

*NOTE: The webinar and these slides are intended as a general guide to identifying some of the legal and regulatory questions that may face your stations in connection with political advertising. This information should not be considered legal advice, as we do not have the specific facts of your situation which could affect how rules and policies are interpreted. For legal advice, you should always talk to your own counsel.*

# FCC Political Broadcasting Requirements – Getting Ready for 2026

*David Oxenford*  
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# Political Broadcasting Issues We'll Cover Today

- Quick Refresher on Political Basics
  - Legally qualified candidates
  - Reasonable access
  - Equal Opportunities
  - No censorship
  - Lowest Unit Rates – how much you charge
    - Basics
    - Classes of Time
    - Packages – including with digital
    - Multi-station sales
  - Sponsorship Identification
  - Paperwork - Disclosure Statements and the Public File

# First, What's New?

- Generally, the rules have not changed in the last two years
- The FCC has changed
  - Bobby Baker, the head of the FCC's Office of Political Broadcasting for about 30 years, retired early this year along with one of his deputy
  - FCC Chairman is looking at many old broadcast policies through a different lens – so there is some uncertainty on the interpretation of some political policies – though hard to undo decades of precedent without formal proceedings which have not been initiated
- Political environment is much more adversarial – more challenges to truth of political ads – and more threats of litigation
- Digital and AI add new wrinkles to political ads – and states are getting more involved in regulation as federal government intervention lags

# Legally Qualified Candidate

- To be a *legally qualified candidate*, a person:
  - Must have publicly announced that he or she is a candidate for elective office; and
  - Must meet all of the qualifications prescribed by the local laws for the office being sought - and filed whatever papers need to be filed
- Write in candidate – must make a “substantial showing” of their candidacy
- Important as rules on access, equal time, no censorship, and lowest unit rates all triggered by having legally qualified candidate

# Reasonable Access

- Stations must provide Reasonable Access to Federal Candidates
- Applies to all classes and dayparts of commercial time (limited news exception)
- Applies to program length time, too - including odd lengths
- Applies to candidates running in districts within the station's service area
- *Bottom line – commercial stations cannot tell federal candidates that they will accept no political advertising and cannot set limits in disclosure statements on amount of time to be sold to federal candidates*
- Reasonable access does not apply to state candidates – so you can exclude them, limit the number of spots they buy, or restrict their ads to dayparts with more inventory
  - But can't force them to buy most expensive classes of spots in a daypart
  - Must treat all candidates for same race in the same way – once you sell to one state or local candidate in a race, must be prepared to sell to all candidates in that same race in the same dayparts

# Equal Opportunities

- Whenever a legally qualified candidate “uses” a station, the use triggers “equal opportunities” rights for all other candidates for the same elective office – sometimes called “equal time”
  - Each opposing candidate must be permitted an equal opportunity to appear on the station at the same cost (if any) in a time period of comparable audience size
  - Equal opportunities are not limited to the pre-election lowest unit rate Political Window; they apply whenever a legally qualified candidate “uses” a station
  - Watch for candidates in non-exempt free programs – like PSAs – the candidate’s appearance could trigger obligation to give free time to opponents – also concerns about on-air employees who become candidates
- *Bottom line – must treat all candidates for the same office in the same way*
- In states with lots of political activity, the combination of equal opportunities and reasonable access requires careful inventory management for the last weeks before an election

# “Use”

- Equal time (and reasonable access, no censorship and LUC) applies to “uses” – with equal time, the definition of a “use” is important because of concerns about having to give free time to candidates if their opponent has had any free appearances on the air
- A “Use” occurs when there is a ***non-exempt, positive*** broadcast of a candidate’s identified or identifiable ***voice or image***
- Exemptions are important, as no equal time triggered by candidate appearances in exempt programs, as long as “bona fide” – area of expressed concern by new FCC Chair:
  - *Bona fide* newscasts
  - *Bona fide* news interviews – defined expansively by the FCC - includes almost all interview programs under control of the station
  - *Bona fide* news documentaries, where the candidate’s appearance is incidental to the subject
  - On-the-spot coverage of *bona fide* news events

# Content of Political Ads

- A station may **NOT** edit or censor the content of a candidate's "use" of the station
- A station may not "channel" a candidate's "use" to a particular time period because the station believes the content may disturb young listeners – can lead to stations having to air controversial content
- Because stations may not edit out defamatory material from a political ad containing a "use," courts have held stations are immune from a libel or other legal liability based on a candidate "use"
- *Bottom line – if the ad comes from a candidate, you can't make decisions about airing it based on its content – but the spot must be a "use" by a candidate (recognizable voice or picture of candidate in candidate-sponsored ad)*
- You **can be responsible for ads from non-candidate groups** – so reach out to your lawyer immediately when you get demand letter to remove third-party political attack ad – more and more lawsuits or threats of lawsuits in recent years over non-candidate ads

# Lowest Unit Charge

- During the pre-election LUC periods (45 days before a primary and 60 days before a general election), charges to candidates for a “use” must be the lowest unit charge for spots sold by the station for the ***same class of time in*** the same time period:
  - Applies to all candidates for public office – federal, state and local
  - Candidates get the benefit of all volume discounts, without having to buy in volume
  - Stations need to determine lowest rate for any class of time running during the window
- “LUC” and “LUR” used interchangeably
- Outside window period, candidates get “comparable rates” to commercial advertisers - can’t charge political candidates artificially high price for spots
- Non-candidate spots do not get LUC – you can charge whatever the market will bear
- Limited exception for parties who are “authorized” by the candidate – may be entitled to LUR – Supreme Court case pending where that “limited” exception may be considerably broadened

# What is a “Class” of Time

A station will have several LURs – one for each class of time and each daypart that is offered to commercial buyers

- Different dayparts will have different LUR
- Within each daypart, there may be spots running from different classes of time, each with different LUR
- Classes include rate categories such as fixed position, non-preemptible, preemptible with notice, preemptible without notice
- Other spots may sometimes fall within a daypart but have their own LUR, e.g., broad rotations, run-of-schedule, and the like
- Classes must be:
  - Clearly defined;
  - Distinguished based on real differences, not simply cost;
  - Disclosed to advertisers; and
  - Made available to candidates who buy time

# Class of Time - Preemptible Time

- Price alone is not sufficient to distinguish classes of time
- There can be different classes when a higher price buys a real benefit, such as more favorable notice or make-good privileges
- These must be real distinctions, offered to commercial advertisers – with limited exception of special candidate-only discounted fixed-position spots, cannot just make up classes for candidate ad sales
- Levels of preemptibility: be careful that all levels are strictly observed or FCC could consider station to have a single level of preemptible time where candidate gets rebate to the lowest-priced spot that clears

# Easy Example – Volume Discounts

- If a commercial advertiser buys spots at \$10 each, but if they spend \$100, they get 12 spots – candidate can buy one spot at \$8.33 even though they have not bought in required volume for the discount
- Same rule applies even if the contract says 10 spots for \$100 plus 2 “no charge” spots – advertiser got 12 spots for \$100, so candidate can buy at \$8.33 rate
- Bonus spots on a sale can either be a volume discount (if the bonus spots are of the same class) or a package (if the bonus spots are of a different class) – and must be treated properly

# Packages

You need to make it easy for the political buyer

- Candidates can't be forced to buy packages on a single station to get the rates in those packages
- Instead, stations must assign rates to all classes of time within a package, and include those rates in determining LUR for each class of time – this is supposed to be done when the order is written
- Allocate the package price to the various classes of time within a package, then compare the allocated price to other spots of the same class sold to other advertisers in other contracts, and see if the allocated price affects your lowest unit rate
- Can also allocate differing values to spots sold in a long-term contract – can be beneficial to station
- Can also be used when spot sale contains both over the air and digital ads – need to recognize that digital has value, but there are no LUC issues for digital (note – some states have laws saying that there are)

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# Easy Example – Package Allocation

- If a commercial advertiser buys prime time spots at \$10 each, but if they spend \$100, they get 2 bonus spots to run in overnight hours
- You need to allocate the \$100 purchase price to the spots of the different classes (prime time and overnight)
- To reflect rates in more valuable time period, allocate \$98 of the \$100 to the prime-time spots, meaning they have a unit value of \$9.80 – compare them to all other prime time sales to see if it affects your prime time LUR
- Remaining \$2 allocated to the 2 overnight spots – unit rate is \$1 – compare that to all other overnight spots to see if it affects your overnight LUR

# Packages

Allocations of spots within a commercial package to evaluate it for LUR purposes are done in internal station records – no need to give the allocation of the package price to commercial advertisers or to political advertisers, and no need to put the allocations in public file

- Invoice to advertiser can show zero-dollar spots for “bonus” spots, yet you can “allocate” a value to those no-charge spots for political purposes – just make sure that the allocation adds up to the package price
- Place contemporaneous dated and signed memo in station *internal* file with contract showing allocations made within package – ***memo need not be in public file***
- Allocation is supposed to be done when you write the package – so you should be doing that now for spots that will run in early primary windows

# Network and Combo Buys

- Buys of multiple stations in a cluster – or from a network where multiple stations are part of the buy – do not affect LUC on any individual station
- For combination sales, if requested, cluster should make combo rate available to candidates at lowest divisible whole number of spots – availability should be referenced in disclosure statement and made available on request
- For network buy, the network (“wired” or “unwired”) theoretically has its own LUC that candidates can request
- Stations have disclosure and potential equal opportunity obligations even if network spots don’t affect LUC – candidates can choose to assert equal opportunities on network (at the network rate) or on an individual station (at the station’s own LUC)

# Federal Candidate Certifications

- Under the Bipartisan Campaign Reform Act, ***Federal candidates*** must supply stations with a special certificate, certified by the candidate or his authorized committee, in order to qualify for lowest unit charge privileges – certifies that, if they mention an opponent in an ad, they will have the “I’m X and I approved this message” language in the spot
- Candidates failing to comply are not entitled to lowest unit rates for the remainder of the election period
- BCRA puts similar requirements on candidates that they, in their own voice, state their approval of all ads – not just those referencing the opposing candidate - so to avoid FEC issues, virtually all ads from Federal candidates will have the required information

# Sponsorship ID

- For federal candidate ad:
  - For radio: Statement in candidate's voice identifying the candidate *and the office the candidate is seeking*, and stating that the candidate approved the message, and that campaign paid for the ad
  - For TV: Statement in candidate's voice that the candidate approved the message
    - Accompanied by a full-screen image of candidate for at least 4 seconds
    - Plus, written statement for at least 4 seconds that the candidate approved the message and that their committee paid for the ad

# More Sponsorship ID

- For all candidates including state and local candidate ads – statement that the announcement was “sponsored by” or “paid for by” a candidate or campaign organization
  - If you receive a spot that does not contain this mandatory ID, you can edit it to insert the material, even if that overrides content
- For third-party ads, make sure full legal name of sponsoring organization is on the ad after the “paid for” or “sponsored by” language
- May be state laws too adding identifications – especially for non-candidate groups – some states require the identification of large donors, sometimes street address of buyer, sometimes name of treasurer of a campaign – and some (though not all) states appear to hold stations responsible for the proper tags

# Disclosure Statements

- Stations must disclose to candidates all classes of time; all discount rates and privileges given to commercial advertisers that affect the value of spots; and station policies that will affect the candidate's buying decisions
- Must be provided to all candidates when they want to buy time
- Every station should have a standard disclosure statement that is given whenever there is an inquiry for political time – technically, it does not need to be in writing, but since it needs to be consistent and so there are no questions about what was disclosed, you should have it in writing
- Not required to be in the public file (the FCC has only suggested, but does not require that stations put a copy there and many don't)

# Recordkeeping

- Online Political File is mandatory, and the FCC is reviewing its contents
- Maintain documents in file for two years from date of document, not from date of election
- Information about **orders** for any candidate or any federal issue must be uploaded “immediately” (**same day or next business day**) – major focus of FCC attention in the past few years – hundreds of consent decrees with stations that did not meet the one-day requirement
- BCRA requires the same information in the public file for issue ads as for candidate ads if the message relates to a political matter of national importance, including:
  - A legally qualified candidate;
  - Any election to federal office; or
  - A national legislative issue.
  - Any political matter of national importance that is regularly debated even if no specific legislation is pending

# Contents of Political File

For all candidates (federal, state and local) and federal issue ads:

- Whether the request to purchase time was accepted or rejected
- Rate charged
- Date and time for spots to be aired (with exact times added to file after the spots air)
- Class of time purchased
- For federal (non-candidate) issue ads, name of candidate to which the spot refers, the office sought, or any federal issue to which the spot refers
  - FCC Order in October 2019 states that ***all Federal candidates and issues*** must be identified for each spot
- In the case of a candidate buy, name of the candidate and his or her authorized committee and its Treasurer

# Political File Contents, cont.

For all issue ads – state, local, and federal:

- The name of the person or entity purchasing the time – full name, no acronyms
- The name, address and phone number of a contact person, and
- A list of the chief executive officers, members of the executive committee or of the governing board of such entity.
- FCC Order in October 2019 requires station to inquire once of sponsors or ad agency if sponsor gives just one name as their governing board or executive officers (FCC expectation is that there will be more than one officer or director)
  - Document the inquiry in case you are ever asked – not in the public file
- Also, upcoming obligation that you confirm that buyer of an issue ad is not a representative of a foreign government.

# Disclosures for Issue Ads

- Requires you to review all issue ads (ads not by a candidate or candidate's committee)
- Determine and disclose *all* the Federal candidates and *all* the Federal issues discussed in any ad – potentially multiple disclosures for each ad
- Federal issues include:
  - Federal elections
  - Matters pending before Congress
  - Other important national issues – could include big administrative decisions (e.g., tax code or environmental regulations) or other significant national issues (e.g., impeachment or health care reform) even if not now pending before Congress
- When candidate is mentioned, spell out name of office they are seeking – no abbreviations

# Impact of FCC Issue Ad Disclosure Requirement

- More work for you – as you need to track down officers and directors of candidate committees, and identify all issues and candidates mentioned in issue ad
  - Likely that most issues advertisers will not provide complete information – so it falls to you
- Potential to make state issue ads (e.g., state party attack on state candidate) into Federal issue ads if they mention Federal issues – will require rate and schedule disclosure of state issue ads if they mention Federal issue
- Even some commercial ads may discuss federal issues and require disclosures
- Watch effective date for need for determination of whether issue ads are sponsored by an agent of a foreign government – currently December 8

# State Laws

- Many states now regulating political advertising – including digital which is not covered by FCC rules
- Some states require recordkeeping, in some states more detailed than the FCC
  - We've seen requests for those documents in a few states – including Washington, Nevada, and New Jersey
- Many states require sponsorship ID enhancement – especially on issue ads
- Majority of states have laws prohibiting use of AI in political ads – a few make stations liable but, even if the station is not liable under these laws, once you have been put on notice that an ad is a deep fake, you have duty to investigate and potentially pull a false ad

# Conclusion

- Lots of rules that are very fact-specific
- Lots of record-keeping obligations
- Make someone the political advertising expert on your staff to learn the rules and deal with the issues
- Potential liability to the FCC – and potentially to person attacked in false attack ad, and some state liability too
- Have your lawyer on speed dial during the election season

# Political Broadcasting Rules: A Refresher for 2026

David Oxenford

202-383-3337

[doxenford@wbklaw.com](mailto:doxenford@wbklaw.com)

[www.broadcastlawblog.com](http://www.broadcastlawblog.com)

WILKINSON ) BARKER ) KNAUER ) LLP