

Political Broadcasting



Minnesota Broadcasters
Association





Political Broadcasting

It pays to know the rules



Political Rules in a Nutshell

- A broadcast licensee must provide to **LEGALLY QUALIFIED** political candidates for **federal office** (of a broadcast facility during a **NON-EXEMPT PROGRAM**,
 - then an opposing candidate is entitled to make a **REQUEST** for **EQUAL OPPORTUNITIES**.
- Certain “uses” may qualify for the station’s **LOWEST UNIT CHARGE**.
 - A full **DISCLOSURE** of the station’s selling practices must be made to all political advertisers.

Nutshell (cont.)

- All “uses” must be free from **CENSORSHIP**, and must bear the proper **SPONSORSHIP IDENTIFICATION** and **BCRA** statement.
- Each request for a “use” of the station’s facilities, and the disposition of that request, must be recorded in the station’s **POLITICAL FILE**.
- The **FAIRNESS DOCTRINE** has been repealed. Court invalidated **POLITICAL EDITORIALS, PERSONAL ATTACKS** corollaries.
- Stations are still subject to **NEWS DISTORTION** rule
- **BCRA** requires some 3rd party ads be noted in the political file.

Legally Qualified Candidate

- Must have announced intention to run
- Must be qualified under state law to hold the office
 - Has qualified under state law to be on the ballot *or* is qualified for a write-in candidate
- Presidential candidates must be qualified in the state or in ten states

The Key Element of Political Broadcasting Is a Candidate “Use”

- A “use” is a positive candidate appearance by an *identifiable* voice or picture for at least 4 sec.
- The appearance does *not* have to be controlled or approved by the candidate



Candidate Access: Two Different Standards



- Federal candidates — Have access rights
- State and local candidates — Access at station discretion

Federal Candidates Are Entitled to Reasonable Access

- Applies during entire campaign
- Stations cannot set limits on amount or type of time that candidates can buy
- Stations may reject unreasonable requests and negotiate with candidates
- Stations need not respond to “blind” requests for avails or time

Program Access (Federal Candidates)

- Must be offered prime time, program time
- May be excluded from news
- May *not* be excluded from any other category of programs
 - Not necessarily when they want – Subject to negotiation
- Stations must consider odd program lengths

Non-Standard Lengths

- Stations are required to negotiate with federal candidates for the sale of non-standard length spots and program-length segments, regardless of whether they have sold such lengths in the past.
- If not previously sold, rates can take into account lost revenue, including any diminution of revenue due to lost ratings for immediately following programs.

State and Local Candidates

- Stations can take ads from some races and not others
- Stations can limit the number of ads
- Stations can restrict dayparts in which ads will run
- Stations must make all “discount classes” available
- Equal Opportunities, Lowest Unit Charge and No Censorship apply

Deadlines

Access to Personnel

- Weekend Access – Other than before the election
 - political advertisers -- only to the extent provided to commercial advertisers at any time during the previous year
 - If weekend access is provided only for modifying copy and canceling spots, that is all that need be given candidates
- Final weekend before the election
 - May be required: may be necessary to permit candidates to exercise their equal opportunities rights

Equal Opportunities

- Applies when candidate becomes legally qualified
- Applies to candidates in same race
- Candidates must request equal opportunities within seven days
- Triggered by non-exempt use

On Camera



Saturday Night Live



Presidential Candidate Larry Lessig Seeks Equal Time After Hillary Clinton's 'Saturday Night Live' Cameo



OCTOBER 18, 2015 | 08:56PM PT

COURTESY OF NBC

Ted Johnson (<http://variety.com/author/ted-johnson/>)
Senior Editor
[@tedstew](http://twitter.com/@tedstew) (<http://twitter.com/@tedstew>)

[Larry Lessig](http://variety.com/larry-lessig/) (<http://variety.com/larry-lessig/>), the Harvard Law School professor who is waging a bid for the Democratic nomination, is asking NBC stations for equal time after [Hillary Clinton](http://variety.com/hillary-clinton/) (<http://variety.com/hillary-clinton/>)'s Oct. 3 appearance on "Saturday Night Live" (<http://variety.com/saturday-night-live/>).

"'Saturday Night Live' is many things, but it is not a bona fide newscast, news interview, news documentary, or on-the-spot coverage of bona fide news events such that it would be exempt from your equal time obligations under the law," Bonin wrote.

NBC's vice president of regulatory affairs, Margaret Tobey, responded to the Lessig campaign's request by asking for proof that Lessig is a "legally qualified candidate," as is required by equal time rules. Such proof includes qualifying for primary or presidential preference ballots, or that he has made a "substantial showing of a bona fide candidacy." NBC's Tobey noted that Lessig also is required to provide proof that Clinton is a legally qualified candidate.

Saturday Night Live





WASHINGTONPOST.COM
THE FIX

The odd law Trump's 'SNL' gig will trigger

Hillary Clinton appeared on "Saturday Night Live" for three minutes and 12 seconds on Oct. 3, beginning at 11:53:01 p.m. That precision is available thanks to WNBC New York's filing with the Federal Communications Commission, which alerted the agency that it had provided those three-plus minutes to a presidential candidate for free.

Why does the FCC care? Because that scripted appearance probably triggers the "equal opportunity" clause of federal communications law.

The law states that if a candidate is allowed to use a broadcast station, the station must "afford equal opportunities to all other such candidates for that office in the use of such broadcasting station."

Every station independently is affected. So if Bernie Sanders demanded three minutes of sketch comedy on every NBC affiliate that aired Clinton's "SNL" sketch across the country, he'd have a good case.

However, it applies only to broadcast networks. Note that this is an FCC rule, not a Federal Elections Commission one.

It also applies to every qualified candidate in a race. So if there were, say, 15 Republicans running for president and, say, one of them was offered the opportunity to host "SNL," it would open a can of worms.

Oh, right. Donald Trump is hosting Nov. 7.

When he was on "SNL" in 2004, Trump appeared in at least 23 minutes of programming. Twenty-three minutes times 14 candidates is nearly 5½ hours of broadcast time. For however many of the hundreds of NBC affiliates that air the show.

PHILIP BUMP

From: Dietze, Jean (NBCUniversal)
Sent: Sunday, October 04, 2015 11:07 AM
Subject: Hillary Clinton On SNL 10/3/15

To : NBC Affiliate General Managers

Each station that aired the October 3, 2015 episode of "Saturday Night Live" featuring an appearance by former Secretary of State Hillary Clinton should complete the following notice by choosing the feed aired by the station, inserting the appropriate call sign and community of license in the text, and uploading a copy of the notice to the online political file maintained for public inspection by the station. Please let Affiliate Relations know promptly if your station receives a demand for equal time from any of the other candidates.

**Notice Required by Section 73.1943 of the Rules of the Federal Communications Commission:
FOR STATIONS AIRING FEED ONE:**

Former Secretary of State Hillary Clinton, a candidate for the Democratic nomination for President in the 2016 national election, appeared without charge on NBC's "Saturday Night Live" for a total period of 3:12 (three minutes and twelve seconds) commencing at 11:53:01 PM EDT on October 3 and ending at 12:01:44 AM EDT on October 4, 2015. Station [call sign], [community of license], is affiliated with the NBC Television Network and broadcast the October 3 episode of "Saturday Night Live," including the segments in which Secretary Clinton appeared.

FOR STATIONS AIRING FEED TWO:

Former Secretary of State Hillary Clinton, a candidate for the Democratic nomination for President in the 2016 national election, appeared without charge on NBC's "Saturday Night Live" for a total period of 3:12 (three minutes and twelve seconds) commencing at 10:53:01 PM MDT and ending at 11:01:44 PM MDT on October 3, 2015. Station [call sign], [community of license], is affiliated with the NBC Television Network and broadcast the October 3 episode of "Saturday Night Live," including the segments in which Secretary Clinton appeared.

FOR STATIONS AIRING FEED THREE:

Former Secretary of State Hillary Clinton, a candidate for the Democratic nomination for President in the 2016 national election, appeared without charge on NBC's "Saturday Night Live" for a total period of 3:17 (three minutes and seventeen seconds) commencing at 11:53:01 PM PDT on October 3 and ending at 12:01:44 AM PDT on October 4, 2015. Station [KNBC], [Los Angeles, CA], is affiliated with the NBC Television Network and broadcast the October 3 episode of "Saturday Night Live," including the segments in which Secretary Clinton appeared. Thanks.

SNL

THE
Hollywood
REPORTER

John Kasich, Lindsey Graham Demand Free Time on NBC

12:16 PM PST 11/16/2015 by Eriq Gardner

The Republicans say that Donald Trump's appearance on Saturday Night Live entitles them to equal opportunity per an FCC rule.



^[1]
AP Images

In light of Donald Trump's appearance on *Saturday Night Live* on Nov. 7, Republican rivals John Kasich and Lindsey Graham want free time on NBC.

As *The Hollywood Reporter* previously reported, NBC affiliates [filed notices](#) ^[2] in the wake of Trump's *SNL* appearance in compliance with a rule by the Federal Communications Commission rule that affords candidates equal opportunity to airtime if a broadcast station gives another candidate airtime in anything other than a newscast or news interview program. NBC counted Trump on air for 12 minutes and five seconds during its variety program.

Candidates had seven days after Trump's appearance to make equal opportunity demands upon NBC stations. At least two — Kasich and Graham — have followed suit.

Style

THE RELIABLE SOURCE

By Amy Argetsinger and Roxanne Roberts

WEDNESDAY, MAY 23, 2007 C3

Fred Thompson, Acting Like a President

Just in case you didn't already think he "looks presidential" . . . undeclared candidate **Fred Thompson** has finally added a real-life chief executive to his Hollywood résumé of chief-executive types: **Ulysses S. Grant**.

"Pretty good casting, don't you think?" said **Dick Wolf**, producer of "Law & Order" and Thompson's latest venture, "Bury My Heart at Wounded Knee," to our colleague Sridhar Pappu at the HBO epic's premiere Monday night at the National Museum of the American Indian. "Fred has a persona that exudes power."

But would a Thompson candidacy force the new movie — scheduled for Sunday night at 9 — off the air? (Stations are already considering yanking "L&O" reruns featuring Thompson because



BY ANNALEE BEVIS

The former senator as President Grant. Wrong century, Fred.

of equal-time rules.) "It's one scene, it's a few minutes," in which the former senator is extravagantly bearded, said an HBO rep. "It's pretty unclear who he is."


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FCC Uncensored

 **FCC Uncensored**
By Gregg Skall [about](#) • [email](#) • [archive](#)

Talented Candidates

May 13, 2014
[Have an opinion? Add your comment below.](#)

Or What Happens When Station Talent Runs For Public Office

The 2014 midterm election season is upon us. Predictions are that this year political will exceed the \$3.2 billion spent in the 2010 midterm elections. Predictions also abound that radio will get an increased share of the spending. And in each election year it seems that news anchors, reporters and other popular broadcast talent, often frustrated by the state of the political scene they are reporting, decide it's time for them to fix the problems and run for office. When this happens it never fails to generate the question: WHAT DO I DO ABOUT OPPOSING CANDIDATES?

Remember the first two cardinal rules of political broadcasting:

1. Stations must provide legally qualified candidates for federal office "reasonable access."
2. When a legally qualified candidate makes a "use" of a broadcast facility during a non-exempt program, the opposing candidate is entitled to "equal opportunities."

There is no exemption for on-air talent.

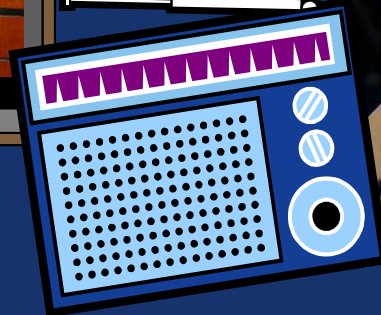
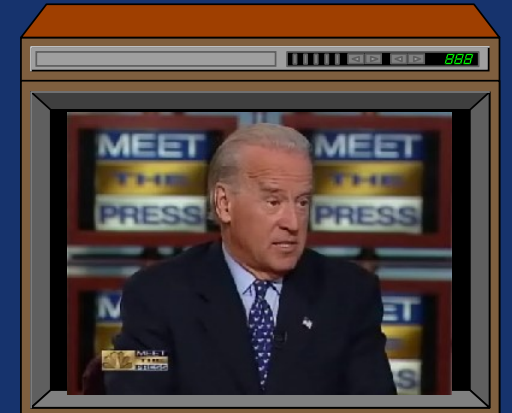
A station personality becomes a legally qualified candidate when he/she has: announced his/her intention to run, has qualified under state law to hold the office, and has qualified to be on the ballot or as a write-in candidate.

At that point **their legally qualified opponents are entitled to equal opportunities.**

This creates an obvious problem. Keeping that on-air newscaster, narrator, reporter or other talent on-air, performing their normal broadcaster duties during the campaign, generates an enormous

<https://www.allaccess.com/fcc-uncensored/archive/18997/talented-candidates>

Programs or Times Exempt from Equal Opportunities?



Exempt Programs

- Bona fide newscasts
- Bona fide news interview programs
- Bona fide documentaries
- On-the-spot coverage of bona fide news events (includes station-sponsored debates)



What's this?

ABC NEWS

JANUARY 2, 2012

abcnews.go.com



Subject of Use

- Because of the no-censorship provision, a candidate may use the time as he or she sees fit – not required to discuss his or her candidacy
- What about Problem Ads

Content that Conflicts with Law

Content

- Can you refuse to air a political “use” which is in conflict with another federal statute, such as a use that is indecent?
 - obscene?
- **TALK TO YOUR LAWYER FIRST!**
 - *In some cases: or channel time*
- You are free to reject political ads which do not contain a “use”
 - Because stations have the power of censorship in such situations, they are not immune to libel and defamation actions based on such advertising

What about Problem Ads ??



WRITE-IN CANDIDATES

Who Qualifies for
Air Time?





FCC Loophole May Allow Graphic Anti-Abortion Super Bowl Ads

A fringe candidate is raising money to air graphic images during the big game.

By Abby Ohlheiser

| Posted Wednesday, Jan. 11, 2012, at 11:47 AM ET



Christian activist Randall Terry is running for the democratic nomination against Barack Obama in order to take advantage of FCC anti-censorship rules pertaining to political ads in the primary season
Photo by Kimihoro Hoshino/AFP/Getty Images.

Randall Terry, an anti-abortion activist who's running against Obama in the Democratic primaries, may have found a loophole allowing him to air graphic anti-abortion ads in 40 cities during the Super Bowl this year — if he can afford it.

The story, which local Colorado paper (warning: graphic image at link) the *Greeley Gazette* picked up and popularized recently via [ThinkProgress](#) and [Right Wing Watch](#), began back in January 2011 when Terry announced his intention to run as a primary candidate against Obama, sights set on an ad spot for the Super Bowl, the conservative *Daily Caller* reported.

His current appeal for funds — he apparently hasn't yet raised the money from the ads — is in the form of a fundraising letter Terry sent to supporters in which he goes after "The Abortion Gang," a pro-choice group that gained some media attention when one of their bloggers called for supporters to make small donations to local pro-choice organizations every time Tim Tebow (who [starred](#) in a Focus On the Family-sponsored anti-abortion ad

during the 2010 Super Bowl) scored a touchdown. Terry wants to retaliate by raising enough money to air graphic ads showing images of dead fetuses in 40 cities during this year's big game. Terry is the founder of Operation Rescue, an anti-abortion organization that has since [distanced themselves from the activist](#). As the *Christian Science Monitor* reports, Terry has freely admitted that his campaign exists essentially to take advantage of FCC free speech rules that allow federal candidates to run uncensored ads. The FCC's [Communications Act](#) bars stations from censoring political ads from federal candidates during the 45 days before a primary election in that state. So far, he's aired ads in New Hampshire, Illinois, Iowa, Minnesota, Missouri, and Nebraska, but obviously the Super Bowl would provide him a much larger platform.

Here's an excerpt from the [multi-page fundraising letter](#) Terry sent to supporters earlier this month:

You can view the ads on Terry's [website](#). They are very graphic.

No Censorship

Farmers Educational and Cooperative Union of America v. WDAY, Inc. 360 U.S. 525, 1959

- “. . . the licensee has consistently been denied “power of censorship” in the area of political broadcasts.” §315
- “Since the power of censorship of political broadcasts is prohibited it must follow as a corollary that **the mandate prohibiting censorship includes the privilege of immunity from liability for defamatory statements** made by the speaker” citing the ND Supreme Court

Prior Review

- Stations *may ask* to review political advertising in advance to ensure:
 - That it constitutes a “use” by the candidate, and
 - That the ad contains the necessary sponsorship identification, and
 - That it does not exceed the agreed length.
- Candidate not required to comply – 1 bite rule
- When requesting a script or tape for such a review, inform the candidate you are prohibited from censoring the material

Rates



Rates

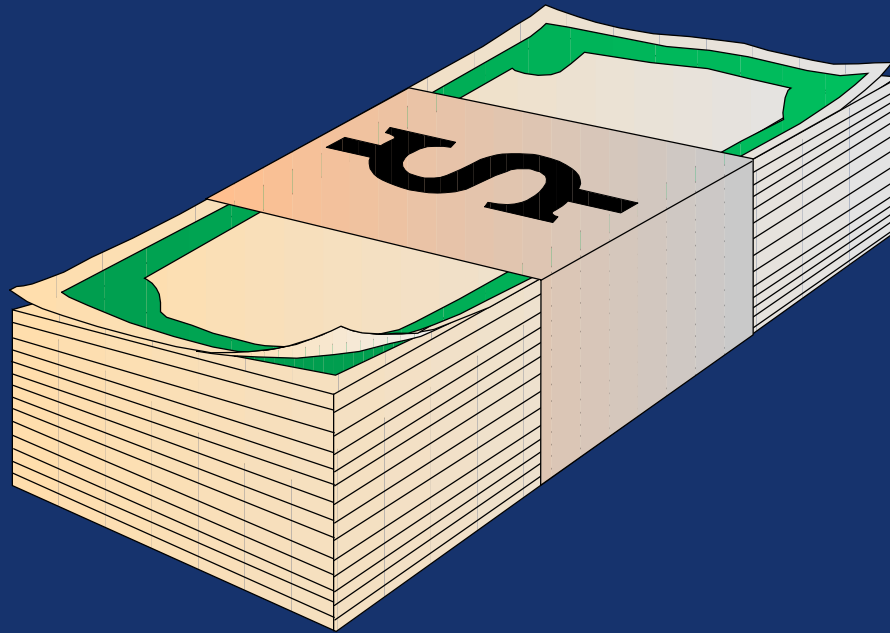
- Outside the 60 & 45 day LUC periods.
 - Legally qualified candidates are entitled to purchase time for a use at rates **COMPARABLE** to those charged other advertisers
- Stations may never discriminate against a candidate or charge more than would be charged any other advertiser for advertising or other station services.

Political Rates

- Apply to all races — federal, state & local
- Lowest unit charge applies during political “window”
 - 45 days before a primary or caucus
 - 60 days before a general or special election
- Use must be in connection with the campaign



Political Rates





Lowest Unit Charge
WINDOWS
2018

PRIMARY ELECTION



AUGUST 14, 2018

LUC BEGAN:

FRIDAY

Saturday, June 30, 2018

GENERAL ELECTION



NOVEMBER 6, 2018

LUC BEGINS:

FRIDAY

SEPTEMBER 7, 2018

Lowest Unit Charge

- The lowest price charged
- For any individual unit of time
- Sold in the same class, in the same length and program or daypart
- That runs within the Lowest Unit Charge Window

Charges Inside the Political Window:

- **Maxim:** The political advertiser must be treated no worse than a station's MOST FAVORED ADVERTISER.
- Even though buying only a single spot, treat as your **best** and **highest volume** advertiser year in and out.

Who is entitled to LUC?

- Only “uses” authorized by legally qualified candidate’s campaign in connection with the campaign are entitled to lowest unit charge
 - If the candidate’s voice or image does not appear, the spot does not qualify
 - Commercials purchased by non-authorized 3rd parties do not qualify
 - Ballot issue ads and “issue” ads do not qualify
- ***LUC applies to ALL legally qualified candidates.***
 - State and local candidates and federal candidates.

Example Classes of Time:

- **Fixed or fixed Position** - Guaranteed to run on date and time.
- **Non-preemptible** - Not subject to preemption.
- **Preemptible with Notice** - Preemptible only after notice by a specific time.
- **Immediately Preemptible w/o Notice** - Preemptible at any time.
- **Run of Schedule** - Preemptible spot can be scheduled at any time by station w/o prior notice.

Preemptible:

- Commercial advertisers may “take a significant prospective risk of nonclearance” to pay less
- Stations may establish their own reasonable classes of preemptible time
 - Not made up for political
 - Not based solely on price or identity of the advertiser
 - Demonstrable benefit to advertiser
 - Different obligations on station

Preemptible Time

- Stations may treat separate levels of preemptible time as separate classes
- Stations that sell all time on an “auction” basis may have only one class of preemptible time

Special Political Classes of Time:

- Stations may offer a special “candidate fixed time”
 - Special class of non-preemptible (more valuable to political advertiser)
 - truly distinguishable from the preemptible
 - **Discounted** no more expensive than commercial preemptible with genuine risk of preemption
- **News Adjacencies**: Only when guaranteed adjacent *and* banned from inside news programming
 - \$ no more than news program itself
 - Different than broader rotation that *happens* to butt the news

Rotations:

- Distinctly different rotations may be separate classes of time.
- Test
 - Are the separate rotations consistent with normal selling practices, and
 - based on objective criteria (audience size, demographics, etc.)

Rotations:

- Week to week variations OK
- BUT
 - Must honor the LUC during the week
 - Political advertiser pays no more than the lowest cost spot running in that week

Package Plans:

- Package plans or bonus spots are not considered a separate class
 - Package within a class is just a volume discount
 - BUT: Package containing spots in multiple classes &/or dayparts may be allocated
 - Packages may be allocated over length of the run
 - Document prices assigned to each spot

What to Include in the LUC:

- All spots paid by commercial advertisers
- Value of packages and bonus spots
- All contracts in effect during the political window
- Paid PSAs by Commercial Advertisers
- Fire Sale Rates

What to Exclude From the LUC:

- Barter spots
- Per-inquiry spots
- Bonuses for charitable and non-profit organizations
- Billboards & Program sponsorships

What to Exclude From the LUC:

- Technical or audience-delivery make goods
- Value-added incentives
 - BUT: Must be offered on the same basis
- The Network Exception

Network Exception

- Compensation received by each station affiliate not affect own LUC
- Network “use” will trigger equal opportunity on every affiliate
- If network itself doesn’t offer equal opportunity, station must
 - Check local network agreements

• Softwave Media Exchange



• Google





- LUC may be excluded
- Equal Opportunities still required
- Check Agreements



Rate Increases or Decreases:

- Before the Political Window
 - Be careful: ads may run in the Window
- During the Political Window
 - If normal practice based on Audience ratings, seasonal program changes or weekly rotation

Agency and Rep Commissions

- Stations that price time on a commissionable basis must offer time on a “net” basis to candidates without agencies
- Reps’ commissions are paid by the station and do not affect the LUC

Specific Programs:

- Programs can differ on program by program basis
- If station treats programs this way, each program may be considered a separate rotation (or daypart)

Sold Out Time?

- Daypart or Particular Program
 - Provide access to comparable opportunities within ↑
- Preemptible Time
 - Only if all preemptible spots within a class were sold at same rate (flat or auction ceiling) & then may be bumped only by a more expensive **class**.
 - If advertiser can preempt with a higher price within same class -- Not sold out!!
 - Total Auction selling = NEVER SOLD OUT

Production Facilities:

- LUC does not apply
- Station may charge standard rates.
- **BUT**
 - Cannot discriminate between political advertisers.
 - E.g. Free production to only one

Make Goods:

Not included in LUC, BUT:

- Must run in same rotation period or may set new LUC for a more expensive period for that week
- Audience Short Fall Make Goods sold to Political:
 - Audience info may not be available
 - Provide a prompt rebate or offer make good for subsequent election

Time Sensitive Make Goods:

- In the last 12 mos. if you promise preempted make good, same class of time, within a specific time frame (*i.e.*, holiday sale) Then
- Political make good must run before the election

Three Most important Rules of Political Broadcasting

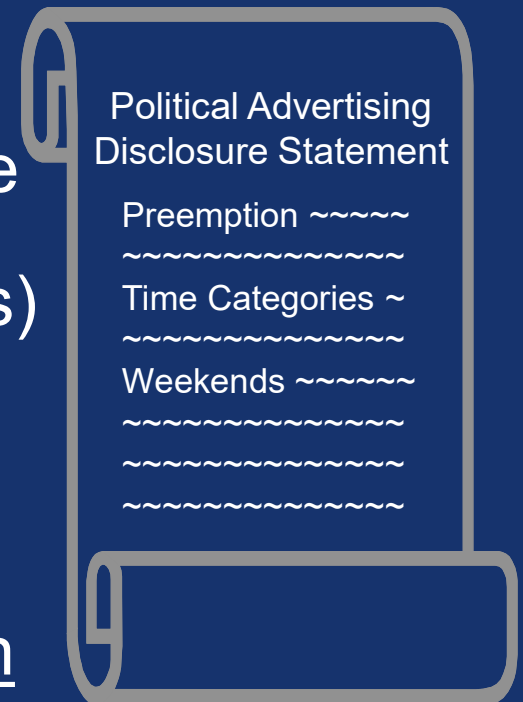
Disclose !!!

Disclose !!!

Disclose !!!

Disclosure Statement

- Should be in writing
- Should be provided to every candidate or agency requesting political time (inside or outside the political windows)
- Stations do not have to ensure that candidates read the disclosure statement
- Will change during the political season



Disclosure Statement Must Include:

- Time classes available to advertisers
- Anticipated LUC or comparable rate for each class
- Make good policies
- Preemptible time practices
- Any other sales practices

Sponsor Identification

- All spots must have a proper sponsor ID
- Must use “paid for” or “sponsored by”
- Spots paid for by someone other than the candidate must state whether they are authorized by the candidate (FEC)
- TV — Four seconds; four percent of screen height (20 scan lines)

Bipartisan Campaign Reform Act of 2002

- *BCRA Sponsorship ID*
- Applies *only* to Federal races
 - Ads refer to opponent
 - To receive LUC
- Candidate must be identified, and the following required candidate statement must be made:
 - they authorized or approved the broadcast and that the spot was paid for by the candidate or his authorized campaign committee

Bipartisan Campaign Reform Act

(Amendment to §315)

Federal candidates – to qualify for LUC

- must supply stations with a certificate re: references to opposing candidates
- certified by the candidate or his authorized committee
- Candidates failing to comply are *not eligible* for lowest unit rates for the remainder of the election period
 - The certificate portion is curable but failure to make *stand-by-your-ad* statement is not!

Federal Candidate Certificate

- Must state that the candidate will not make direct reference to an opposing candidate in his advertising
- Unless, at the end of the spot, there is a **4 sec. +** statement
 - the spot was authorized by the candidate and
 - paid for by candidate or authorized committee and
 - Statement that candidate approved the ad
 - **TV spots** -- clearly identifiable image of candidate and clearly readable written statement and approved the ad

BCRA ID – Radio – Campaign Act

- An audio statement by the candidate in which the candidate identifies himself and states that he approves of the broadcast

BCRA ID – Radio – Comm Act

- An audio statement of the candidate in which the candidate identifies himself, **states the office he is running for**, states that he approves of the broadcast

What's Wrong with This Radio Ad?



The Right Way !



BCRA ID - Television

What's Wrong with This TV Ad Tag?



What's Wrong with This TV Ad?





What's the Issue

- BCRA applies to the Candidate, not the broadcaster
- Consequence is loss of **entitlement** to LUC
- Claims against the Broadcaster – illegal campaign contribution



LIABILITY



- Civil Liability – FEC Enforcement
 - Up to 200% of amount involved
 - 300% to 1000% of amount involved for conduit schemes
- Criminal Liability -- DOJ
 - \$2 to \$25K: Fine &/or Up to 1 yr
 - \$25K and Up: Fine &/or Up to 5 yrs



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 14, 2005

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2004-43

Gregg P. Skall, Esq.
Womble, Carlyle, Sandridge & Rice, P.L.L.C.
Seventh Floor
1401 Eye Street, N.W.
Washington, D.C. 20005

Dear Mr. Skall:

We are responding to your advisory opinion request on behalf of the Missouri Broadcasters Association ("MBA") regarding whether, under the Federal Election Campaign Act of 1971, as amended ("FECA"), a broadcaster would be making a corporate in-kind contribution by selling advertising time at the Lowest Unit Charge ("LUC")¹ to a candidate who may have failed to include a fully compliant Communications Act Statement in one of his advertisements and, therefore, may not be entitled to the LUC under section 315(b) of the Communications Act. 47 U.S.C. 315(b).

Background

The facts of this request are presented in your letter of October 29, 2004, as supplemented by your letters of November 19, 2004, January 21, 2005, and February 8, 2005.

MBA is a voluntary association of broadcasters who are Federal Communications

Questions Presented

Does a broadcaster make an in-kind contribution by charging a Federal candidate the LUC for advertising time when the candidate may not be “entitled” to the LUC under the Communications Act? If the LUC is an in-kind contribution, must the broadcaster re-bill the candidate for the difference between the LUC and some higher rate?

The Commission concludes that a broadcaster’s decision to offer Senator Bond the LUC under these circumstances did not result in an in-kind contribution under FECA and Commission regulations.

The Commission has reviewed the ads provided by MBA and has concluded that there is no violation of any disclaimer requirement over which the Federal Election Commission has jurisdiction. The Commission notes that the disclaimer requirements in the Federal Election Campaign Act are substantially similar to those in the Communication Act, and that the FEC has substantial expertise in evaluating disclaimer issues. Moreover, the FCC has not, to our knowledge, come to a contrary conclusion, either through evaluation of the merits in this case or by promulgating regulations (under the disclaimer provisions of the Communications Act) that would warrant a different result.

Political File

§73.1943

- The name of the candidate requesting time (not rate inquiries)
- The nature and disposition of the request – whether accepted or rejected
- The rate charged
- All other non-exempt uses
- Keep information for two years
- For political, do not have to respond to telephone inquiries



Contents of Political File

- Date and time aired
- Class of time purchased
- Name of candidate to which the spot refers, the office sought, or the issue to which the spot refers
- In the case of a candidate request, name of the candidate, authorized committee, and treasurer of the committee

Political File Contents, cont.

- Any other political request:
 - The name of the person or entity purchasing the time,
 - 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 board of directors of such entity.

Recordkeeping

- Maintained for two years
- Covers each message relating to a political matter of national importance, including
 - A legally qualified candidate;
 - Any election to federal office; or
 - A national legislative issue of public importance.

On-Line Public File

A screenshot of the FCC Station Profiles website. The browser address bar shows 'https://stations.fcc.gov'. The page title is 'TV Station Profiles & Public Inspection Files'. There is a search bar with a magnifying glass icon and a 'SIGN IN' button. A navigation menu includes 'HOME', 'ABOUT PUBLIC INSPECTION FILES', 'FOR BROADCASTERS', 'FOR DEVELOPERS', 'FAQ', and 'HELP'. Below the search bar, there is a 'GENERAL RESOURCES' section with a link to 'The Public and Broadcasting Manual'. At the bottom, there is a 'GET EMAIL UPDATES' section with input fields for 'Email Address' and 'Zip Code', and a 'SIGN UP' button. A footer section contains contact information for the FCC, including address, phone, TTY, fax, and various policy links like 'RSS', 'Privacy Policy', 'FOIA', etc.

Station Profiles - Federal

Federal Communications Commission [US] https://stations.fcc.gov

Federal Communications Commission

TV Station Profiles & Public Inspection Files

SIGN IN

HOME ABOUT PUBLIC INSPECTION FILES FOR BROADCASTERS FOR DEVELOPERS FAQ HELP

You may enter a call sign (e.g., WXYZ), network affiliation (e.g., NBC), channel number (e.g., 28), or facility ID number (e.g., 123456).

GENERAL RESOURCES

The Public and Broadcasting Manual

For help or assistance please contact us at 1-877-480-3201 or 1-717-338-2824 (TTY) or you may submit requests online via e-support.

Federal Communications Commission
445 12th Street SW
Washington, DC 20554
Phone: 1-888-225-5322
TTY: 1-888-835-5322
Fax: 1-866-418-0232

RSS
Privacy Policy
Moderation Policy
Website Policies & Notices
Required Browser & Plug-ins

FOIA
No Fear Act Data
Open Government Directive
Plain Writing Act
2009 Recovery and Reinvestment Act

GET EMAIL UPDATES

Email Address

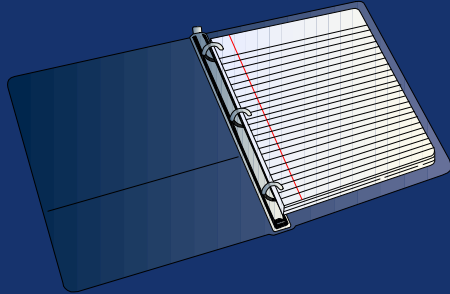
Zip Code SIGN UP



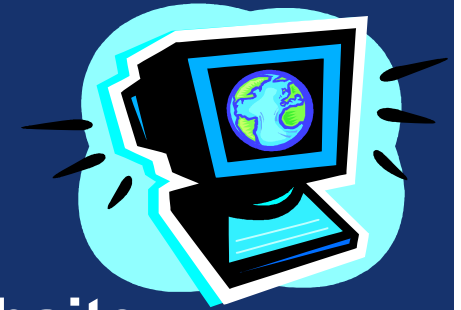
https://stations.fcc.gov/for-broadcasters/

The screenshot shows a web browser window with the URL <https://stations.fcc.gov/for-broadcasters/>. The page header includes the FCC logo and the text "Federal Communications Commission". The main heading is "TV Station Profiles & Public Inspection Files". A navigation menu contains links for "HOME", "ABOUT PUBLIC INSPECTION FILES", "FOR BROADCASTERS", "FOR DEVELOPERS", "FAQ", and "HELP". A prominent blue button labeled "Broadcaster Facility Sign In" is visible. Below it, a list of instructions explains the sign-in process, mentioning the need for a facility ID and passcode, and the availability of an FRN sign-in option.

This detailed view shows two sign-in panels. The "Facility Sign In" panel on the left includes a radio tower icon, input fields for "Facility ID:" and "Passcode:", a yellow "SIGN IN" button, and a link for "How do I get a passcode?". The "FRN Sign In" panel on the right includes a person and gear icon, input fields for "FCC Registration Number (FRN):" and "Password:", a green "SIGN IN" button, and a link to "Reset/Change FRN password".



Public File



- **Public File: Must be posted on Station Website**
 - Stations must upload any required public file document that has not already been filed with the Commission.
 - must post a link to its Commission online public file on its own website's home page.

Political Upload Requirement

- Items previously maintained at the station now must be uploaded to the Commission's website:
 - A list of chief executive officers or members of the executive committee of an entity sponsoring or furnishing broadcast material concerning political matter or matter involving the discussion of controversial issues/public importance §73.1212(e);
 - Donor lists for non-commercial educational channels (“NCEs”) §73.3527(e)(9);
 - Political file §73.3526(e)(6) and 73.3527(e)(5);

Upload Requirement #1

- Must certify compliance with upload requirement in renewal checkbox
- *Timing.* Upload the political file immediately, absent unusual circumstances. Deemed time-sensitive.

Upload Requirement #2

- Station website link to the Commission's website.
- If the station has a website,
 - must provide a **hyperlink**
 - from the station's website's *homepage*
 - to the station's public inspection file hosted on the Commission's website.

Requirement #3: Back-up files.

- **Political files back-up files.**
 - political files only
 - Because highly time-sensitive and
 - make political files available to candidates and the public *in the event the Commission's file system becomes unavailable.*
 - Statutory obligation to make information available to candidates, their representatives, non-candidate political time buyers, and the public generally as soon as possible.
- **Full public inspection file back-up files.**
 - Stations or interested parties may download a complete mirror copy of their public file or automate a periodic synchronization.

Requirement 4: Verification

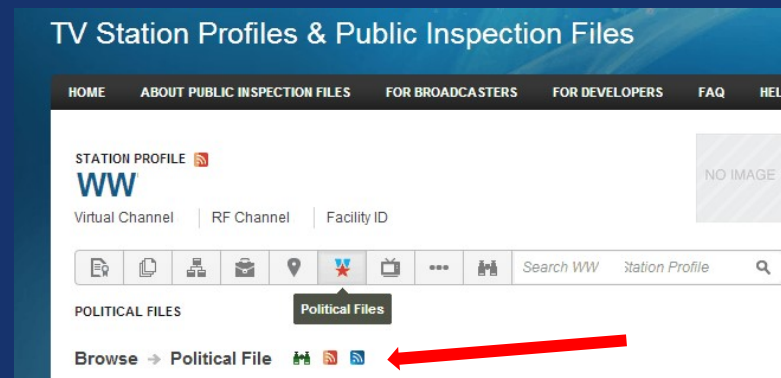
- Station self-verification.
- If the station's public file site is inaccurate or incomplete, then the station will be responsible for posting the complete and correct materials.

BROADCAST POLITICAL FILE – A DATA MINING OPPORTUNITY

- **ALL Public File - Political File - §73.1943 info!**
 - The name of the candidate requesting time (not rate inquiries)
 - The nature and disposition of the request – whether accepted or rejected
 - Record of any free time given
 - All other non-exempt uses
 - Keep information for two years
 - Q: Can someone subscribe to political files only or to a specific race or candidate?

A DATA MINING OPPORTUNITY

- **RSS subscribe to political files for specific race or candidate**
- **RSS feed for all stations or 1 station.**
 - All folder pages have 3 feature icons next to the folder name.
 - Red icon, generates RSS feed link for that particular station
 - Blue icon, generates an RSS feed link for all stations



A DATA MINING OPPORTUNITY

- Keeping up with new files placed in stations' online public files?
- 3 new features **Quick View**, **Search** and **RSS**
- Greatly expand search & notification
 - **Quick View** - station-specific complete list of documents sorted by date and time by latest.
 - click the "Binoculars" icon
 - Example: Files uploaded by WJLA-TV: <https://stations.fcc.gov/station-profile/wjla-tv/document-uploads/>
 - **Search** - displays file names or folders matching a keyword or partial keyword.
 - Enter the keyword in the search field below the station logo or
 - go to list of files matching a particular word.
 - Example: Files matching "agree" at WCBS-TV: <https://stations.fcc.gov/station-profile/wcbs-tv/find/agree>
 - **RSS** - RSS (Really Simple Syndication) reader to be notified of new uploads in a broad variety of ways.
 - A very powerful tool to customize notifications.
 - Examples:
 - Follow all files uploaded by KGTv: <https://stations.fcc.gov/station-profile/kgtv/rss/>
 - Follow Citizen Agreements from all stations: https://stations.fcc.gov/rss/feed-/citizen_agreements
 - Follow Presidential candidates from KDKA: https://stations.fcc.gov/station-profile/kdka-tv/rss/feed-/political_file/2012/federal/president

RSS Feeds

Examples:

All Political Files, All Stations: https://stations.fcc.gov/rss/feed-/political_file/2012

All Political Files, WAGA-TV: https://stations.fcc.gov/station-profile/waga-tv/rss/feed-/political_file/2012

All Candidates for President, All Stations: https://stations.fcc.gov/rss/feed-/political_file/2012/federal/president

All Candidates for President, WAGA-TV: https://stations.fcc.gov/station-profile/waga-tv/rss/feed-/political_file/2012/federal/president

Ads for Barack Obama, All Stations: https://stations.fcc.gov/rss/feed-/political_file/2012/federal/president/barack_obama

Ads for Barack Obama, WAGA-TV: https://stations.fcc.gov/station-profile/waga-tv/rss/feed-/political_file/2012/federal/president/barack_obama

Nefarious Data Mining

- Checks
- **Q: Are stations required to place political time buyers' payment checks in the political file?**
 - **A:** No. There is no requirement that a political time buyer's payment check be placed in the file.
 - IF station does place a payment check in the file as a means of providing information required by the rules,
 - Consider redacting any customer account information before making the material available online.



Third Party Issues Spots

Third Party Spots – BCRA

- Third party spots which **advocate the election or defeat of federal candidates, or which solicit campaign contributions**, must contain the following:
 - A statement that the spot is not authorized by any candidate; and
 - Audio statement: “_____ is responsible for the content of this advertising”
 - Blank identifies political committee or who paid for the broadcast, any organization connected with the payor, and a permanent street address, tel no. & www
 - For TV, an unobscured full-screen view of a representative of the committee or person making the statement plus the text of the statement (4 sec.; color contrast)

Third Party Issues Spots – FCC

- Where the material broadcast is:
 - **political matter** or
 - **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, 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, etc
- shall be made available for public inspection at the location specified by the licensee

BCRA Section 504

New 315 (e)

- A licensee shall maintain, and make available for public inspection, a complete record of a request to purchase broadcast time that—
- ***
 - 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.

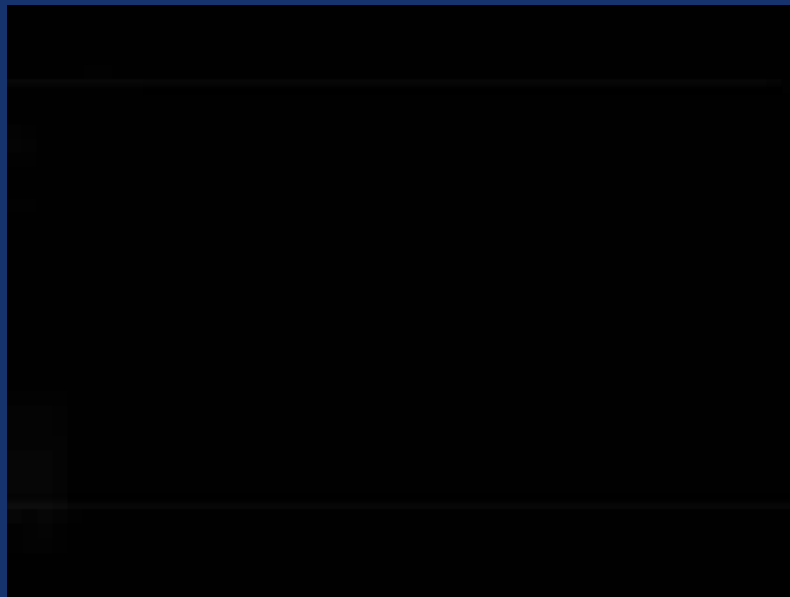
- contain information regarding—
 - A. whether the request to purchase broadcast time is accepted or rejected by the licensee;
 - B. the rate charged for the broadcast time;
 - C. the date and time on which the communication is aired;
 - D. the class of time that is purchased;
 - E. the name of the candidate 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.

Check the Facts:
NewtFacts.com



the least conservative candidate, Newt Gingrich.

PAID FOR BY RESTORE OUR FUTURE, INC. AND NOT AUTHORIZED
BY ANY CANDIDATE OR CANDIDATE'S COMMITTEE.
WWW.RESTOREOURFUTURE.COM



ADVANCE PAYMENT



- For federal candidates, stations can require payment no more than *seven days* in advance
- For state and local races, station's commercial advance payment policies apply



Credit Must Be Offered If:

- Candidate or agency has established credit relationship with the station, *and*
- Candidate or agency assumes responsibility for payment, *and*
- Station would give credit to similar commercial advertiser



Third Party Issues Spots

Independent Expenditure Candidate Spots

Ads and Other Communications

Activities of others



Ideas for
Enhanced Selling & NTR

Outside Groups



Who can pay for a campaign ad? What is off limits?

Federal PACs -- no limit

Individuals -- No limit, but

- Over certain limits must report

Corporations (including non-profits) and Unions –

Before Citizens United:

no treasury funds for:

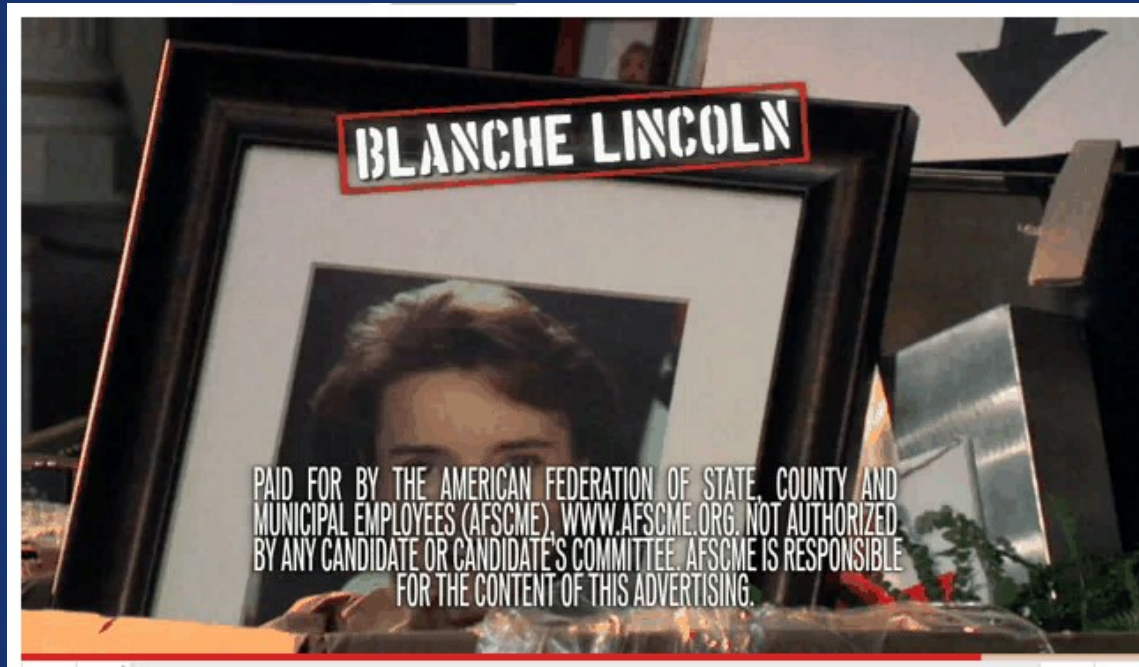
Express advocacy

Electioneering communications



After Citizens United

Corporations (including non-profits) and
Unions –
No Limits



POLITICO

- POLITICO 44
- CLICK
- CONGRESS
- 2010
- ARENA
- LOBBYING
- POLICY
- COMMUNITY
- MULTIMEDIA
- HEADLINES
- MORE INFO

Navigate: POLITICO | Ben Smith | AFSCME hits Lincoln

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May 25, 2010
Categories: 2010

AFSCME hits Lincoln



The public workers union AFSCME, heading into Arkansas with a huge media budget, attacks Blanche Lincoln as a Washington insider for moving to Virginia and selling out to the insurance companies and banks.

She gets no credit in this one for voting to advance health care legislation or for an amendment providing for particularly tough banking regulations.

(via Sargent)

Archives

- May 2010
- April 2010
- March 2010
- February 2010
- January 2010
- December 2009
- November 2009
- October 2009
- September 2009
- August 2009
- July 2009
- June 2009
- May 2009
- April 2009

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MULTIMEDIA

See all video



VIDEO: POLITICO Playback



VIDEO: Primary results in 2 minutes



VIDEO: Obamas picnic with Congress

Contact Ben

Email: bsmith@politico.com
AIM: benobserver
twitter: benpolitico

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Search input field with GO button

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- Vito joins the no-shame game May 26 2010 - 5:04 AM EDT
- The Gates-Clinton axis May 24 2010 - 4:50 AM EDT
- The education of an 'outsider' May 21 2010 - 4:30 AM EDT

CENSORSHIP ALLOWED

- Censorship prohibitions of §315 & immunity protections only apply to candidate ads
- You are free to reject political ads which do not contain a “use”
 - i.e. Non-candidate ads
 - Even directly advocating or deriding candidate by name
- Be vigilant for problem ads!



LOOK OUT



- ✓ Libel & defamation claims allowed
- ✓ Because stations have the power of censorship in such situations, they are not immune to libel and defamation actions based on such advertising

Claims of Falsehood

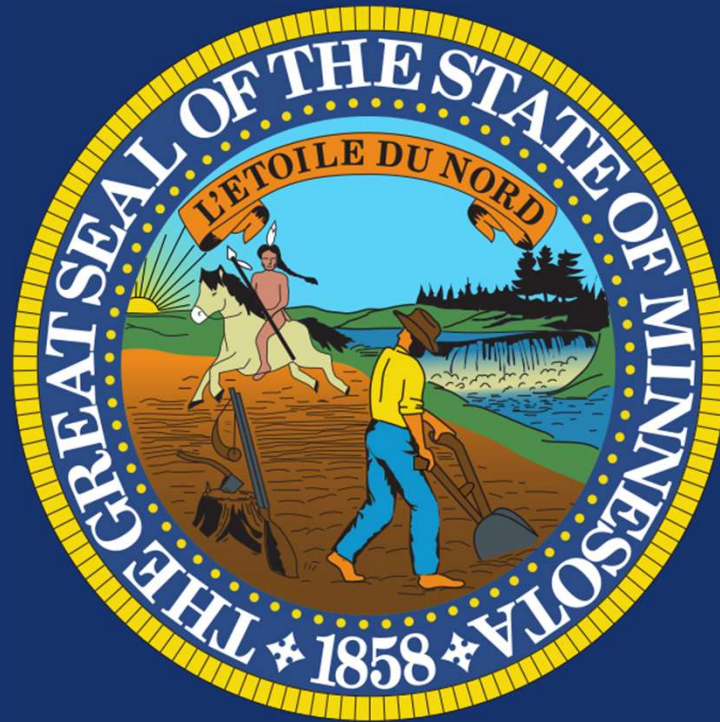
Demand Letters

- Demand Letters to withdraw
- Standard of Behavior:
 - Commission will not attempt to judge whether statements are true or false or whether a licensee was justified
 - Only concerned where substantial evidence that a licensee had acted in bad faith in either broadcasting or rejecting them.
 - Standard:
 - A “knowing presentation” of falsity, or
 - active participation in perpetrating a deception upon the audience.

Political Ads

- Send links, MPEG and MP3
- gregg.skall@wbd-us.com

State Regulation



States cannot “trump”^{*} Feds

- Communications Act and FCC regulation do not fully preempt.
- States can add to the requirements of Federal law, but –
 - may not add requirement inconsistent with the basic Federal law.
 - In other words, the state cannot “trump” the Federal law or agency regulations adopted pursuant to its authority.

^{*} ~~No~~ pun intended

TIME FOR YOUR QUESTIONS



WHERE TO CALL

- **Gregg Skall — Minnesota Washington Counsel**
202.857.4441
gregg.skall@wbd-us.com
- **Bobby Baker : Gary Schonman —**
FCC Political Programming Branch
202-418-1440
robert.baker@fcc.gov
gary.schonman@fcc.gov
www.fcc.gov/media/policy/political-programming
- **NAB Legal Department**
(NAB Member Stations Only) — 202-429-5430

