

CRS Report for Congress

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The FCC's Political Broadcasting Regulations

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Summary

This report provides an overview of the Federal Communication Commission's political broadcasting regulations, including general public interest obligations; the equal opportunity (equal time) regulations; and the various interpretations of the Fairness Doctrine, which is no longer enforced by the Commission. A brief section of frequently asked questions regarding political broadcasting is also provided. This report will be updated as events warrant.

Public Interest Obligations of Broadcast Licensees

The Communications Act of 1934, as amended, authorizes the FCC to issue licenses to broadcast stations only if it finds that such grants will serve the "public convenience, interest, or necessity."¹ While the Commission is charged with ensuring that all broadcasters serve the public interest, the public interest standard is not clearly defined by statute.² However, the FCC has specified several public interest obligations relating to programming and consumer accessibility that broadcasters must fulfill.³ A significant part of a broadcast licensee's public interest obligation relates to political broadcasts.

While the FCC's role in overseeing programming is very limited,⁴ the Commission expects its broadcast licensees to "be aware of the important problems or issues in the communities their stations serve and foster public understanding by presenting some programs and/or announcements about local issues."⁵ To further meet their public interest

¹ 47 U.S.C. 307(a).

² See Remarks of FCC Commissioner Gloria Tristani, "Campaigns, Broadcasters, and the Public Interest," June 19, 2000. [<http://ftp.fcc.gov/Speeches/Tristani/2000/spgt008.html>].

³ See 65 Fed. Reg. 4211(I)(2)(January 26, 2000).

⁴ *The FCC and Broadcasting*, [<http://www.fcc.gov/mb/enf/forms/fcc100.html>].

⁵ *Id.* See also *Revision of Programming and Commercialization Policies, Ascertainment Requirements and Program Log Requirements for Commercial Television Stations*, 98 F.C.C.2d (continued...)

obligations, broadcasters are also required to allow reasonable access to candidates for federal office,⁶ provide equal opportunities for use of broadcast facilities to all candidates for the same public office,⁷ and during the 45 days preceding a primary election and the 60 days preceding a general election to charge legally qualified candidates for public office “the lowest charge of the station for the same class and amount of time for the same period.”⁸ These requirements are discussed in detail *infra*.

Equal Opportunity Regulations

Pursuant to section 315 of the Communications Act of 1934, as amended, if a broadcaster allows “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.”⁹ Under section 315, the broadcaster is not permitted to censor the material broadcast by the candidates.¹⁰

Certain types of broadcasts are exempt from the equal opportunity requirements. Under section 315, an 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), is not deemed to be “use of a broadcasting station” for equal opportunity purposes.¹¹

Generally, equal opportunity is defined to prohibit discrimination between candidates.¹² The practices, regulations, facilities, or services for or in connection with service rendered by the broadcaster must be the same for all candidates for a political office.¹³ Broadcast licensees are also prohibited from making 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 office.”¹⁴ Under this provision, for example, a station could not enter into a contract with a candidate stipulating that the station would not sell time to another candidate during the same time period.

⁵ (...continued)
1076 (1984).

⁶ 47 U.S.C. 312(a)(7).

⁷ 47 U.S.C. 315(a).

⁸ 47 U.S.C. 315(b)(1).

⁹ 47 U.S.C. 315(a). “Use” is defined to include a candidate appearance, including by voice or picture, that is not exempt under section 315(a). 47 C.F.R. 73.1941(b).

¹⁰ 47 U.S.C. 315(a).

¹¹ *Id.*

¹² 47 C.F.R. 73.1941(e).

¹³ *Id.*

¹⁴ *Id.*

Reasonable Access Requirement. Section 315 does not require broadcasters to allow candidates to use their facilities; however, “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” could lead to revocation of the station’s license.¹⁵ Thus, broadcasters are required to permit candidates for Congress, and for the offices of President and Vice President, to purchase reasonable amounts of time. Broadcast stations are not required to allow candidates for local offices access on a similar basis. However, if they do offer time to a local candidate, the equal opportunity regulations would apply and time must be offered to all local candidates for that office.

Charges for Use of Broadcast Station. If a broadcaster makes time available to a legally qualified candidate for public office, the amount that the station may charge the candidate may be limited. During the 45 days preceding the date of a primary or runoff election and during the 60 days preceding the date of a general or special election charges for air time may not exceed “the lowest unit charge of the station for the same class and amount of time for the same period.”¹⁶ The lowest unit charge of the station is typically what the station charges its most favored commercial advertisers for the same classes and amounts of time.¹⁷ The broadcaster must disclose and make available to the candidate any special discount plans or other pricing options that are made available to commercial advertisers.¹⁸

Classes of time are generally defined according to the benefits with which they are associated. The Commission recognizes the following classes of time: nonpreemptible, preemptible with notice, immediately preemptible and run-of schedule.¹⁹ Broadcasters are allowed to establish and define their own 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 the identity of the advertiser.”²⁰ Classes of preemptible with notice time may also be defined so long as all classes of such time are clearly defined, fully disclosed and made available to the candidate.²¹ Broadcast stations may treat nonpreemptible and fixed position time as distinct classes of time provided that the differences between such classes are clearly

¹⁵ 47 U.S.C. 312(a)(7). *See also* 47 C.F.R. 73.1944. Noncommercial educational broadcast stations are not subject to the reasonable access requirement.

¹⁶ 47 U.S.C. 315(b)(1)(A). *See also* 47 C.F.R. 73.1941(a)(1).

¹⁷ 47 C.F.R. 73.1941(a)(1)(i).

¹⁸ *Id.*

¹⁹ 47 C.F.R. 73.1942(a)(1)(ii).

²⁰ 47 C.F.R. 73.1942(a)(1)(iii). 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.

²¹ 47 C.F.R. 73.1942(a)(1)(iv).

articulated.²² Stations may not establish a separate, “premium-period” class of time sold only to candidates.²³

At any other time, the charges may not exceed the charges made for comparable use of the station by other users (i.e. commercial advertisers).²⁴ The rates charged to all candidates for the same office must be uniform and may not be rebated by any means, direct or indirect.²⁵ Any discount privileges offered by the broadcaster to commercial advertisers must be disclosed and made available upon equal terms to all candidates for public office.²⁶

Sponsorship Identification Requirements. Under the Bipartisan Campaign Reform Act (BCRA), a candidate is not entitled to receive the lowest unit charge rates discussed *supra* unless the candidate provides written certification to the broadcast station that the candidate (or any authorized committee of the candidate) will not make any direct reference to another candidate for the same office unless such reference meets certain sponsorship identification requirements.²⁷ In order to qualify for the lowest unit charge rates, the broadcast (advertisement) must include, for a period of no less than 4 seconds, “(1) a clearly identifiable photographic or similar image of the candidate; and (2) a clearly readable printed statement, identifying the candidate and stating that the candidate has approved the broadcast and that the candidate’s committee has paid for the broadcast.”²⁸ For radio broadcasts, the broadcast must include “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.”²⁹

Frequently Asked Questions

Are broadcast stations required to provide “fair and balanced” reporting on political issues or candidates? Are news programs required to present opposing viewpoints? There are no current regulations that require broadcasters to provide fair and balanced reporting. Until 1985, the Fairness Doctrine required broadcasters to present opposing viewpoints on controversial issues of public

²² 47 C.F.R. 73.1942(a)(1)(v).

²³ 47 C.F.R. 73.1942(a)(1)(vi).

²⁴ 47 U.S.C. 315(b)(1)(B). *See also* 47 C.F.R. 73.1941(a)(2)

²⁵ 47 C.F.R. 73.1941(a)(2).

²⁶ *Id.*

²⁷ 47 U.S.C. 315(b)(2)(A).

²⁸ 47 U.S.C. 315(b)(2)(C). BCRA places additional sponsorship identification requirements on television advertisements. Under BCRA, television advertisements must include an unobscured, full-screen view of the candidate making the statement; or the candidate making the approval in voice-over accompanied by a clearly identifiable photographic or similar image of the candidate. Pub. L. 107-155, Sec. 311, codified at 2 U.S.C. 441d(d)(1)(B)(i).

²⁹ 47 U.S.C. 315(b)(2)(D).

importance.³⁰ However, in 1985, the FCC determined that the Fairness Doctrine was no longer justified due to the “multiplicity of voices in the marketplace.”³¹ The Commission based its determination on findings that the doctrine restricted broadcaster’s journalistic freedom, and “in operation, actually inhibit[ed] the presentation of controversial issues of public importance to the detriment of the public and in degradation of the editorial prerogative of broadcast journalists.”³² While not as precise as the equal time rules, which apply to the use of a broadcast station by a candidate, the Fairness Doctrine required the broadcaster “to make reasonable judgments in good faith on the facts of each situation – as to whether a controversial issue of public importance is involved, as to what viewpoints have been or should be presented, as to the format and spokesmen to present the viewpoints, and all the other facets of such programming.”³³

Are broadcast stations required to air political debates? Are they paid when they do? Broadcast stations are not required to air political debates and are not paid for doing so. Political debates are typically aired at the request of the Commission on Presidential Debates, and are apparently exempt from the equal opportunity regulations discussed *supra*.³⁴ Some broadcasters choose not to air the debates because of contractual obligations to air other programs, such as sporting events.

Are there regulations prohibiting a broadcast journalist or on-air talent from taking a certain position on a political issue or candidate? What about the station manager or station owner? There are no regulations requiring journalists to be nonpartisan or unbiased. Under the Fairness Doctrine, which is no longer enforced by the FCC, a broadcaster would have been required to present opposing viewpoints, but there is no such requirement under current law. Additionally, there are no FCC regulations that would prohibit the station manager or station owner from doing so.³⁵

³⁰ *In re Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance*, 40 F.C.C. 598 (1964).

³¹ *General Fairness Doctrine Obligations of Broadcast Licensees*, 50 Fed. Reg. 35418 (1985). The repeal of the Fairness Doctrine also led to the repeal of its corollary, the Personal Attack Rule. *Radio-Television Directors Association of America v. FCC*, 229 F.3d 269 (D.C. Cir. 2000). Additionally, the *Zapple* Doctrine, an additional interpretation of the Fairness Doctrine that required broadcasters to provide supporters of a candidate with an opportunity to respond when the broadcaster has allowed his or her opponent’s supporters to use or purchase time on the station, is presumably no longer enforced by the Commission. *See In re Request by Nicholas Zapple, Communications Counsel, Committee on Commerce for Interpretive Ruling Concerning Section 315 Fairness Doctrine*, 23 F.C.C. 2d 707 (1970). For a detailed discussion of the evolution and repeal of the fairness doctrine, see Stuart N. Brotman, *Communications Law and Practice*, 2003 ed., §§ 2.04 *et seq.*

³² 50 Fed. Reg. 35418 (1985).

³³ *Supra* n. 30. The Fairness Doctrine did not require that equal time be given for varying viewpoints, nor did it require balance in individual programs.

³⁴ *See In re Complaint of Ross Perot Against ABC, CBS, NBC, and Fox Broadcasting Co.*, 11 F.C.C. Rcd. 13109 (1996).

³⁵ While there are no FCC regulations that relate to this situation, certain campaign finance laws (continued...)

Are broadcast stations required to air a certain amount of public interest or civic affairs programming? The FCC expects broadcasters to “be aware of the important problems or issues in the communities their stations serve and foster public understanding by presenting some programs and/or announcements about local issues.”³⁶ However, there is no requirement that broadcast stations air a specific amount of such programming.

³⁵ (...continued)

regarding contributions by corporations may be applicable. *See* 2 U.S.C. 441b.

³⁶ *See Revision of Programming and Commercialization Policies, Ascertainment Requirements and Program Log Requirements for Commercial Television Stations*, 98 F.C.C.2d 1076 (1984).