



Political Broadcasting Primer

Each year as election season approaches, we recommend that you review the applicable federal rules and policies governing political broadcasting and take steps to ensure that staff handling political buys, maintaining the political file, and supervising public access to station records are well acquainted with applicable Federal Communications Commission (FCC) and Federal Election Commission (FEC) obligations. Now is an ideal time to remove items that are more than two years old from your political file, to update your political disclosure statement so that it reflects current station practices, and to calculate lowest unit charge windows for the upcoming election. This Political Broadcasting Primer will assist you as you prepare for upcoming federal, state, and local races. It provides information on key elements of the FCC's political broadcasting rules and policies as well as applicable provisions of the Bipartisan Campaign Reform Act (BCRA) and related FEC regulations and is organized as follows:

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The discussion that follows is not intended to be exhaustive, but to provide an overview of applicable FCC and FEC requirements and to identify the issues that typically arise in connection with the sale of advertising time to candidates or other parties interested in the political process and the broadcast of election-related news and information.

1. Legally Qualified Candidates

The FCC's political broadcasting rules generally are aimed at establishing the rights of "legally qualified" candidates for elected office—in particular, their rights to access the station, to "equal opportunities" vis-à-vis competing candidates, and to purchase time at a station's "lowest unit charge" during specified pre-election windows.

"Legally qualified" candidates are defined by federal and state law and FCC rules. It is up to the candidate, not the station, to demonstrate that he or she satisfies the conditions. Usually, the local or state government election authorities can confirm or deny a candidate's claim that he or she is legally qualified.

- To be qualified, a candidate must have announced his or her intention to run and must meet the basic constitutional and state qualifications for the office (age, residency, etc.); and
- The person must have qualified for a place on the ballot, or be committed to be a write-in candidate (where legal) and show that he or she is a "*bona fide* candidate" actively seeking election (*i.e.* by establishing campaign headquarters, making campaign speeches, issuing press releases, etc.); or
- If a candidate for President or Vice President, or if a candidate for nomination to another office by convention or caucus, the individual must meet other specified FCC requirements showing the seriousness of the candidacy. If a presidential candidate is qualified in 10 states, he/she will be deemed qualified in all states.

2. "Use" vs. "Non-Use"

Whether a political spot involves a "use" by a candidate often has critical legal significance. A "use" of a broadcast station consists of **any "appearance" by a candidate that is positive in nature and occurs after the candidate becomes legally qualified**. An appearance occurs whenever a candidate personally participates in a program or announcement, either by voice or picture, in such a way that the audience will recognize the candidate—regardless of what the candidate talks about. For example, a candidate's appearance on a local charity telethon, in a broadcast of a television show or movie, in a public service announcement, in a paid commercial spot for an advertiser, or in a fellow party member's political advertisement qualifies as a "use," provided that the appearance is broadcast after he/she has become a legally qualified candidate.

Stations that employ individuals with on-air responsibilities or work with advertisers who may also be running for political office need to be particularly aware of the candidate "use" rules. Virtually any on-air appearance, either visual or aural, in which the employee-candidate or advertiser-candidate is recognizable, whether or not the appearance is related to their candidacy, will likely constitute a "use" under the FCC's rules and trigger the associated policies. These situations can arise in the context of syndicated programming or with respect to talk

show hosts who are running for political office. For instance, if a candidate-host typically participates in all or the vast majority of the program in question, then it is likely that the entire program would constitute a “use.” On the other hand, if the host participates in the program only intermittently, only the periods during which he or she actually appears would be considered “uses.” Even if the material is syndicated, the licensee of the station, not the syndicator, is ultimately responsible for complying with the FCC’s rules. If your station employs a candidate for office, airs advertisements with spokespersons who are also candidates, or airs syndicated programming with candidate-hosts, we recommend that you consult counsel to determine the appropriate course of action.

A “use,” in conjunction with a campaign, triggers the following FCC political broadcasting policies (discussed below):

- Reasonable access requirements for federal candidates.
- Equal opportunities.
- Lowest unit charge.
- Prohibition against censoring a political spot or program.
- Protection for the station against liability for defamatory statements that might occur in a political spot or program.
- Sponsorship identification requirements.
- Public file reporting requirements.

3. “Reasonable Access” for Candidates for Federal Offices

Each **commercial** station must provide “reasonable access” to advertising opportunities for “uses” by legally qualified candidates for **federal** elective offices. This requirement does not apply to non-commercial stations. In addition, it is important to recognize that this access right does not apply to candidates for state and local offices; such candidates do not have a legal claim to access for their ads except as noted below.

- **Defining Reasonable Access:**
“Reasonable access” means that paid or free access must be provided to all classes and periods of time on a station including both spot announcement and program time. In other words, as to candidates for federal office, the station cannot refuse to make time available to candidates or establish preset limits on the amount of time, classes of time, or day parts to be made available for candidate advertising. The station can, however, take into account the amount of time the candidate has already bought, the amount of disruption the buy would create, the potential for equal opportunities demands by other candidates, and the timing of the request.

The station cannot declare time periods (*e.g.*, primetime) off-limits, except that the station may adopt a policy of not selling political ads during news programs or in particular parts of news programs. “News adjacencies” (*i.e.*, commercial breaks immediately preceding or following a news program) are subject to reasonable access requirements. See Section 6 (“Lowest Unit Charge”) below for a discussion of lowest unit charge considerations that apply to news adjacencies.

- **When Reasonable Access Requirements Begin:**
“Reasonable access” requirements take effect when the political campaign begins. Depending on the circumstances surrounding a particular candidacy or election, this often can occur earlier than the 45- or 60-day period for lowest unit charge (discussed below).
- **Rules for State and Local Candidates:**
Since stations must afford “reasonable access” rights only to candidates for federal office, broadcasters may use their own judgment in deciding which state and local elections warrant the sale of time to candidates. The FCC does not impose any specific duty on stations to make advertising time available to state and local candidates. Consequently, station licensees may choose to accept ads only for certain state and local races, or may decline state and local candidate ads altogether. ***However, once access is granted to one state or local candidate, others in the same race must be treated evenhandedly.***

4. Equal Opportunities

“Equal opportunities” (also commonly known as “equal time”) refers to rights that arise for any opposing candidate following a legally qualified candidate’s “use” of a broadcast station. When there has been a candidate “use,” equal opportunities must be afforded, upon timely request, to all opposing candidates for the same elective office, whether federal, state, or local—even those of fringe parties if “legally qualified.”

- **What Constitutes an Equal Opportunity:**
“Equal opportunities” means making the same amounts and types of advertising time available to the requesting candidate at no greater cost.¹
- **Timeline for Requests:**
In order to be timely, a request for equal opportunities must be made to the station within seven (7) days after a “use” by an opposing candidate. To make this workable, notice of all requests, sales, and gifts of time (including “uses” unintended by the station) must be immediately inserted in the station’s political file and kept available for public inspection.

¹ The FCC has rescinded the *Zapple* Doctrine, which pertained to appearances by candidates, supporters, or spokespersons, rather than candidates themselves. The Doctrine provided “quasi-equal opportunities” for responses by spokespersons for competing candidates.

Stations are not obligated to provide information by telephone concerning the extent of a particular candidate's "use" of time, and most stations refuse to do so. Callers should be invited to visit the station's political file to secure such information.

5. Exempt News-Related Programs

Many news and public affairs programs are exempt from the "equal opportunities" requirements even if a candidate appearance is involved. The exempt categories are:

- ***Bona fide* Newscast:**

Under Commission precedent, a "*bona fide* newscast" is determined by examining "whether the program reports news of some area of current events, in a manner similar to . . . traditional newscasts."

This is a rather broad definition, and the Commission has found that current and former entertainment news magazine programs such as "Entertainment Tonight," "Hard Copy," and the celebrity-tabloid show "TMZ" qualified as *bona fide* news programs for this purpose.

- ***Bona fide* News Interview** (when regularly scheduled and meeting FCC criteria of newsworthiness and station control):

Bona fide news interviews must have been conducted by the station "in the exercise of its *bona fide* news judgment and not for the political advantage of the candidate for political office.

In the last 20 years, the Commission has applied this definition fairly broadly, finding that interview portions of "The Tonight Show with Jay Leno," "Jerry Springer," "The 700 Club," "Howard Stern," "Tom Joyner Radio Program," "Donahue," "Sally Jessy Raphael Show," and "Politically Incorrect" programs all qualified.

- ***Bona fide* News Documentary** (if the appearance of the candidate is incidental to the coverage of another subject):

The key to this exception is that the candidate's appearance be incidental, and not the principal focus of the documentary. For instance, an episode of the A&E Channel's "Biography" program profiling the year 2000 presidential candidates was found not to constitute a *bona fide* news documentary because the candidates were in fact the subject of the pieces. (The specific programs in question were found to be exempt, however, under the *bona fide* news interview category.)

Conversely, a documentary on the Vietnam War that mentioned presidential candidate John McCain's imprisonment likely would qualify under this exemption.

- **Bona fide News Event** (covered on-the-spot, including political conventions and, under certain circumstances, press conferences and candidates' debates carried in their entirety):

The FCC has found coverage of candidate debates exempt even in cases where the debates are sponsored by the station airing the debate or by another media organization, provided that the debate is covered as a newsworthy event and the coverage is not intended to benefit any particular candidate.

Based on FCC decisions in the other categories, a strong argument can be made that news coverage of local candidate appearances or town hall meetings would fall under this exception as long as the coverage was not "for the political advantage" of a specific candidate. To date, however, the FCC has not ruled formally on town hall appearances as opposed to more traditional debate formats.

The FCC permits stations to get advance rulings on whether a particular program qualifies for one of the news-related exceptions to the equal opportunity rule, but stations are not required to ask for such a ruling. If your station is unsure whether one of its programs will qualify for an exemption, you should consult counsel.

6. Lowest Unit Charge

Stations must offer the "lowest unit charge" for the purchase of time for a "use" by any political candidate (federal, state, or local) during the **45 days preceding a primary election** and during the **60 days preceding a general or special election**. At other times, charges to a candidate must be equal to those for "comparable use," *i.e.*, equivalent to those for other advertisers.

- **Determining the Lowest Unit Charge:**

A station's "lowest unit charge" (LUC) is the **amount that is offered or charged to the station's most preferred commercial advertiser** for the same class (e.g., immediately preemptible spot) and amount (e.g., 30 seconds) of time for the same period (e.g., 11:00 news or morning drive time). A candidate buying even one unit of a certain class of time must be given the benefit of all station discounts for volume and frequency on that class of time that are made available to other advertisers.

Spots sold in special **package plans** must be counted in the LUC calculation for relevant time periods even if the candidate does not choose to purchase in accordance with the package terms. Candidates cannot be subject to volume purchase requirements and are permitted to "cherry pick" among the various components of a package. This is the case with respect to multi-platform packages that stations increasingly are offering to advertisers, which may consist of spots on a station's primary channel, one or more multicast channels, and its Internet web site. During LUC windows, candidates may choose among the various parts of such packages and cannot be required to purchase spots on any particular platform.

However, stations may create separate internal documents that allocate the “true values” of each spot in a package (such that those with more value are accorded a higher rate), and these values (rather than the rates shown on the face of the contract) will establish the LUC if memorialized in writing at the time of the contract. As explained in more detail in Section 12 (“Political Advertising on Station Websites”) below, the LUC does not apply to Internet advertising. Thus, website advertising should be valued at the standard rate charged to commercial advertisers.

The FCC recognizes that there can be different classes of immediately ***preemptible spot time*** in determining the LUC, but only if these classes differ in matters other than price alone (such as varying levels of preemption protection). Under this interpretation, if a station has several differently-priced classes of preemptible spots with a definite order of preemptibility fully disclosed in advance to candidates, a candidate’s preemptible spot cannot be more costly than the least expensive preemptible spot in the same class of preemptibility which clears for broadcast, as determined in the station’s usual manner (e.g., weekly or monthly). Note that:

- Separate classes of immediately preemptible spots must reflect the station’s current treatment of commercial advertisers, and the different classes must be clearly defined;
- When offering fixed or other non-preemptible time, the station must specifically disclose to candidates the availability of, and the station’s best estimate of the effects of purchasing, a lower cost preemptible class. Failure to clearly provide such information has led to numerous FCC complaints and a number of lawsuits by candidates;
- A candidate’s preemptible spot may be preempted by a spot in a class with higher preemption protection (indeed, it should receive no extra insulation from preemption merely because it is a political ad);
- A make-good spot for a preempted candidate spot should be negotiated and broadcast before election day, if possible, or a rebate must be offered (assuming make-good privileges attach to the preemptible class the candidate purchased); and
- If another advertiser’s spot clears for broadcast at a lower price than that paid by a candidate for the same class of preemptible time, the candidate will be entitled to a rebate for the difference.

LUC determinations involving preemptible time are often very fact specific and complex. We would be happy to assist you as questions arise in this area.

The value of **bonus spots** provided to commercial advertisers must be taken into account in calculating the lowest unit charge. For contracts with bonus spots, this is true regardless of whether the spot that aired during the window was “paid for” or bonused.

- The value of bonus spots is not zero. Rather, the station should use its reasonable, good faith discretion to allocate a portion of the contract price to the bonused ads. That value must be taken into account when determining the value of each spot that is part of that contract. For example, if the station charges \$100 for 10 preemptible spots, and provides 2 spots as a bonus, for purposes of the LUC it has charged \$100 for 12 spots. This has the effect of increasing the “price” of a bonus spot from zero to its fair market value, and of decreasing the contract “price” allocated to the “paid for” spots. The allocated value of a spot that airs during the window (whether originally “paid for” or bonused) must be used to calculate the LUC.
- If all spots in the contract are of the same class and time period, the value assigned to that spot would be determined by dividing the total value of the contract by the total number of spots in the contract (including the bonus spots). If the package contained more than one class of time or time period, the station could make a good faith allocation of the package price among the spots (bonus and paid). The value assigned to the spot that clears during the window would be used for the purpose of determining the LUC for that class of spot. It would not affect the LUC for other classes of spots (such as non-preemptible).
- The station must establish the allocated values for all spots **at the time the contract is entered**. The total of the allocated values must equal the contract price. Once the allocation is set, it cannot be changed. We advise stations to allocate values via a written memo that is signed by a representative of the station and to place the memo in a station (but not public) file for future reference. If challenged, the station may not be able to justify its allocations unless it has a contemporaneous memo documenting the allocations.

The FCC has concluded that **public service announcements (PSA)** that are sponsored by commercial advertisers are “spots” for purposes of LUC calculations. The entire PSA must be taken into account, even if the commercial advertiser appears during only part of the PSA (Thus, a 30-second PSA is considered a 30-second spot, even if the sponsor appears for only 5 seconds). Further, the FCC has concluded that PSAs provided to commercial advertisers in connection with a paid schedule of time are considered the equivalent of bonus spots for purposes of LUC calculations.

Special considerations apply to **news adjacencies**. Stations are permitted, but not required, to create a separate class of time for news adjacencies. However, if a station offers a news adjacency class of time but does not provide candidates with access to the adjacent news program (as permitted under the reasonable access standards), then the LUC for that class of time can be no higher than that for the news program. On the other

hand, if advertising during news adjacencies is sold as part of a broader class of time, stations may charge candidates the LUC that applies to that class.

- **When the LUC Applies:**

LUC requirements are applicable during the **45 days preceding a primary** or primary run-off election (including a caucus election with voting by the public) and during the **60 days preceding a general or special election**.

During these periods, LUC requirements apply to political campaign “uses” by “legally qualified candidates” for public election to all political offices – federal, state, and local. As discussed below, they do not apply to spots purchased by organizations other than the candidate’s designated or authorized campaign committee.

- **When the LUC Does Not Apply:**

“Comparable use” rates apply to candidates for election to public office during campaign periods outside the 45- and 60-day windows in which the LUC applies. Comparable use rates are those used for other advertisers; in other words, outside the LUC windows, candidates may be charged the same rate as a similarly-situated commercial advertiser would be charged for buying the spot, but should not be charged more.

- **Non-Candidates and the LUC:**

Only ads sponsored by a candidate or his or her “authorized committee” are entitled to the LUC. An ad sponsored by an independent committee, even if it supports a candidate with material that includes the picture or voice of the candidate, generally is not entitled to the station’s LUC. An ad sponsored by a candidate’s political party may be entitled to the LUC, but only if the party is an authorized committee of the candidate. It may be necessary to make a special inquiry about party spots to ascertain whether they were appropriately authorized by the candidate. If you have questions concerning LUC eligibility, we suggest that you contact counsel.

- **BCRA Requirements to Qualify for the LUC:**

See Section 9 (“Sponsorship Identification/Stand By Your Ad”) below for a discussion of the detailed certification and “Stand By Your Ad” statements required under BCRA in order for federal candidates to be entitled to the LUC.

7. Political Disclosure Statements

The FCC has adopted specific rules concerning the information that stations must make available to persons seeking to purchase advertising on behalf of political candidates. This information usually takes the form of a station “Political Disclosure Statement.” In order to

ensure that a disclosure statement reflects a station's current sales procedures, it is very important for each station to review and update its statement every election season. The rules require that stations provide the following information, at a minimum:

- **Classes of Time:** A description and definition of each class of time available to commercial advertisers. This information must be sufficiently complete to allow candidates to identify and understand what specific attributes differentiate each class;
- **Lowest Unit Charge:** 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;
- **Method for Selling Preemptible Time:** If applicable, a description of the station's method of selling preemptible time based on 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;
- **Likelihood of Preemption:** An approximation of the likelihood of preemption for each class of preemptible time (so that candidates can make knowledgeable choices); and
- **Station Sales Practices:** 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 on this basis if commercial advertisers can do so.

The Commission does not require that the information be provided to candidates in writing, but we strongly advise stations to prepare written disclosure statements to avoid disputes as to what information has been provided to candidates. Attached as Appendix B is a model checklist that may be helpful in assuring that your Political Disclosure Statement contains the requisite information.

8. Censoring the Content of Political Ads

Stations generally are not allowed to censor the text of an advertisement that qualifies as a candidate "use," even though it may contain statements that would be offensive or libelous in another context. The FCC has implicitly recognized that broadcasters may censor a "use" that presents a clear and present danger of incitement to an imminent act of violence, and it has concluded that broadcasters may also review candidate "use" material to prevent violation of federal law prohibiting the broadcasting of obscene and indecent material.

A station may produce and utilize content neutral disclaimers (*e.g.*, "the following is a paid political announcement") to precede political spots, but the candidate may not be charged for that time and, if such disclaimers are used, they must be applied consistently to all candidate

spots for the same race. Graphic advertising material that could be shocking to children may not be limited by the station to late night time periods, but may be the subject of a neutral disclaimer or advisory warning (e.g., “the following announcement may not be suitable for children”).

Licenses are immune from civil liability for the content of announcements that constitute candidate “uses.” Stations may routinely check political ads before broadcast to see if they involve a candidate “use,” have the requisite sponsor identification, and meet the applicable time limitation. However, stations cannot refuse a candidate’s advertisement based on content and are not permitted to edit content or require candidates to sign indemnification agreements.

9. Sponsorship Identification/Stand By Your Ad

Stations have a responsibility to ensure that all political ads and programs comply with FCC rules on political sponsorship identification. Stations may also take steps to ensure that federal candidate ads comply with certain of the “Stand By Your Ad” requirements imposed by BCRA in order to be eligible to receive the lowest unit charge, but otherwise are not expected to enforce BCRA requirements.

- **FCC Sponsorship ID Regulations:**

Pursuant to the Commission’s rules, a sponsorship ID must reflect the true identity of the persons or groups who pay for political messages. If the station airs political broadcasts that are provided by third parties or broadcasts involving the discussion of controversial issues of public importance, the station must identify who supplied those materials. In the case of television stations, the sponsorship ID for political candidate spots must be visual and must comply with the following minimum criteria:

- The letters identifying the sponsor must be equal to or greater than four (4) percent of the vertical picture height; and
- The ID must air for not less than four (4) seconds.

In the case of non-use spots, the sponsorship ID rule is applied as it would be for other commercials – *i.e.*, the spot should include a statement that it has been paid for or sponsored, and by whom. Heralding a change from recent election season limitations, the Supreme Court in *Citizens United v. Federal Election Commission* (January 2010) lifted the prohibition on corporations (and by implication unions) directly sponsoring a political advertisement that takes an express position on an issue or candidate. Those sponsoring entities, however, are subject to the same sponsorship ID requirements as other commercial and political organizations.

The station, rather than the candidate organization, is held responsible for compliance with the FCC's sponsorship ID rules and, as an exception to the no censorship rule, a station has the duty to take steps to correct such announcements if the candidate fails to do so. If a station receives a political announcement with an improper sponsorship ID, the station is allowed to air it once with the incorrect identification, but thereafter the station must make sure that a correct ID is used. (This is the only instance in which a station is allowed to alter a political "use" spot.)

In the case of non-candidate spots (or programs) that discuss controversial issues of public importance or a "political matter of national importance" (also called "Issue" advertisements) certain other information identifying the leadership of the groups that provided the on-air material must also be made available in the station's public inspection file. See Section 11 ("Political Data to be Kept in the Station's Public Inspection File") below for further discussion.

- **BCRA "Stand By Your Ad" Requirements:**

BCRA imposes sponsorship identification rules on federal candidate-sponsored ads that are distinct from the FCC's sponsorship ID rules. At this point, stations are not required to ensure candidate compliance with the rules, but should be familiar with them.

BCRA requires that a television ad for a federal candidate include either:

- An unobscured, full-screen view of the candidate, who must identify himself or herself, state the office he or she is seeking, and that he or she approves the ad; or
- A picture of the candidate that fills at least 80 percent of the screen accompanied by a candidate voice-over identifying the candidate and making this statement.

Radio ads must include an audio statement by the candidate identifying himself/herself and the office sought, indicating that the candidate has approved the broadcast, and stating that the candidate and/or the candidate's authorized committee paid for the broadcast.

Some states have adopted similar requirements. Based on our discussions with FCC staff (and in contrast to the FCC's sponsorship ID rules), it appears that stations will not be held responsible for ensuring that candidates comply with these specific requirements. Stations may not refuse to air candidate ads based on problems with the "Stand By Your Ad" requirements.

- **Lowest Unit Charge Certification and Candidate Approval Statements:**

Under BCRA, in order to be entitled to the LUC, a federal candidate (or the candidate's authorized committee) must certify to the station in writing, at the time of purchase, either:

- That the material to be aired will not make any direct reference to another candidate for the same office; or
- That if the material will contain a direct reference, the spots will include a statement to the effect that the candidate has approved the broadcast. For radio ads, the specific requirement is that there be a personal audio statement by the candidate that identifies him or her and the office he or she is seeking, and indicates that he or she has approved the broadcast. For television, there must be:
 - A clearly identifiable photo or other image of the candidate; and
 - A clearly readable printed statement, identifying the candidate and stating that he or she has approved the broadcast and that his or her authorized committee paid for it.

The photo and the printed message must appear simultaneously **at the end** of the TV spot for no less than four (4) seconds—requirements that do not apply to the general BCRA “Stand By Your Ad” requirement noted above. These certification and approved statement requirements apply only to federal candidates; state and local candidates are not required to certify or include such statements in order to obtain the LUC.

- **Ensuring Station Compliance With BCRA:**

We advise stations to obtain the required certification at the time the contract is entered or contemporaneously with the airing of the spot and to place certifications in their political files. Attached as Appendix C is a model certification form for this purpose. We also suggest that stations review political ads before airing to determine whether the ad refers directly to an opponent, and if so, whether it includes the required candidate approval statement. If the ad requires but does not contain an appropriate candidate approval statement, the station should inform the candidate and request that the ad be revised to conform with BCRA's requirements before airing. We believe that, in most cases, candidates will make such changes willingly because of their desire to receive the LUC. In the event that you receive an ad that does not meet these requirements, we suggest that you contact counsel.

- **The LUC and Non-Compliant Candidates:**

The FCC has stated informally with respect to the candidate approval and certification requirements that, although candidates who do not comply are not **entitled to** the LUC, stations may use their discretion to offer noncompliant candidates LUC rates. The FCC further has stated, however, that if a station offers one noncompliant candidate the LUC, it must do the same for all other candidates that fail to comply with the requirement.

It should be noted that there is some risk that providing the LUC for ads that are not so qualified could be determined to amount to an illegal campaign contribution under the rules and regulations of the Federal Election Commission, and that the FCC's views concerning this matter are not binding on the FEC.

On each of the two occasions the FEC has addressed the question, it has split 3-to-3 on whether the provision of the LUC to a federal candidate who has not satisfied the approval and certification requirements will be deemed to constitute an illegal campaign contribution. Although we think it is unlikely that a majority of the FEC would rule the provision of the LUC illegal in such circumstances, the issue is not yet free from doubt, and you should consult counsel if a question arises concerning compliance with “Stand By Your Ad” requirements and eligibility for the LUC.

If a candidate refuses to make the certification, or to fix a non-compliant spot, the station can and should still air the spot, but can withhold the LUC. Note also that if a federal candidate violates the certification or approval statement requirement, he or she forfeits entitlement to the LUC not only for the spot in question, but also for any other spots broadcast during the 45-day or 60-day pre-election window.

10. Issues Relating to “Non-Candidate” Advertising

Many of the FCC rules discussed in this Primer do not apply in the case of a “non-use” or “non-candidate” political spot or program. The most common types of non-candidate advertisements are those sponsored by a political action committee (PAC), a political party, a corporation, or an advocacy group, which often do not include a candidate appearance. Such advertisements are often referred to as “issue” advertisements when they do not explicitly urge viewers/listeners to vote for or against a specific candidate (although the implication often tends to be obvious from the advertisement). However, in a literal sense “issue advertisements” deal with controversial issues of public importance (*e.g.*, ballot propositions, referenda, constitutional amendments or other controversial issues such as environmental concerns or healthcare) and are not designed to address the merits of candidates.

The anti-censorship rule and immunity from defamation actions do not extend to “non-uses” (*e.g.*, advertisements sponsored by independent PACs, political parties, or advocacy groups and not involving a candidate’s appearance). Accordingly, before airing political advertisements that are “non-uses,” station management should be sure that it is comfortable with the content

(and it can demand that changes be made to the content as a condition to airing the spot), since the station is not immune from defamation suits or copyright infringement claims arising out of the content of such advertisements.

- **When Attacked Candidates Protest to the Station:**

Candidates attacked in “non-use” advertisements often will protest to stations airing the ads, arguing that: (i) the station has the discretion to reject or discontinue the advertisement and/or (ii) the station is not immune from defamation suits based on the content of the advertisement. Although both of these assertions are correct, the content of such an advertisement—albeit replete with nasty political hardball—generally does not rise to the level of defamation. Often the alleged defamatory content proves to be essentially a matter of interpretation, rather than an outright falsehood. Moreover, although the target of an attack ad often will argue that the licensee is responsible for the truth or falsity of all material aired on the station—which, again, is technically true—the FCC has been disinclined to saddle stations with the burden of examining the merits of every political claim. Should an attacked candidate contact your station demanding that you cease and desist airing a negative non-use spot, we recommend that you ask the sponsor of the spot for documentation of its claims. If such documentation is not forthcoming, or if you find it unsatisfactory, you are free to decline to run the ad. We would be happy to assist you in making this determination.

- **Record Keeping and Non-Candidate Ads:**

Stations must keep certain records about non-candidate ads that involve a discussion of a “controversial issue of public importance” or a “national legislative issue of public importance.” Those requirements are discussed in Section 11 (“Non-Use Spots –Additional Public File Requirements”), below.

11. Political Data to be Kept in the Station’s Public Inspection File

Every broadcast station must maintain and permit public inspection of a political file that contains specific information concerning all requests for broadcast time made by or on behalf of candidates for public office and, thanks to BCRA, certain issue ads. Television stations must maintain this information in their online public files. The information that must be placed in the public file for each type of political spot or candidate use is discussed below. Many broadcasters use the National Association of Broadcasters (NAB) Form PB-18 to collect the information required by the FCC and FEC. Advertisers are sometimes reluctant to provide all of the required information; however, broadcasters must ensure that the station’s public file records are complete. Attached at **Appendix D** is a quick-reference Political File Checklist that lists the required information.

- **Candidate Requests:**

Where a final order for broadcast time is made by or on behalf of a candidate, the following information concerning the order should be placed in the station's public inspection file:

- The name of the candidate;
- The election (*i.e.*, the office sought);
- The name of the candidate's authorized committee, and the name, address, and phone number of a contact person for the candidate or committee;
- The name of the committee's treasurer;
- A schedule of the time purchased;
- The length of the spots and when they actually aired;
- The rates charged; and
- The class(es) of time purchased.

Finally, when free time is provided for use by or on behalf of candidates, a record of the free time provided should be placed in the political file.

- **BCRA-Required Information in Candidate Advertising Contracts / Invoices:**

In the past, this requirement usually could be met by placing the advertising contract relating to a request for time in the file and subsequently replacing that contract with the invoice, when issued. Now, in light of BCRA, the advertising contract or the invoice may need to be supplemented with written documentation that includes the candidate's name, the election, the contact information for the authorized committee, and the name of the committee's treasurer.

- **Non-Advertising Appearances by a Candidate:**

In the case of non-advertising appearances (*e.g.*, a candidate's appearance on a program not covered by one of the news exceptions), a brief statement including the candidate's name, the election, the candidate's authorized committee, and the time and duration of the appearance should be placed in the file.

- **Non-Candidate Spots – Additional Public File Requirements:**

Except as noted below, data about purchases of non-candidate spots does not have to be placed in the station's public file (as it does in the case of candidate spots), and

the station is not under any obligation to disclose to third parties any information about the contracts for these spots (the ad rate, when they will run, etc.). Note, however, the following FCC and BCRA requirements:

- **FCC Requirements:**

- If the spot includes the favorable appearance of a candidate—and is therefore a “use”—information about the order should be placed in the public file to protect the equal opportunities rights of any competing candidates.
- When a station runs a spot (or a program) involving the discussion of a “controversial issue of public importance,” or political matter, and the sponsor is a corporation, committee, or group, the station must obtain and place in the public file a list of the chief executive officers, or members of the executive committee or the board of directors of the sponsor. (The FCC wants the public to be able to find out who is responsible for such spots.)

- **BCRA Requirements:**

- In addition, under BCRA, stations must collect and place in the public file certain information regarding final orders for time by anyone who wants to communicate a message relating to any “political matter of national importance,” including: (i) a candidate; (ii) a federal election; or (iii) any “national legislative issue of public importance.” The following information concerning the order must be placed in the political file:
 - The name of the candidate(s), if any, referred to in the spots;
 - The election(s), if any, referred to in the spots;
 - The issue(s), if any, referred to in the spots;
 - The name of the person purchasing the time;
 - The name, address, and phone number of a contact person;
 - A schedule of the time purchased;
 - The length of the spots and when they actually aired;
 - The rates charged;

- The class(es) of time purchased; and
 - If applicable, a list of the chief executive officers or members of the executive committee or the board of directors of the organization sponsoring the ad.
- BCRA does not define what constitutes a “political matter of national importance” or “national legislative issue of public importance.” The Supreme Court has given the FCC authority to define these terms, but the Commission has not yet done so. The FCC staff has advised us that until implementing regulations are adopted, broadcasters will be held to a standard of “good faith” compliance.
- **Timing and Retention:**

The requisite material must be placed in the public file immediately (absent unusual circumstances) and must be retained for two years. Compliance with these requirements is very important because opposing candidates must be able to review the political file on a current basis in order to exercise their rights to “equal opportunities.”

Radio stations may choose to require personal visits to inspect political files, but should be uniform in the treatment of such requests from opposing candidates.

Television stations must upload their political files to their FCC-hosted online public file. The same “immediacy” requirement that applied to paper political files also applies to online public files. The FCC requires that, in the event the Commission’s online public file becomes unavailable, stations must make any information in the political file available to members of the public. Accordingly, stations subject to the online public file requirement still should keep a local copy of their political file.

12. Political Advertising on Station Websites

- **FCC Regulations Do Not Apply:**

Internet advertising is not subject to FCC regulations or the political broadcasting provisions of the Communications Act. Therefore, concepts such as lowest unit charge, equal opportunities, and reasonable access are not applicable for Internet advertising.

- **FEC Regulations Do Apply:**

FEC rules, however, do apply to political advertising on the Internet:

- FEC regulations do not include any lowest unit charge requirement. To the contrary, the FEC requires that Internet advertising for candidates be sold at

standard rates. Discounts should not be given to candidates unless those discounts are made available to regular commercial advertisers on the same terms. Any favorable treatment for a political candidate could be construed as an in-kind campaign contribution.

- The FEC also requires sponsorship identification disclosures on certain Internet advertisements. A sponsorship identification disclosure, such as one of the three listed below, should appear clearly and conspicuously on any political advertisement on your website that relates to a federal candidate or election:
 - **Advertising paid for and authorized by “x” candidate:** “This communication has been paid for and authorized by *[name of candidate’s authorized political committee]*.”
 - **Advertising authorized, but not paid for by “x” candidate:** “This communication has been paid for by *[name of purchaser]* and authorized by *[name of candidate or candidate’s authorized committee]*.”
 - **Advertising not authorized by “x” candidate:** “This communication is not authorized by any candidate or candidate’s committee and has been paid for by *[full name of purchaser, with permanent street address, telephone number, or web address of purchaser]*.”

Many states have similar requirements for ads relating to state and local candidates or ballot propositions.

Due to the different regulatory requirements imposed on broadcast and Internet political advertisements, online advertising generally should not be bundled with broadcast advertising for sales to political candidates. In the event a political candidate wishes to buy broadcast advertising time as well as online advertising, the broadcast time should be priced in accordance with FCC requirements, including the lowest unit charge requirement during specified pre-election windows. The price paid for the online advertising should be separately stated and satisfy the pricing standards stated above. All online political advertising should be billed on separate invoices.

* * *

If you have any questions on political broadcasting issues, please contact the Wiley Rein attorney who regularly handles your station's matters or:

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Appendix A

Significant Political Broadcasting Statutes, FCC and FEC Rules

Relevant Excerpts from the Communications Act of 1934

Section 312	Administrative sanctions
Section 315	Candidates for public office
Section 317	Announcement of payment for broadcast

Relevant Excerpts from Federal Communications Commission Rules

Section 73.1212	Sponsorship identification; list retention; related requirements
Section 73.1940	Legally qualified candidates for public office
Section 73.1941	Equal opportunities
Section 73.1942	Candidate rates
Section 73.1943	Political file
Section 73.1944	Reasonable access

Relevant Excerpts from Federal Election Commission Rules

Section 100.26	Public Communication
Section 110.11	Communications; advertising; disclaimers

Relevant Excerpts from the Communications Act of 1934

Sec. 312. [47 U.S.C. § 312] Administrative sanctions

(a) Revocation of station license or construction permit

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.

(d) Burden of proof

In any case where a hearing is conducted pursuant to the provisions of this section, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Commission.

(f) “Willful” and “repeated” defined

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.

Sec. 315. [47 U.S.C. § 315] Candidates for public office

(a) Equal opportunities requirement; censorship prohibition; allowance of station use; news appearances exception; public interest; public issues discussion opportunities

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

(A) 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 conditions of access under this Act, unless such reference meets the requirements of subparagraph (C) or (D).

(B) Limitation 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 terms “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.

Sec. 317. [47 U.S.C. § 317] Announcement of payment for broadcast**(a) Disclosure of person furnishing**

(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.

(b) Disclosure to station of payments

In any case where a report has been made to a radio station, as required by section 508 of this Act, of circumstances which would have required an announcement under this section had the consideration been received by such radio station, an appropriate announcement shall be made by such radio station.

(c) Acquiring information from station employees

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

(d) Waiver of announcement

The Commission may waive the requirement of an announcement as provided in this section in any case or class of cases with respect to which it determines that the public interest, convenience, or necessity does not require the broadcasting of such announcement.

(e) Rules and regulations

The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.

Relevant Excerpts from Federal Communications Commission Rules**Sec. 73.1212 [47 C.F.R. § 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....[*Note: additional text omitted*]
 - (i) For 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.
- (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 under §73.3526. 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. Such lists shall be kept and made available for a period of two years.

Sec. 73.1940 [47 C.F.R. § 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.

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- (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.

Sec. 73.1941 [47 C.F.R. § 73.1941] Equal opportunities.

- (a) *General requirements.* Except as otherwise 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:

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- (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) - (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.

Sec. 73.1942 [47 C.F.R. § 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) Make 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, prospectively 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.

Sec. 73.1943 [47 C.F.R. § 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.
 - (d) *Location of the file.* A television station licensee or applicant must post all of the contents added to its political file after the effective date of this paragraph in the political file component of its public file on the Commission's Web site. A television station must retain in its political file maintained at the station, at the location specified in §§73.3526(b) or 73.3527(b), all material required to be included in the political file and added to the file prior to the effective date of this paragraph. The online political file must be updated in the same manner as paragraph (c) of this section.

Sec. 73.1944 [47 C.F.R. § 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.

Relevant Excerpts from Federal Election Commission Rules**Sec. 100.26 [11 C.F.R. § 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 Web site.

Sec. 110.11 [11 C.F.R. § 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.
- (e) *Exempt activities.* A public communication authorized by a candidate, authorized committee, or political party committee, that qualifies as an exempt activity under 11 CFR 100.140, 100.147, 100.148, or 100.149, must comply with the disclaimer requirements of paragraphs (a), (b), (c)(1), and (c)(2) of this section, unless excepted under paragraph (f)(1) of this section, but the disclaimer does not need to state whether the communication is authorized by a candidate, or any authorized committee or agent of any candidate.

(f) *Exceptions.*

(1) The requirements of paragraphs (a) through (e) of this section do not apply to the following:

(i) Bumper stickers, pins, buttons, pens, and similar small items upon which the disclaimer cannot be conveniently printed;

(ii) Skywriting, water towers, wearing apparel, or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable; or

(iii) Checks, receipts, and similar items of minimal value that are used for purely administrative purposes and do not contain a political message.

(2) For purposes of this section, whenever a separate segregated fund or its connected organization solicits contributions to the fund from those persons it may solicit under the applicable provisions of 11 CFR part 114, or makes a communication to those persons, such communication shall not be considered a type of public communication and need not contain the disclaimer required by paragraphs (a) through (c) of this section.

(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 purposes 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.

Appendix B

Political Disclosure Checklist

The FCC requires (§ 73.1942(b) of the rules) that the following information be disclosed to candidates and their representatives in regard to station political advertising policies.

1. A description of every available class of advertising time offered to commercial advertisers, with differences explained in plain English. These would include:
 - (a) Rates offered for various classes;
 - (b) Priorities against preemption; and
 - (c) Make-good privileges.
2. A statement of the lowest unit charge for each class of time offered, or station's best good-faith estimate of the LUC for each class.²
3. A description of the station's method of time sales, such as:
 - (a) Grid;
 - (b) Demand-driven;
 - (c) Current selling levels; or
 - (d) Fluctuating levels.
4. A statement for each class of preemptible time that indicates the probability of the advertisement being preempted.³
5. A description of sales practices that affect rates, such as:
 - (a) Audience delivery guarantee arrangements;
 - (b) Preemption priorities; or
 - (c) Other (*e.g.*, free production upon a specified minimum order)
6. The make-good policy prior to election.
7. An explanation of discount and value added privileges (including availability of custom packages, if offered to commercial advertisers).
8. Rotations available to commercial and political candidates.
9. A statement that the station offers to candidates all classes of time made available to commercial advertisers.

² Because this figure may change from week to week for particular classes of time, the written disclosure statement can state that updated lowest unit charge information will be provided on a current basis upon request.

³ Information concerning the probability of preemption can be delivered orally, but the written document should state that the station is prepared to supply this estimate upon request.

Appendix C
Lowest Unit Charge Certification Form

Pursuant to Section 305 of the Bipartisan Campaign Reform Act of 2002, I hereby certify as follows:

The announcements to be aired pursuant to this purchase of air time will not make direct reference to another candidate for the same office, unless such reference meets the requirements of Section 305(a) of the Act. Specifically:

(i) If this purchase is for radio time and there is a direct reference to an opposing candidate, the material to be broadcast will include a personal audio statement by the purchasing candidate that identifies him or her and the office he or she is seeking, and indicates that he or she has approved the broadcast.

(ii) If this purchase is for television time and there is a direct reference to an opposing candidate in any of the announcements aired pursuant to this purchase, the material to be broadcast will include a clearly identifiable photo or other image of the purchasing candidate and a clearly readable printed statement, identifying the candidate and stating that he or she has approved the broadcast and that his or her authorized committee paid for the broadcast. The photo and the printed statement will appear simultaneously at the end of the broadcast for a period of no less than 4 seconds.

I understand that the station is relying upon this certification in order to comply with my request for air time at the station's "lowest unit charge."

Signature

Date

Title

Purchasing Candidate/Authorized Committee

Federal Office Sought

Appendix D
Political File Checklist

CANDIDATE ADVERTISEMENTS

Candidate Order When a final order for broadcast time is made by or on behalf of a legally qualified candidate, the following information should be placed in the station's political inspection file:	√
NAB Form PB-18 Agreement Form for Political Candidate Advertisements <ul style="list-style-type: none"> • For FEDERAL Candidates: Pages 1-3 • For STATE/LOCAL Candidates: Pages 1, 2 	
Order Information: <ul style="list-style-type: none"> • Schedule purchased (Class, Rates, Length of Spots) • Information on when spots actually aired, make-goods, and rebates 	
If Candidates DO NOT complete NAB Form PB-18, then they must provide ALL of the following information in addition to the Order information listed above: <ul style="list-style-type: none"> • The name of the candidate; • The election (<i>i.e.</i>, the office sought); • The name of the candidate's authorized committee, and the name, address, and phone number of a contact person for the candidate or committee; • The name of the committee's treasurer; and • For FEDERAL Candidates: Certification whether the advertisement refers to an opposing candidate, and if it does that it includes the required disclosure 	
If a Candidate Order is Refused	√
Memo explaining why the request was refused (<i>e.g.</i> , request made day before election)	

ISSUE ADVERTISEMENTS

<p>NATIONAL ISSUE or FEDERAL ELECTION</p> <p>If the spot communicates a message relating to any “political matter of national importance,” including: (i) a candidate; (ii) a federal election; or (iii) any “national legislative issue of public importance,” the following information must be placed in the online political file:</p>	<p>√</p>
<p><u>NAB Form PB-18</u> Agreement Form for Non-Candidate/Issue Advertisements</p> <p>If the advertiser answers “Yes” on page 2 of the NAB form, then each box on page 2 must be completed and placed in the online political file.</p>	
<p><u>Order Information</u></p> <ul style="list-style-type: none"> • Schedule purchased (Class, Rates, Length of Spots) • Information on when spots actually aired, make-goods, and rebates 	
<p>If advertisers DO NOT complete the NAB Form PB-18, then they must provide ALL of the following information, in addition to the Order information listed above:</p> <ul style="list-style-type: none"> • The issue(s), if any, referred to in the spots • The name of the candidate(s), if any, referred to in the spots • The election(s), if any, referred to in the spots • The name of the person purchasing the time • The name, address, and phone number of a contact person • A list of the chief executive officers or members of the executive committee or the board of directors of the organization sponsoring the ad 	

ISSUE ADVERTISEMENTS, CONT'D

<p>OTHER ISSUE</p> <p>“Controversial issue of public importance” OR a “Political matter” (usually a state or local issue)</p>	<p>v</p>
<p>NAB Form PB-18 Agreement Form for Non-Candidate/Issue Advertisements</p> <ul style="list-style-type: none"> • If the advertiser answers “No” on page 2 of the NAB form, then only page 3 must be completed and placed in the online political file <p>Information about the order (schedule, class, rates) is <u>not</u> required to be placed in the political file UNLESS the spot includes a candidate “USE” (the favorable appearance of a candidate). See page 6 for what must be included when there is a “use.”</p>	
<p>If advertisers DO NOT complete the NAB Form PB-18, then they must provide ALL of the following information:</p> <ul style="list-style-type: none"> • The name and address of the group paying for the advertisement; and • A list of the chief executive officers or members of the executive committee or the board of directors of the organization sponsoring the ad 	

Candidate “Use” in Issue Advertisements or Other Programming

If an issue advertisement includes the <i>favorable</i> appearance of a candidate – and is therefore a “use” – then the following information must be placed in the online political file:	√
The name of the candidate	
The election (<i>i.e.</i> , the office sought)	
The sponsor of the ad	
A schedule of the time purchased	
The length of the spots and when they actually aired	
The class(es) of time purchased	

If a candidate appears in a program that is <u>not</u> an advertisement and the program is not covered by one of the news exceptions, such as a Saturday Night Live, this is still a candidate “use,” and the station must place a memo with the following information in the online political file:	√
The name of the candidate	
The election (<i>i.e.</i> , the office sought)	
The name of the candidate’s authorized committee	
The time and duration of the appearance	

If free time is provided for use by or on behalf of a candidate, the station must place a memo with the following information in the online political file:	√
The name of the candidate	
The election (<i>i.e.</i> , the office sought)	
The name of the candidate’s authorized committee	
The time and duration of the free time provided	

Online Political File Guidance for Television Stations

How to Access the Online Political File

The online public file is accessed at <https://stationaccess.fcc.gov/> using the station's facility ID number and passcode.

To locate the political file folders, once you have logged into the online public file click on the "Political Files" link in the menu on the left side. Click on the correct year and then choose the correct folder for the political material:

- (1) Federal;
- (2) State;
- (3) Local;
- (3) Non-Candidate Issue Ads; or
- (4) Terms and Disclosures

How to Organize the Online Political File

It is important to keep your online political file well organized.

Use Folders: Use the main folders (Federal, State, Local, and Non-Candidate Issue Ads) and create sub-folders to store files by Candidate name, PAC, or Issue (e.g., Local/Sheriff/Candidate A, State/Senate Primary/Candidate B, Federal/House/Candidate C, Issue Ads/NRCC/Healthcare, etc.).

Naming documents: Name uploaded documents using a date and other identifying information (e.g., Purdue082614, NAB FormPurdue082614). If the order is revised, leave the original order in the folder and upload the revised order with a new name (e.g., Purdue082614v2 or Purdue082614Rev1).

Contents of the Online Political File

DO NOT place in the online political file:

- Material in the *paper* political file prior to July 1, 2014 (only new material – as of July 1, 2014 – goes in the online political file).
- Requests for time that do not result in a final order (except where a request for a candidate spot is refused – see below).
- Checks or credit card statements – proof of payment is not required (e.g., do not include bank account information, social security numbers, etc.).
- Memos containing internal valuations of packages.

DO NOT use the online political file to store all political advertising information. Include ONLY the information that the FCC requires.

DO place the following information in the online political file:

The charts above can be used as a checklist for station representatives handling political advertising requests. Different material must be included in the political file depending on who is purchasing the ad and whether it features a candidate “use.”

Timing

- Once an order is placed or revised, the required information should be uploaded to the public file within 24 hours.⁴
- NAB Form (or letter with all required information) must be uploaded at the same time as the order.
 - **Important:** The NAB Form provided by the candidate or issue advertiser must be filled out **completely**. If they choose not to use the NAB Form, then they must provide all the information listed in the charts below. If any information is missing, the Station should fill it in before uploading it to the public file.

⁴ The FCC’s rules require that the material be placed in the political file immediately. Public interest groups have raised concerns about stations that take longer than 1 day to place information in the political files. Make sure more than one person knows how to upload information to the files in case the person primarily responsible is out of the office.