

**2018 MID-TERM ELECTIONS
LUC HAS BEGUN
LOWEST UNIT CHARGE EXPLAINED**

By Gregg P. Skall
Womble Bond Dickinson (US) LLP

Given the intense interest in the 2018 Mid-Term elections, Lowest Unit Rate, also sometimes called Lowest Unit Charge (“LUC”) is sure to be a red-hot issue for the next 60-days. To clear up misunderstandings, here is an overview and recap on the topic.

Friday, September 7 marks the beginning of the 60 day LUC window for the November 6 General Election.

LUC is defined as 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. The basic point to remember is this - the political advertiser must be treated no worse than a station’s “most favored advertiser” without regard to the quantity of advertising purchased. Thus, even though the political advertiser may be buying only a few spots over a relatively short period of time, the candidate must be treated as though he or she had been the station’s best advertiser to whom quantity discounts may have been provided.

Preemptible Time and Levels:

A good deal of discussion always revolves around preemptible time. As a general matter, stations may establish and define their own reasonable classes of preemptible time, provided as they are not based solely on price or the identity of the advertiser. The test is that each class or level is defined by some different demonstrable benefit to the advertiser, or place a different obligation on the station. Examples may include varying levels of preemption protection, scheduling flexibility or make-good benefits. Separate classes of immediately preemptible time may be distinguished by price-notice requirements (e.g., 1-day, 2-days, 1-week, 1-month, etc.), and the estimated probability that a spot at each price level will run. Each classification of time and its terms must be disclosed to all candidates.

Preemptible time can be sold out only if its preemptible spots may be bumped by spots purchased in a higher class of time, or if, as a matter of normal business practice, the station limits the number of spots sold in each class of preemptible time. However, these practices must be followed throughout the year and cannot be restricted to political periods, unless changes are made for *bona fide* business purposes.

Package Plans, Volume Discounts and Bonus Spots

Package plans and bonus spots are not separate classifications of time. All rates and bonuses offered to commercial advertisers in packages must be included in calculating LUC. This includes all packages and bonus spots, whether individually negotiated or available to every advertiser. Generally, package plans are simply a volume discount composed of several classes of time. If all spots in the package are within a single class, then the package price sets the LUC for each spot within the package and the LUC is set by dividing the package price by the number

of spots. When a package contains spots in more than one class or time period, a licensee may allocate the package price among the spots in each class or time period. Otherwise, the rotation may establish a new lowest unit rate for all the classes of time within the rotation. To avoid this undesired result, the station may, and should, allocate an ROS package over its various classes of time in which the spot will run and assign different values to them.

The Commission also recognizes that the spots in a package sold over a long period of time will have different values in different seasons, and will allow the allocation of those spots over time. Thus, a 26-week package of afternoon drive radio spots, sold in March, may be assigned different values in April, July and September. However you allocate, the prices assigned to each spot in the package must be documented, either on the face of the contract or invoice or on a simultaneously prepared separate internal memorandum.

PSAs

Public Service Announcements (“PSAs”) and the distinction between normal and “paid” or “sponsored” PSAs deserve special attention.

In general, typical PSAs promote a nonprofit organization or activity and are run by the station as a public service. Some PSAs, however, are paid for, at least in part, by a commercial advertiser (and identified as such). Examples would be a United Way solicitation followed by mention that this reminder was brought to you as a community service by a local auto dealer or a responsible drinking promotional spot purchased by a brand of beer.

Sponsored PSAs (also called “Paid PSAs) sold by themselves are counted the same as any other paid advertisement for purposes of calculating lowest unit rates. If the sponsored PSA is offered to a commercial advertiser as a bonus or as part of a package, then the value of these Paid PSAs must be calculated as part of the lowest unit charge in the same manner as package plans by assigning a reasonable value to the bonus PSA spots.

Thus, if the paid PSA is of the same class and time period as a commercial spot, then the “package price” must be prorated among commercial and paid PSA spots in order to arrive at the lowest unit rate. When the paid PSA is run in a different class or time period, then the Commission will generally defer to the station’s reasonable good faith judgment in allocating the price of a package among the PSAs and spots.

As with any allocation scheme, be careful! Should a station assign too low a value to the paid PSAs, this value will set or depress the lowest unit charge for the classes and time periods during which the PSAs were aired.

So, in review, here is a bullet list for LUC:

What must be included 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 may be excluded from LUC:

- Barter spots
- Per-inquiry spots
- Bonuses for charitable and non-profit organizations
- Billboards & program sponsorships
- Technical or audience-delivery make goods
- Value-added incentives
 - BUT: Must be offered on the same basis
- The Network Exception (i.e., sales by a network and run by the station.)

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