR 45856, Oct. 4, 1978; 43 FR 55769, Nov. 29, 1978; 45 FR 26066, Apr. 17, 1980; 45 FR 28141, Apr. 28, 1980; 57 FR 208, Jan. 3, 1992; 57 FR 27708, June 22, 1992]

§ 73.1941 Equal Opportunities.

(a) *General requirements.* Except as other-wise indicated in § 73.1944, no station licensee is required to permit the use of its facilities by any legally qualified candidate for public office, but if any licensee shall permit any such candidate to use its facilities, it shall afford equal opportunities to all other candidates for that office to use such facilities. Such licensee shall have no power of censorship over the material broadcast by any such candidate. Appearance by a legally qualified candidate on any:

(1) Bona fide newscast;

(2) Bona fide news interview;

(3) Bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary); or

(4) On-the-spot coverage of bona fide news events (including, but not limited to political conventions and activities incidental thereto) shall not be deemed to be use of broadcasting station. (section 315(a) of the Communications Act.)

(b) *Uses.* As used in this section and § 73.1942, the term "use" means a candidate appearance (including by voice or picture) that is not exempt under paragraphs 73.1941 (a)(1) through (a)(4) of this section.

(c) *Timing of request.* A request for equal opportunities must be submitted to the licensee within 1 week of the day on which the first prior use giving rise to the right of equal opportunities occurred: Provided, however, That where the person was not a candidate at the time of such first prior use, he or she shall submit his or her request within 1 week of the first subsequent use after he or she has become a legally qualified candidate for the office in question.

(d) *Burden of proof.* A candidate requesting equal opportunities of the licensee or complaining of noncompliance to the Commission shall have the burden of proving that he or she and his or her opponent are legally qualified candidates for the same public office.

(e) *Discrimination between candidates.* In making time available to candidates for public office, no licensee shall make any discrimination between candidates in practices, regulations, facilities, or services for or in connection with the service rendered pursuant to this part, or make or give any preference to any candidate for public office or subject any such candidate to any prejudice or disadvantage; nor shall any licensee make any contract or other agreement which shall have the effect of permitting any legally qualified candidate for any public office to broadcast to the exclusion of other legally qualified candidates for the same public office.

[57 FR 208, Jan. 3, 1992; 59 FR 14568, March 29, 1994]

§ 73.1942 Candidate rates.

(a) *Charges for use of stations.* The charges, if any, made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his or her campaign for nomination for election, or election, to such office shall not exceed:

(1) During the 45 days preceding the date of a primary or primary runoff election and during the 60 days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period.

(i) A candidate shall be charged no more per unit than the station charges its most favored commercial advertisers for the same classes and amounts of time for the same periods. Any station practices offered to commercial advertisers that enhance the value of advertising spots must be disclosed and made available to candidates on equal terms. Such practices include but are not limited to any discount privileges that affect the value of advertising, such as bonus spots, time-sensitive make goods, preemption priorities, or any other factors that enhance the value of the announcement.

(ii) The Commission recognizes non-preemptible, preemptible with notice, immediately preemptible and run-of-schedule as distinct classes of time.

(iii) Stations may establish and define their own reasonable classes of immediately preemptible time so long as the differences between such classes are based on one or more demonstrable benefits associated with each class and are not based solely upon price or identity of the advertiser. Such demonstrable benefits include, but are not limited to, varying levels of preemption protection, scheduling flexibility, or associated privileges, such as guaranteed time-sensitive make goods. Stations may not use class distinctions to defeat the purpose of the lowest unit charge requirement. All classes must be fully disclosed and made available to candidates.

(iv) Stations may establish reasonable classes of preemptible with notice time so long as they clearly define all such classes, fully disclose them and make available to candidates.

(v) Stations may treat non-preemptible and fixed position as distinct classes of time provided that stations articulate clearly the differences between such classes, fully disclose them, and make them available to candidates.

(vi) Stations shall not establish a separate, premium-period class of time sold only to candidates. Stations may sell higher-priced non-preemptible or fixed time to candidates if such a class of time is made available on a bona fide basis to both candidates and commercial advertisers, and provided such class is not functionally equivalent to any lower-priced class of time sold to commercial advertisers.

(vii) [Reserved]

(viii) Lowest unit charge may be calculated on a weekly basis with respect to time that is sold on a weekly basis, such as rotations through particular programs or dayparts. Stations electing to calculate the lowest unit charge by such a method must include in that calculation all rates for all announcements scheduled in the rotation, including announcements aired under long-term advertising contracts. Stations may implement rate increases during election periods only to the extent that such increases constitute "ordinary business practices," such as seasonal program changes or changes in audience ratings.

(ix) Stations shall review their advertising records periodically throughout the election period to determine whether compliance with this section requires that candidates receive rebates or credits. Where necessary, stations shall issue such rebates or credits promptly.

(x) Unit rates charged as part of any package, whether individually negotiated or generally available to all advertisers, must be included in the lowest unit charge calculation for the same class and length of time in the same time period. A candidate cannot be required to purchase advertising in every program or daypart in a package as a condition for obtaining package unit rates.

(xi) Stations are not required to include non-cash promotional merchandising incentives in lowest unit charge calculations; provided, however, that all such incentives must be offered to candidates as part of any purchases permitted by the licensee. Bonus spots, however, must be included in the calculation of the lowest unit charge calculation.

(xii) Makes goods, defined as the rescheduling of preempted advertising, shall be provided to candidates prior to election day if a station has provided a time-sensitive make good during the year preceding the pre-election periods, respectively set forth in paragraph (a)(1) of this section, to any commercial advertiser who purchased time in the same class.

(xiii) Stations must disclose and make available to candidates any make good policies provided to commercial advertisers. If a station places a make good for any commercial advertiser or other candidate in a more valuable program or daypart, the value of such make good must be included in the calculation of the lowest unit charge for that program or daypart.

(2) At any time other than the respective periods set forth in paragraph (a)(1) of this section, stations may charge legally qualified candidates for public office no more than the charges made for comparable use of the station by commercial advertisers. The rates, if any, charged all such candidates for the same office shall be uniform and shall not be rebated by any means, direct or indirect. A candidate shall be charged no more than the rate the station would charge for comparable commercial advertising. All discount privileges otherwise offered by a station to commercial advertisers must be disclosed and made available upon equal terms to all candidate for public office.

(b) If a station permits a candidate to use its facilities, the station shall make all discount privileges offered to commercial advertisers, including the lowest unit charges for each class and length of time in the same time period, and all corresponding discount privileges, available upon equal terms to all candidates. This duty includes an affirmative duty to disclose to candidates information about rates, terms conditions and all value-enhancing discount privileges offered to commercial advertisers. Stations may use reasonable discretion in making the disclosure; provided, however, that the disclosure includes, at a minimum, the following information:

(1) A description and definition of each class of time available to commercial advertisers sufficiently complete to allow candidates to identify and understand what specific attributes differentiate each class;

(2) A description of the lowest unit charge and related privileges (such as priorities against preemption and make goods prior to specific deadlines) for each class of time offered to commercial advertisers;

(3) A description of the station's method of selling preemptible time based upon advertiser demand, commonly known as the "current selling level," with the stipulation

that candidates will be able to purchase at these demand-generated rates in the same manner as commercial advertisers;

(4) An approximation of the likelihood of preemption for each kind of preemptible time; and

(5) An explanation of the station's sales practices, if any, that are based on audience delivery, with the stipulation that candidates will be able to purchase this kind of time, if available to commercial advertisers.

(c) Once disclosure is made, stations shall negotiate in good faith to actually sell time to candidates in accordance with the disclosure.

(d) This rule (§ 73.1942) shall not apply to any station licensed for non-commercial operation.

[57 FR 209, Jan. 3, 1992; 57 FR 27709, June 22, 1992]

§ 73.1943 Political File.

(a) Every licensee shall keep and permit public inspection of a complete and orderly record (political file) of all requests for broadcast time made by or on behalf of a candidate for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if the request is granted. The "disposition" includes the schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased.

(b) When free time is provided for use by or on behalf of candidates, a record of the free time provided shall be placed in the political file.

(c) All records required by this paragraph shall be placed in the political file as soon as possible and shall be retained for a period of two years. As soon as possible means immediately absent unusual circumstances.

[57 FR 210, Jan. 3, 1992]

§ 73.1944 Reasonable Access.

(a) Section 312(a)(7) of the Communications Act provides that the Commission may revoke any station license or construction permit for willful or repeated failure to allow reasonable access to, or to permit purchase of, reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy.

(b) *Weekend Access.* For purposes of providing reasonable access, a licensee shall make its facilities available for use by federal candidates on the weekend before the election if the licensee has provided similar access to commercial advertisers during the year preceding the relevant election period. Licensees shall not discriminate between candidates with regard to weekend access.

[57 FR 210, Jan. 3, 1992]

Relevant Sections of the FCC's Rules Dealing with Cable Television Systems (47 CFR § ___)

§ 76.205 Origination cablecasts by legally qualified candidates for public office; equal opportunities.

(a) *General requirements.* No cable television system is required to permit the use of its facilities by any legally qualified candidate for public office, but if any system shall permit any such candidate to use its facilities, it shall afford equal opportunities to all other candidates for that office to use such facilities. Such system shall have no power of censorship over the material broadcast by any such candidate. Appearance by a legally qualified candidate on any:

(1) Bona fide newscast;

(2) Bona fide news interview;

(3) Bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary); or

(4) On-the-spot coverage of bona fide news events (including, but not limited to political conventions and activities incidental thereto) shall not be deemed to be use of a system. (section 315(a) of the Communications Act.)

(b) *Uses.* As used in this section and § 76.206, the term "use" means a candidate appearance (including by voice or picture) that is not exempt under paragraphs 76.205 (a)(1) through (a)(4) of this section.

(c) *Timing of Request.* A request for equal opportunities must be submitted to the system within 1 week of the day on which the first prior use giving rise to the right of equal opportunities occurred: Provided, however, That where the person was not a candidate at the time of such first prior use, he or she shall submit his or her request within 1 week of the first subsequent use after he or she has become a legally qualified candidate for the office in question.

(d) *Burden of proof.* A candidate requesting equal opportunities of the system or complaining of noncompliance to the Commission shall have the burden of proving that he or she and his or her opponent are legally qualified candidates for the same public office.

(e) *Discrimination between candidates.* In making time available to candidates for public office, no system shall make any discrimination between candidates in practices, regulations, facilities, or services for or in connection with the service rendered pursuant to this part, or make or give any preference to any candidate for public office or subject any such candidate to any prejudice or disadvantage; nor shall any system make any contract or other agreement which shall have the effect of permitting any legally qualified

candidate for any public office to cablecast to the exclusion of other legally qualified candidates for the same public office.

[43 FR 32796, July 28, 1978, as amended at 45 FR 76179, Nov. 18, 1980; 57 FR 210, Jan. 3, 1992; 59 FR 14568, March 29, 1994]

§ 76.206 Candidate rates.

(a) *Charges for use of cable television systems.* The charges, if any, made for the use of any system by any person who is a legally qualified candidate for any public office in connection with his or her campaign for nomination for election, or election, to such office shall not exceed:

(1) During the 45 days preceding the date of a primary or primary runoff election and during the 60 days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the system for the same class and amount of time for the same period.

(i) A candidate shall be charged no more per unit than the system charges its most favored commercial advertisers for the same classes and amounts of time for the same periods. Any system practices offered to commercial advertisers that enhance the value of advertising spots must be disclosed and made available to candidates upon equal terms. Such practices include but are not limited to any discount privileges that affect the value of advertising, such as bonus spots, time-sensitive make goods, preemption priorities, or any other factors that enhance the value of the announcement.

(ii) The Commission recognizes non-preemptible, preemptible with notice, immediately preemptible and run-of-schedule as distinct classes of time.

(iii) Systems may establish and define their own reasonable classes of immediately preemptible time so long as the differences between such classes are based on one or more demonstrable benefits associated with each class and are not based solely upon price or identity of the advertiser. Such demonstrable benefits include, but are not limited to, varying levels of preemption protection, scheduling flexibility, or associated privileges, such as guaranteed time-sensitive make goods. Systems may not use class distinctions to defeat the purpose of the lowest unit charge requirement. All classes must be fully disclosed and made available to candidates.

(iv) Systems may establish reasonable classes of preemptible with notice time so long as they clearly define all such classes, fully disclose them and make them available to candidates.

(v) Systems may treat non-preemptible and fixed position as distinct classes of time provided that systems articulate clearly the differences between such classes, fully disclose them, and make them available to candidates.

(vi) Systems shall not establish a separate, premium-priced class of time sold only to candidates. Systems may sell higher-priced non-preemptible or fixed time to candidates if such a class of time is made available on a *bona fide* basis to both candidates and

commercial advertisers, and provided such class is not functionally equivalent to any lower-priced class of time sold to commercial advertisers.

(vii) [Reserved]

(viii) Lowest unit charge may be calculated on a weekly basis with respect to time that is sold on a weekly basis, such as rotations through particular programs or dayparts. Systems electing to calculate the lowest unit charge by such a method must include in that calculation all rates for all announcements scheduled in the rotation, including announcements aired under long-term advertising contracts. Systems may implement rate increases during election periods only to the extent that such increases constitute "ordinary business practices," such as seasonal program changes or changes in audience ratings.

(ix) Systems shall review their advertising records periodically throughout the election period to determine whether compliance with this section requires that candidates receive rebates or credits. Where necessary, systems shall issue such rebates or credits promptly.

(x) Unit rates charged as part of any package, whether individually negotiated or generally available to all advertisers, must be included in the lowest unit charge calculation for the same class and length of time in the same time period. A candidate cannot be required to purchase advertising in every program or daypart in a package as a condition for obtaining package unit rates.

(xi) Systems are not required to include non-cash promotional merchandising incentives in lowest unit charge calculations; provided, however, that all such incentives must be offered to candidates as part of any purchases permitted by the system. Bonus spots, however, must be included in the calculation of the lowest unit charge calculation.

(xii) Make goods, defined as the rescheduling of preempted advertising, shall be provided to candidates prior to election day if a system has provided a time-sensitive make good during the year preceding the pre-election periods, respectively set forth in paragraph (a)(1) of this section, to any commercial advertiser who purchased time in the same class.

(xiii) Systems must disclose and make available to candidates any make good policies provided to commercial advertisers. If a system places a make good for any commercial advertiser or other candidate in a more valuable program or daypart, the value of such make good must be included in the calculation of the lowest unit charge for that program or daypart.

(2) At any time other than the respective periods set forth in paragraph (a)(1) of this section, systems may charge legally qualified candidates for public office no more than the charges made for comparable use of the system by commercial advertisers. The rates, if any, charged all such candidates for the same office shall be uniform and shall not be rebated by any means, direct or indirect. A candidate shall be charged no more than the rate the system would charge for comparable commercial advertising. All discount privileges otherwise offered by a system to commercial advertisers must be disclosed and made available upon equal terms to all candidates for public office.

(b) If a system permits a candidate to use its cablecast facilities, the system shall make all discount privileges offered to commercial advertisers, including the lowest unit charges for each class and length of time in the same time period and all corresponding discount privileges, available on equal terms to all candidates. This duty includes an affirmative duty to disclose to candidates information about rates, terms, conditions and all value-enhancing discount privileges offered to commercial advertisers, as provided in § 76.1611. Systems may use reasonable discretion in making the disclosure; provided, however, that the disclosure includes, at a minimum, the following information:

(1) A description and definition of each class of time available to commercial advertisers sufficiently complete enough to allow candidates to identify and understand what specific attributes differentiate each class;

(2) A description of the lowest unit charge and related privileges (such as priorities against preemption and make goods prior to specific deadlines) for each class of time offered to commercial advertisers;

(3) A description of the system's method of selling preemptible time based upon advertiser demand, commonly known as the "current selling level," with the stipulation that candidates will be able to purchase at these demand-generated rates in the same manner as commercial advertisers;

(4) An approximation of the likelihood of preemption for each kind of preemptible time; and

(5) An explanation of the system's sales practices, if any, that are based on audience delivery, with the stipulation that candidates will be able to purchase this kind of time, if available to commercial advertisers.

(c) Once disclosure is made, systems shall negotiate in good faith to actually sell time to candidates in accordance with the disclosure.

[57 FR 210, Jan. 3, 1992; 57 FR 27709, June 22, 1992; 65 FR 53615, Sept. 5, 2000]

§ 76.1611 Political cable rates and classes of time.

If a system permits a candidate to use its cablecast facilities, the system shall disclose to all candidates information about rates, terms, conditions and all value-enhancing discount privileges offered to commercial advertisers. Systems may use reasonable discretion in making the disclosure; provided, however, that the disclosure includes, at a minimum, the following information:

(a) A description and definition of each class of time available to commercial advertisers sufficiently complete enough to allow candidates to identify and understand what specific attributes differentiate each class;

(b) A description of the lowest unit charge and related privileges (such as priorities against preemption and make goods prior to specific deadlines) for each class of time offered to commercial advertisers;

(c) A description of the system's method of selling preemptible time based upon advertiser demand, commonly known as the "current selling level," with the stipulation that candidates will be able to purchase at these demand-generated rates in the same manner as commercial advertisers;

(d) An approximation of the likelihood of preemption for each kind of preemptible time; and

(e) An explanation of the system's sales practices, if any, that are based on audience delivery, with the stipulation that candidates will be able to purchase this kind of time, if available to commercial advertisers.

§ 76.1615 Sponsorship identification.

(a) When a cable television system operator engaged in origination cablecasting presents any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such cable television system operator, the cable television system operator, at the time of the cablecast, shall announce that such matter is sponsored, paid for, or furnished, either in whole or in part, and by whom or on whose behalf such consideration was supplied: Provided, however, that "service or other valuable consideration" shall not include any service or property furnished either without or at a nominal charge for use on, or in connection with, a cablecast unless it is so furnished in consideration for an identification of any person, product, service, trademark, or brand name beyond an identification reasonably related to the use of such service or property on the cablecast. For the purposes of this section, the term "sponsored" shall be deemed to have the same meaning as "paid for." In the case of any political advertisement cablecast under this paragraph that concerns candidates for public office, the sponsor shall be identified with letters equal to or greater than four (4) percent of the vertical picture height that air for not less than four (4) seconds.

(b) Each cable television system operator engaged in origination cablecasting shall exercise reasonable diligence to obtain from employees, and from other persons with whom the system operator deals directly in connection with any matter for cablecasting, information to enable such system operator to make the announcement required by this section.

(c) In the case of any political origination cablecast matter or any origination cablecast matter involving the discussion of public controversial issues for which any film, record, transcription, talent, script, or other material or service of any kind is furnished, either directly or indirectly, to a cable television system operator as an inducement for cablecasting such matter, an announcement shall be made both at the beginning and conclusion of such cablecast on which such material or service is used that such film, record, transcription, talent, script, or other material or service has been furnished to such cable television system operator in connection with the transmission of such cablecast matter: Provided, however, that in the case of any cablecast of 5 minutes' duration or less, only one such announcement need be made either at the beginning or conclusion of the cablecast.

(d) The announcement required by this section shall, in addition to stating the fact that the origination cablecasting matter was sponsored, paid for or furnished, fully and fairly disclose the true identity of the person or persons, or corporation, committee, association or other unincorporated group, or other entity by whom or on whose behalf such payment is made or promised, or from whom or on whose behalf such services or other valuable consideration is received, or by whom the material or services referred to in paragraph (c) of this section are furnished. Where an agent or other person or entity contracts or otherwise makes arrangements with a cable television system operator on behalf of another, and such fact is known or by the exercise of reasonable diligence, as specified in paragraph (b) of this section, could be known to the system operator, the announcement shall disclose the identity of the person or persons or entity on whose behalf such agent is acting instead of the name of such agent.

(e) In the case of an origination cablecast advertising commercial products or services, an announcement stating the sponsor's corporate or trade name, or the name of the sponsor's product, when it is clear that the mention of the name of the product constitutes a sponsorship identification, shall be deemed sufficient for the purposes of this section and only one such announcement need be made at any time during the course of the cablecast.

(f) The announcement otherwise required by this section is waived with respect to the origination cablecast of "want ad" or classified advertisements sponsored by an individual. The waiver granted in this paragraph shall not extend to a classified advertisement or want ad sponsorship by any form of business enterprise, corporate or otherwise.

(g) The announcements required by this section are waived with respect to feature motion picture film produced initially and primarily for theatre exhibition.

Note to § 76.1615(g): The waiver heretofore granted by the Commission in its Report and Order, adopted November 16, 1960 (FCC 60-1369; 40 FCC 95), continues to apply to programs filmed or recorded on or before June 20, 1963, when § 73.654(e) of this chapter, the predecessor television rule, went into effect.

(h) Commission interpretations in connection with the provisions of the sponsorship identification rules for the broadcasting services are contained in the Commission's Public Notice, entitled "Applicability of Sponsorship Identification Rules," dated May 6, 1963 (40 FCC 141), as modified by Public Notice, dated April 21, 1975 (FCC 75-418). Further interpretations are printed in full in various volumes of the Federal Communications Commission Reports. The interpretations made for the broadcasting services are equally applicable to origination cablecasting.

§ 76.1701 Political file.

(a) Every cable television system shall keep and permit public inspection of a complete and orderly record (political file) of all requests for cablecast time made by or on behalf of a candidate for public office, together with an appropriate notation showing the disposition made by the system of such requests, and the charges made, if any, if the request is granted. The "disposition" includes the schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased.

(b) When free time is provided for use by or on behalf of candidates, a record of the free time provided shall be placed in the political file.

(c) All records required by this paragraph shall be placed in the political file as soon as possible and shall be retained for a period of two years. As soon as possible means immediately absent unusual circumstances.

(d) Where origination cablecasting material is a political matter or matter involving the discussion of a controversial issue of public importance and a corporation, committee, association or other unincorporated group, or other entity is paying for or furnishing the matter, the system operator shall, in addition to making the announcement required by § 76.1616(a), require that a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association or other unincorporated group, or other entity shall be made available for public inspection at the local office of the system. Such lists shall be kept and made available for a period of two years.

Relevant Section of the FCC's Rules Dealing with Direct Broadcast Satellite (47 CFR § ____)

§ 25.701 Public interest obligations.

(a) DBS providers are subject to the public interest obligations set forth in paragraphs (b) and (c) of this section.

(b) Political broadcasting requirements--

(1) Reasonable access. DBS providers must comply with § 312(a)(7) of the Communications Act of 1934, as amended, by allowing reasonable access to, or permitting purchase of reasonable amounts of time for, the use of their facilities by a legally qualified candidate for federal elective office on behalf of his or her candidacy.

(2) Use of facilities. DBS providers must comply with § 315 of the Communications Act of 1934, as amended, by providing equal opportunities to legally qualified candidates.

(c) Carriage obligation for noncommercial programming--

(6) Public file.

(i) Each DBS provider shall keep and permit public inspection of a complete and orderly record of:

(D) A record of all requests for political advertising time and the disposition of those requests.

(ii) All records required by this paragraph shall be placed in a file available to the public as soon as possible and shall be retained for a period of two years.

[64 FR 5956, Feb. 8, 1999]

Relevant Sections of the Federal Election Campaign Act of 1971, as amended

Section 431 [2 U.S.C. §431] DEFINITIONS

(22) Public communication.— The term “public communication” means a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising.

Section 441d [2 U.S.C. §441d] PUBLICATION AND DISTRIBUTION OF STATEMENTS AND SOLICITATIONS

(a) Identification of funding and authorizing sources

Whenever a political committee makes a disbursement for the purpose of financing any communication through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising, or whenever any person makes a disbursement for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising or makes a disbursement for an electioneering communication (as defined in section 434 (f)(3) of this title), such communication—

(1) if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee, or

(2) if paid for by other persons but authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication is paid for by such other persons and authorized by such authorized political committee;

(3) if not authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state the name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate’s committee.

(b) Charge for newspaper or magazine space

No person who sells space in a newspaper or magazine to a candidate or to the agent of a candidate, for use in connection with such candidate’s campaign, may charge any amount for such space which exceeds the amount charged for comparable use of such space for other purposes.

(c) Specification

Any printed communication described in subsection (a) of this section shall—

- (1) be of sufficient type size to be clearly readable by the recipient of the communication;
- (2) be contained in a printed box set apart from the other contents of the communication; and
- (3) be printed with a reasonable degree of color contrast between the background and the printed statement.

(d) Additional requirements

(1) Communications by candidates or authorized persons

(A) By radio

Any communication described in paragraph (1) or (2) of subsection (a) of this section which is transmitted through radio shall include, in addition to the requirements of that paragraph, an audio statement by the candidate that identifies the candidate and states that the candidate has approved the communication.

(B) By television

Any communication described in paragraph (1) or (2) of subsection (a) of this section which is transmitted through television shall include, in addition to the requirements of that paragraph, a statement that identifies the candidate and states that the candidate has approved the communication. Such statement—

(i) shall be conveyed by—

- (I) an unobscured, full-screen view of the candidate making the statement, or
- (II) the candidate in voice-over, accompanied by a clearly identifiable photographic or similar image of the candidate; and

(ii) shall also appear in writing at the end of the communication in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least 4 seconds.

(2) Communications by others

Any communication described in paragraph (3) of subsection (a) of this section which is transmitted through radio or television shall include, in addition to the requirements of that paragraph, in a clearly spoken manner, the following audio statement: “XXXXX is responsible for the content of this advertising.” (with the blank to be filled in with the name of the political committee or other person paying for the communication and the name of any connected organization of the payor). If transmitted through television, the statement shall be conveyed by an unobscured, full-screen view of a representative of the political committee or other person making the statement, or by a representative of

such political committee or other person in voice-over, and shall also appear in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least 4 seconds.

Relevant Section of the FEC's Rules Dealing with Internet Advertising (11 CFR § _____)

§ 100.26 Public communication (2 U.S.C. 431(22)).

Public communication means a communication by means of any broadcast, cable or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, or any other form of general public political advertising. The term general public political advertising shall not include communications over the Internet, except for communications placed for a fee on another person's website.

[Agenda Doc. No. 06-20, March 24, 2006]

Sec. 110.11 Communications; advertising; disclaimers (2 U.S.C 441d).

(a) Scope. The following communications must include disclaimers, as specified in this section:

(1) All public communications, as defined in 11 CFR 100.26, made by a political committee; electronic mail of more than 500 substantially similar communications when sent by a political committee; and all Internet websites of political committees available to the general public.

(2) All public communications, as defined in 11 CFR 100.26, by any person that expressly advocate the election or defeat of a clearly identified candidate.

(3) All public communications, as defined in 11 CFR 100.26, by any person that solicit any contribution.

(4) All electioneering communications by any person.

(b) General content requirements. A disclaimer required by paragraph (a) of this section must contain the following information:

(1) If the communication, including any solicitation, is paid for and authorized by a candidate, an authorized committee of a candidate, or an agent of either of the foregoing, the disclaimer must clearly state that the communication has been paid for by the authorized political committee;

(2) If the communication, including any solicitation, is authorized by a candidate, an authorized committee of a candidate, or an agent of either of the foregoing, but is paid for by any other person, the disclaimer must clearly state that the communication is paid for by such other person and is authorized by such candidate, authorized committee, or agent; or

(3) If the communication, including any solicitation, is not authorized by a candidate, authorized committee of a candidate, or an agent of either of the foregoing, the disclaimer must clearly state the full name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication, and that the communication is not authorized by any candidate or candidate's committee.

(c) Disclaimer specifications—

(1) Specifications for all disclaimers. A disclaimer required by paragraph (a) of this section must be presented in a clear and conspicuous manner, to give the reader, observer, or listener adequate notice of the identity of the person or political committee that paid for and, where required, that authorized the communication. A disclaimer is not clear and conspicuous if it is difficult to read or hear, or if the placement is easily overlooked.

(2) Specific requirements for printed communications. In addition to the general requirement of paragraphs (b) and (c)(1) of this section, a disclaimer required by paragraph (a) of this section that appears on any printed public communication must comply with all of the following:

(i) The disclaimer must be of sufficient type size to be clearly readable by the recipient of the communication. A disclaimer in twelve (12)-point type size satisfies the size requirement of this paragraph (c)(2)(i) when it is used for signs, posters, flyers, newspapers, magazines, or other printed material that measure no more than twenty-four (24) inches by thirty-six (36) inches.

(ii) The disclaimer must be contained in a printed box set apart from the other contents of the communication.

(iii) The disclaimer must be printed with a reasonable degree of color contrast between the background and the printed statement. A disclaimer satisfies the color contrast requirement of this paragraph (c)(2)(iii) if it is printed in black text on a white background or if the degree of color contrast between the background and the text of the disclaimer is no less than the color contrast between the background and the largest text used in the communication.

(iv) The disclaimer need not appear on the front or cover page of the communication as long as it appears within the communication, except on communications, such as billboards, that contain only a front face.

(v) A communication that would require a disclaimer if distributed separately, that is included in a package of materials, must contain the required disclaimer.

(3) Specific requirements for radio and television communications authorized by candidates. In addition to the general requirements of paragraphs (b) and (c)(1) of this section, a communication that is authorized or paid for by a candidate or the authorized committee of a candidate (see paragraph (b)(1) or (b)(2) of this section) that is transmitted through radio or television, or through any broadcast, cable, or satellite transmission, must comply with the following:

(i) A communication transmitted through radio must include an audio statement by the candidate that identifies the candidate and states that he or she has approved the communication; or

(ii) A communication transmitted through television or through any broadcast, cable, or satellite transmission, must include a statement that identifies the candidate and states that he or she has approved the communication. The candidate shall convey the statement either:

(A) Through an unobscured, full-screen view of himself or herself making the statement, or

(B) Through a voice-over by himself or herself, accompanied by a clearly identifiable photographic or similar image of the candidate. A photographic or similar image of the candidate shall be considered clearly identified if it is at least eighty (80) percent of the vertical screen height.

(iii) A communication transmitted through television or through any broadcast, cable, or satellite transmission, must also include a similar statement that must appear in clearly readable writing at the end of the television communication. To be clearly readable, this statement must meet all of the following three requirements:

(A) The statement must appear in letters equal to or greater than four (4) percent of the vertical picture height;

(B) The statement must be visible for a period of at least four (4) seconds; and

(C) The statement must appear with a reasonable degree of color contrast between the background and the text of the statement. A statement satisfies the color contrast requirement of this paragraph (c)(3)(iii)(C) if it is printed in black text on a white background or if the degree of color contrast between the background and the text of the statement is no less than the color contrast between the background and the largest type size used in the communication.

(iv) The following are examples of acceptable statements that satisfy the spoken statement requirements of paragraph (c)(3) of this section with respect to a radio, television, or other broadcast, cable, or satellite communication, but they are not the only allowable statements:

(A) "I am [insert name of candidate], a candidate for [insert Federal office sought], and I approved this advertisement."

(B) "My name is [insert name of candidate]. I am running for [insert Federal office sought], and I approved this message."

(4) Specific requirements for radio and television communications paid for by other persons and not authorized by a candidate. In addition to the general requirements of paragraphs (b) and (c)(1) of this section, a communication not authorized by a candidate or a candidate's authorized committee that is transmitted through radio or television or through any broadcast, cable, or satellite transmission, must comply with the following:

(i) A communication transmitted through radio or television or through any broadcast, cable, or satellite transmission, must include the following audio statement, "XXX is responsible for the content of this advertising," spoken clearly, with the blank to be filled in with the name of the political committee or other person paying for the communication, and the name of the connected organization, if any, of the payor unless the name of the connected organization is already provided in the "XXX is responsible" statement; and

(ii) A communication transmitted through television, or through any broadcast, cable, or satellite transmission, must include the audio statement required by paragraph (c)(4)(i) of this section. That statement must be conveyed by an unobscured full-screen view of a representative of the political committee or other person making the statement, or by a representative of such political committee or other person in voice-over.

(iii) A communication transmitted through television or through any broadcast, cable, or satellite transmission, must also include a similar statement that must appear in clearly readable writing at the end of the communication. To be clearly readable, the statement must meet all of the following three requirements:

(A) The statement must appear in letters equal to or greater than four (4) percent of the vertical picture height;

(B) The statement must be visible for a period of at least four (4) seconds; and

(C) The statement must appear with a reasonable degree of color contrast between the background and the disclaimer statement. A disclaimer satisfies the color contrast requirement of this paragraph (c)(4)(iii)(C) if it is printed in black text on a white background or if the degree of color contrast between the background and the text of the disclaimer is no less than the color contrast between the background and the largest type size used in the communication.

(D) Coordinated party expenditures and independent expenditures by political party committees. (1)(i) For a communication paid for by a political party committee pursuant to 2 U.S.C. 441a(d), the disclaimer required by paragraph (a) of this section must identify the political party committee that makes the expenditure as the person who paid for the communication, regardless of whether the political party committee was acting in its own capacity or as the designated agent of another political party committee.

(ii) A communication made by a political party committee pursuant to 2 U.S.C. 441a(d) and distributed prior to the date the party's candidate is nominated shall satisfy the requirements of this section if it clearly states who paid for the communication.

(2) For purposes of this section, a communication paid for by a political party committee, other than a communication covered by paragraph (d)(1)(ii) of this section, that is being treated as a coordinated expenditure under 2 U.S.C. 441a(d) and that was made with the approval of a candidate, a candidate's authorized committee, or the agent of either shall identify the political party that paid for the communication and shall state that the communication is authorized by the candidate or candidate's authorized committee.

(3) For a communication paid for by a political party committee that constitutes an independent expenditure under 11 CFR 100.16, the disclaimer required by this section must identify the political party committee that paid for the communication, and must state that the communication is not authorized by any candidate or candidate's authorized committee.

* * * *

(g) Comparable rate for campaign purposes.

(1) No person who sells space in a newspaper or magazine to a candidate, an authorized committee of a candidate, or an agent of the candidate, for use in connection with the candidate's campaign for nomination or for election, shall charge an amount for the space which exceeds the comparable rate for the space for non-campaign purposes.

(2) For purposed of this section, comparable rate means the rate charged to a national or general rate advertiser, and shall include discount privileges usually and normally available to a national or general rate advertiser.

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Mr. Krasnow formerly served as Senior Vice President and General Counsel of the National Association of Broadcasters and as Administrative Assistant to the late Congressman Torbert H. Macdonald, Chairman of the House Communications and Power Subcommittee. He has served on graduate and law school faculties at Ohio State, American, Temple, George Washington, Catholic and Georgetown Universities.

Described by Paul Kagan Associates as “one of the broadcast industry’s leading dealmakers” and by *Radio Business Report* as “a preeminent communications lawyer who knows the business of buying and selling radio stations,” Mr. Krasnow has represented sellers and buyers of broadcasting, cable and telecommunications properties in transactions totaling well in excess of \$19 billion.

Mr. Krasnow is a past President of the Capitol Hill Bar Association, comprising members of Congress, counsel to committees and staff lawyers. He also served as Treasurer and on the Executive Committee of the Federal Communications Bar Association. He is the author or co-author of several books, including *Profitably Buying and Selling Broadcast Stations*, *The Politics of Broadcast Regulation*, *100 Ways to Cut Legal Fees and Manage Your Lawyer*, *A Candidate’s Guide to the Law of Political Broadcasting*, *An Insider’s Guide To Radio Station Acquisition Contracts* and *FCC Lobbying: A Handbook of Insider Tips and Practical Advice* and has written over 250 articles and monographs on communications law and FCC decision making.

Mr. Krasnow is a recipient of the Roscow Barrow Award, COMM/ENT Law Journal, Hastings College of Law for “outstanding achievement in the field of communications,” the Distinguished Education Service Award of the Broadcast Education Association for a “significant and lasting contribution to the American system of broadcasting,” and the Donald H. McGannon Award of the Office of Communications, United Church of Christ, for “special contributions in advancing the role of women and people of color in the media.”



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Mr. King is a past Editor-In-Chief of the *Federal Communications Bar Journal*, and past Co-Editor of the *FCBA News*, the newsletter of the Federal Communications Bar Association. He is a frequent contributor to communications industry trade publications including *TVNewsCheck*, *The Small Market Radio Newsletter*, *The Financial Manager*, and *Radio World*. Mr. King is Washington DC counsel to *Radio Ink*, where his articles on FCC-related topics appear regularly. He is a co-author of *Profitably Buying and Selling Broadcast Stations*.

Mr. King is a frequent speaker before such national industry meetings as the NAB and MFM, as well as state broadcast association meetings. He has participated in the NAB's license renewal "road show" seminars, and been a panelist on industry distance learning seminars on FCC political advertising and EEO regulations.

Mr. King counsels clients in political and traditional broadcast matters, in new technologies, and in related areas such as trademark, copyright, licensing, and associated intellectual property issues. He also concentrates on transactional matters for radio and television stations, cable operators, internet service providers, and related entities.

Mr. King has served as Briefs Judge for the National Telecommunications Moot Court Competition of the Columbus School of Law at the Catholic University of America in Washington DC. He holds a Juris Doctor degree, with distinction, from the University of Nebraska. Mr. King is admitted to practice in the District of Columbia, Virginia, and Nebraska, and is a member of the Bar of the Supreme Court of the United States.

An accomplished campanologist, Mr. King is a past President of the North American Guild of Change Ringers, and former Ringing Master of the Washington Ringing Society, which performs on the bells of Washington National Cathedral. He is a member of the Ancient Society of College Youths, the oldest British bell ringing society.