

**Political  
Broadcasting**



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**Legally Qualified Candidate**

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- Must have announced intention to run
- Must be qualified under state law to hold the office
- Must be qualified under state law to be on the ballot or a write-in candidate
- Presidential candidates must be qualified in the state or in ten states
- Check with governmental officials

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**The Key Element of Political  
Broadcasting Is a Candidate  
"Use"**

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- A "use" is a candidate appearance by an *identifiable* voice or picture
- Any "positive" appearance by a candidate is a "use"
- The appearance does *not* have to be controlled or approved by the candidate
- "Use" triggers "equal opportunity" for opponents of that candidate

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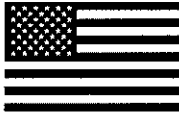
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## Candidate Access: Two Different Standards



- Federal Candidates - have “reasonable access” rights
- State and local candidates – Only “access” at station discretion

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## Federal Candidates Are Entitled to Reasonable Access

- Applies to candidate “uses” (see definition) during entire campaign period
- Stations cannot set flat “limits” on amount or type of spots/program time that candidates can buy
- But, Stations may reject unreasonable requests and negotiate with candidates
- Stations need not respond to “blind” requests for avails or time

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## Federal Access Continued (Federal Candidates)

- Must be offered prime time, program time
- May be excluded from news
- May *not* be excluded from any other category of programs
- Do not have a right of access to any particular program, day or day-part
- Note: non-commercial “educational” stations (FCC reserved channels) are exempt from “reasonable access” concerns by Section 312(a)(7)

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### Reasonable Determinations by Stations

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- Station's "reasonable determination" consider:
- --how much time previously sold to candidate
- --potential disruptive effect on programming
- --possibility of "equal opportunity" requests
- --timing of request—near election date?

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### State and Local Candidates

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- Stations can take political ads/program from some races and not others
- Stations can limit the number of ads/programs
- Stations can restrict to certain day-parts
- Stations must make all "discount classes" available
- Equal Opportunities, Lowest Unit Charge and No Censorship apply

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### Equal Opportunities

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- Applies when candidate becomes legally qualified
- Applies to candidates in "same race" (opponents seeking the same office)
- Candidates must request equal opportunities within seven days of opponent's "use"
- Triggered by non-exempt "use"

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## Exempt Programs

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



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## Bipartisan Campaign Reform Act "BCRA"

- Prohibits expenditures by political parties of "soft money" at any time for any purpose; and:
- During periods of 30 days before primary/convention, and 60 days before general election, BCRA prohibits use of "soft money" & even use of "free" PSAs by corporations/labor unions
- To avoid problems: can limit or refuse political related orders from such entities during applicable periods.

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## Political Rates

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



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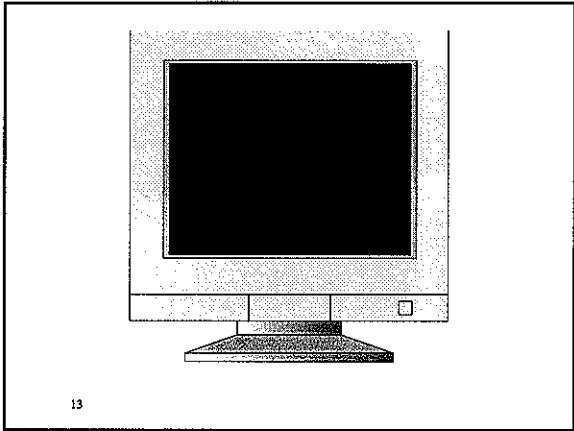
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**PRESIDENTIAL PREFERENCE PRIMARY**  
Democratic Party: January 29, 2008  
LUC Window Opens: December 15, 2007  
Republican Party: February 2, 2008  
LUC Window Opens: December 19, 2007

**PRIMARY ELECTION DATE**  
LUC Window Opens: April 26, 2008  
Election: June 10, 2008  
(Runoff Date: June 24, 2008)

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**GENERAL ELECTION**  
LUC Window Opens: Sept. 4, 2008  
Election: Nov. 4, 2008

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### Lowest Unit Charge

- The lowest unit charge (“LUC”) is the lowest rate charged for the same class and amount of time for the same period-- that runs within a LUC window. Not always easy to determine.
- Same “class” (fixed/preemptible/ROS etc.)
- Same “amount of time” (30/60+etc.)
- Same “period” (prime time, drive time, etc.)

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### Charges Inside the Political Window

- Maxim: The political advertiser received the benefit of all discounts, frequency & otherwise, offered to the most favored commercial advertiser for the same class & amount of time for the same period without regard to the frequency of use by the candidate.
- Example: even though buying only a small dollar value & number of spots, candidate gets volume discount applicable to most favored commercial advertiser.

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### Bipartisan Campaign Reform Act “BCRA” Federal Candidate Certification

- To be entitled to LUC, a Federal Candidate “must certify” that “if” the candidate on-air material refers to an “opponent” (negative or positive) that certain required language will be inserted into the audio & video message.
- This requirement is for “federal candidates” only.
- Deny LUC if the candidate does not certify.

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## Preemptible Time

- Stations with separate levels of preemptible time (with different rights) may treat each level as a separate class, each with its own LUC.
- Stations must disclose estimate of approximate “likelihood” of preemption of each class.
- Stations which sell time on a perpetual “auction” basis have only one class of preemptible time.

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## Package Plans

- Package plans or bonus spots are *not* considered a separate class.
  - Package within a class is just a volume discount.
  - Package containing spots in multiple classes and/or dayparts may be allocated.
  - Calculate value for each & retain in private non-public file in case complaint/FCC inquiry.

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## What to Include in the LUC

- All paid slots
- Value of packages and bonus spots
- All contracts in effect during the political window
- Frequency Discounts
- “Special” Package Plans

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## What to Exclude From the LUC

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- Spots for which no payment is received
- Barter spots
- Per-inquiry spots
- Bonus spots for charitable organizations/government entities
- Billboards & Program Sponsorships
- Non-cash merchandizing/promotional incentives (but make available to candidate on same terms unless de minimis in value or imply a relationship with the station)

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## What to Exclude From the LUC (Cont'd)

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- Web services excluded. Treat like non-cash incentive. If part of pkgs for other advertisers then candidate gets on same basis.
- Charges for production, line charges, remote production etc.

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## Make Goods

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- Unless runs in same price time period, a make good may set new LUC for a more expensive spots sold in a different time period.
- Audience Short-Fall Make Goods:
  - Audience information/rating may not be available before the election. Disclose this possibility. Give after election cash rebate or try offer/negotiate for make good for subsequent election.

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## Time Sensitive Make Goods

- Political make good must run before the election, if station has provided time-sensitive make goods to any commercial advertiser purchasing the same class of time during the year preceding.

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## Disclosure Statement

- Advisable to have in writing
- 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
- May change during the political season



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## Disclosure Statement Contents

- Time classes available to advertisers (preemptible, ROS, etc. available to commercial advertisers)
- LUC or comparable rate for each class
- Make good policies
- Preemptible time practices, different classes/approx. likelihood of preemption
- Audience delivery sales practices, value-added privileges, discounts, etc.
- Any other sales practices
- Charges for use of facilities, advance payment policies, etc.

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## 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
- TV - Four second; four percent of screen height (20 scan lines)
- BCRA adds requirement for federal candidates if mention an opponent.

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## BCRA Sponsor ID Requirement for federal candidates

- Federal candidate certification that "if" mention opponent will add certain language:
- TV: image of candidate, identifying him/herself, & stating he/she authorized ad; plus text stating authorized ad & candidate/his/her campaign committee paid for ad. See specs for size on screen etc.
- AM/FM: candidate voice identifying him/herself, office sought, & that he/she approved the ad.

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## Other BCRA Sponsor ID Requirements

- Political Programming "Advocating" election or defeat of federal candidate
  - If Authorized
  - If not Authorized (third party/issue advertisers)
- Enforcement. Query: Station responsibility?

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## 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

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## 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

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## Political File

- The name of the candidate requesting time (not rate inquiries), details of who/entity placed order, names, telephone/address, etc.
- Nature and disposition of request, schedule provided, class of time, rate, when aired.
- Information as to all other non-exempt uses
- Keep information for two years
- Note new BCRA requirements



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**Additional BCRA Political File Requirement**

- Information as to “programming” that “communicates a political matter of national importance”—although this is a vague standard, it would include at least the following:
  - --legally qualified candidate
  - --any election to federal office
  - --national legislative issue

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Questions?

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