ALLIANCE FOR BETTER CAMPAIGNS

GOUGING DEMOCRACY

HOW THE TELEVISION INDUSTRY PROFITEERED ON CAMPAIGN 2000

The Alliance for Better Campaigns is a public interest group that promotes campaigns in which the best information reaches the greatest number of citizens in the most engaging ways. In 2000, it encouraged the broadcast television industry to provide air time for candidates to discuss issues. It is funded by grants from The Pew Charitable Trusts, the Open Society Institute, the Joyce Foundation, the Carnegie Corporation of New York and the Ford Foundation.

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GOUGING DEMOCRACY

HOW THE TELEVISION INDUSTRY PROFITEERED ON CAMPAIGN 2000

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EXECUTIVE SUMMARY

Local television stations across the country systematically gouged candidates in the closing months of the 2000 campaign, jacking up the prices of their ads to levels that were far above the lowest candidate rates listed on the stations' own rate cards. They did so despite a 30-year-old federal law designed to protect candidates from such demand-driven price spikes. The stations apparently did not break the law; rather, they exploited loopholes in a law that has never worked as intended. In 2000, this so-called "lowest unit charge" [LUC] safeguard for candidates was overrun by the selling practices of stations, the buying demands of candidates, the sharp rise in issue advocacy advertising and the unprecedented flood of hard and soft money into political campaigns.

As a result, political advertisers spent five times more on broadcast television ads in 2000 than they did in 1980, even after adjusting for inflation. The candidates made these payments to an industry that has been granted free and exclusive use of tens of billions of dollars worth of publicly owned spectrum space in return for a pledge to serve the public interest. In 2000, the broadcasters treated the national election campaign more as a chance to profiteer than to inform. Their industry has become the leading cause of the high cost of modern politics.

This study is based on a comparison of political advertising sales logs and rate cards at 10 local television stations; an analysis of political advertising costs at all stations in the top 75 media markets in the country; and interviews with Democratic and Republican media buyers, television station ad sales managers and officials at the Federal Communications Commission. Its key findings:

Candidates Paid Prices Far Above the Lowest Published Rate. In the final months of Campaign 2000, federal, state and local candidates paid ad rates that, on average, were 65 percent above the candidate "lowest unit charge" rate published in the stations' own rate card, according to an audit of ad logs at 10 local stations across the country. The 10 stations are major network affiliates in large markets; in total, they aired more than 16,000 political spots.

Stations Steered Candidates Toward Paying Premium Rates. Television stations made their lowest candidate rate unattractive to candidates by selling ads at that rate with the proviso that they could be bumped to another time if another advertiser came forward with an offer to pay more. The LUC system is supposed to ensure that candidates are treated as well as a station's most favored product advertisers (e.g., the year-round advertiser who buys time in bulk and receives a volume discount). But unlike most product advertisers, candidates operate in a fast-changing tactical environment and need assurance that their ads will run in a specified time slot. During the height of the 2000 campaign, station ad salesmen routinely took advantage of these special needs and steered candidates toward paying high premiums for "non-preemptible" ad time.

THE RATES ARE BECOMING EXTORTIONIST.

Jim Jordan, spokesman
Democratic Senate Campaign Committee

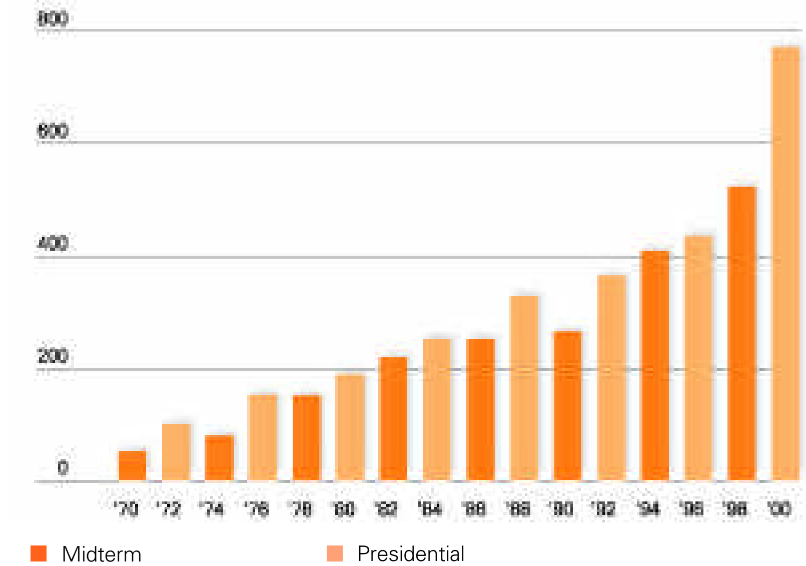
An Explosion of Issue Advocacy Ads Caused Spikes in All Ad Rates. The biggest change in the marketplace of political advertising in recent years has been the explosive growth of party and issue group advertising; in 2000, it accounted for roughly half of all political ad spending. These ads are not entitled to LUC protection. In markets where there were highly competitive races, stations doubled and sometimes tripled issue ad rates in the campaign's final weeks. This had a tail-wags-dog effect on the pricing of candidate spots. The intention of the LUC system is to peg candidate rates to volume discount rates for product ads. But in 2000, candidates paid rates driven up by the demand spike created by the flood of soft money-funded issue advocacy ads.

Some Candidates Were Shut Out of Air Time. The heavy demand for political ad time squeezed some would-be candidate advertisers off the air. In some markets, television stations either ran out of inventory or refused to sell air time to down-ballot state and local candidates. These candidates are entitled to lower ad rates than issue groups and parties, but, unlike candidates for federal office, they are not guaranteed access to paid ad time.

Political Ad Sales Were at Least $771 Million… Stations in the top 75 media markets took in at least $771 million from Jan. 1 to Nov. 7, 2000 from the sale of more than 1.2 million political ads, almost double their 1996 take of $436 million.

TELEVISION'S RISING FORTUNES

Political Ad Sales, 1970-2000, in millions



*Inflation-adjusted to 2000.
Sources: Television Bureau of Advertising (1970-1998); Campaign Media Analysis Group (2000)

…and May Have Hit $1 Billion. The $771 million figure is a conservative estimate. It covers ad spending on the 484 stations in the nation's 75 largest markets, but excludes the ad dollars spent on roughly 800 stations in the nation's 135 smaller markets. It also fails to account for the spike in ad rates that occurred close to Election Day. Some Wall Street analysts estimate the actual political ad revenue total was closer to $1 billion.

While Profiteering on the Surge in Political Spending, Stations Cut Back on Coverage. Even as it was taking in record revenues from political advertisers, the broadcast industry scaled back on substantive coverage of candidate discourse. Throughout the 2000 campaign, the national networks and local stations offered scant coverage of debates, conventions and campaign speeches, prompting veteran ABC newsman Sam Donaldson to remark that his network evening news political coverage had "forfeited the field" to cable. The industry also fell far short of a proposal by a White House advisory panel, co-chaired by the president of CBS, that stations air five minutes a night of candidate discourse in the closing month of the campaign. In the month preceding Nov. 7, the national networks and the typical local station aired, on average, just a minute a night of such discourse. This minimal coverage increased the pressure on candidates to turn to paid ads as their only way of reaching the mass audience that only broadcast television delivers.

INTRODUCTION

Long before the election that refused to end finally did, a clear winner had already emerged from Campaign 2000 – the nation's local television stations. The industry took in at least $771 million from the sale of 1.2 million political ads in 2000, according to a report by the Campaign Media Analysis Group (CMAG), a research firm that tracked political ad spending on television stations in the top 75 media markets.[1] This was a five-fold increase over the amount of political ad spending in 1980. In even-numbered election years, political advertising is now the third biggest category of ads sold on local broadcast television – behind automotive and retail stores, but ahead of movies and fast foods, according to a 2000 Bear Stearns analysis.

Several factors have fueled this rapid growth. For candidates, broadcast television has long been the most important and widely watched medium for communicating with voters. However, a reduction in political coverage by broadcasters and the desire by candidates to control their message has led candidates more than ever to rely on paid ads to communicate with voters via television. The continuing fragmentation of audiences has also played a role. Even as broadcast channels lose viewers to cable and the Internet, they alone are able to offer candidates the ability to reach a broad audience (albeit not as broad as it once was). In a universe made up of niches, any medium that reaches across niches has added value. Finally, the surge in issue advocacy advertising, party advertising and ballot initiative advertising – much of it financed by unlimited contributions from special interests – has added to the all-ads, all-the-time culture of politics on television.

THEY CAN CHARGE THE MOON AND GET IT.

David Keating, Executive Director of the Club for Growth, on stations and issue ad prices

[1] CMAG used a satellite service to monitor and categorize political ads that aired on the 484 stations in the top 75 media markets, which serve 80 percent of the population. It used average cost per spot per market data to estimate station revenue from these ads. Because these estimates relied on a fixed market-wide average, they did not always account for the spike in ad prices that occurred as Election Day approached, especially in markets with highly competitive races.

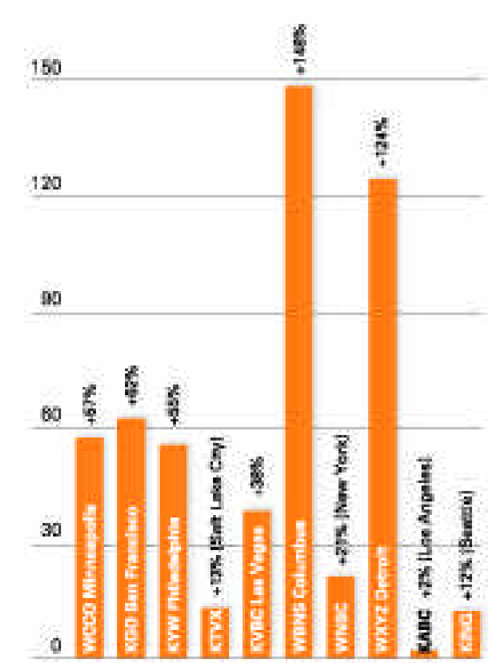
THE COLLAPSE OF THE LUC SYSTEM

In 1971, Congress enacted the "Lowest Unit Charge" system to insulate candidates from price gouging by local television stations. The law requires that, as a condition of receiving their free licenses to use the public's airwaves, television stations must offer reduced rates to candidates in the closing weeks of all elections. Specifically, broadcasters must offer qualified candidates an LUC rate, the one given to the station's most favored product advertiser (for example, a local auto dealer who buys a heavy volume of air time) in a comparable "class" of time. [For a more detailed explanation of LUC and its history, see Appendix II.]

In order to comply with the law, local stations publish a candidate or LUC rate card in the weeks and months preceding all elections. But these rates come with a catch: Ads sold at the LUC rate can be pre-empted by the station, often without any notice, if another advertiser wants that particular time slot and is willing to pay more for it. When this happens, candidates are entitled to have their money refunded or have their ad run at a later date. This is cold comfort for the candidate. Unlike many product advertisers, whose chief objective is to build brand loyalty over the long haul and who can therefore afford to be flexible about when their ads run, candidate advertisers need assurance their ads will run exactly when and where they place them. In the hothouse culture of campaign thrust and parry, if an opponent's attack ad is running on the 6 p.m. news, the candidate needs to know that a counterattack ad will run in the same time and place. Local stations understand these dynamics and many stations exploit them. They charge a high premium for non-preemptible ad time, and as Election Day approaches and demand for such time keeps rising, the premium keeps rising with it.

CANDIDATE AD PRICES, FALL 2000

Price of Typical Candidate Ad, as Percentage Greater than Lowest Published Candidate Rate



These 10 stations aired more than 16,000 candidate ads leading up to the November election. On average, the typical candidate ad sold at 65 percent above each station's lowest published candidate rate.

Source: Station records; see chart, page 7

"It's become common practice for station ad salesmen to pressure you out of buying LUC into buying non-preemptible by telling you it's the only way they can be sure the ads will run when you want," said Cathie Herrick, president of Buying Time, a Washington, DC-based political time buying firm. "We found in 2000 that the ads we bought at the LUC rate weren't clearing [running in the designated time slot] because of supply and demand."

"It's the ultimate squeeze play," said Peter Fenn, a longtime Democratic media consultant. "The stations know it's their way or the highway. That's why you end up paying top dollar. They've done this kind of gouging in the past, but in 2000, they broke through some kind of ceiling. They've just become vacuum cleaners for political money. They sit at their cushy desks and just rake it in. It's the easiest money they'll ever make."

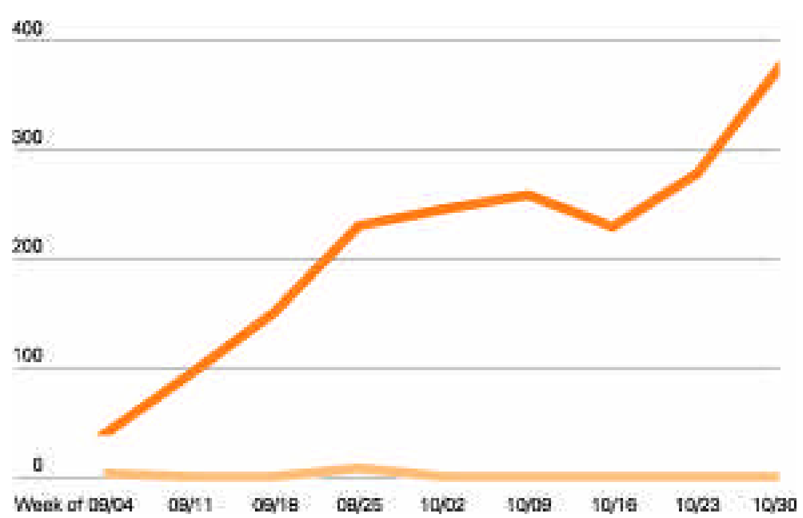
Over the years, virtually everyone associated with the buying and selling of political ads has acknowledged that the LUC law has not worked as intended to keep down the cost of candidate ads. But in 2000, the system was simply overrun by the unprecedented flood of money into political campaigns. A detailed audit of ad sales records at 10 stations in large markets found that, on average, candidates paid a price that was 65 percent greater than the lowest candidate rate published on the stations' own rate cards.

At these local stations, candidate ad prices rose from week to week as the fall campaign season unfolded. For example, in Philadelphia, a battleground for the presidential race and U.S. Senate campaigns in Pennsylvania, New Jersey and Delaware, the LUC rate on CBS affiliate KYW for a preemptible, 30-second spot on the 6 p.m. local news climbed from $575 the week of Labor Day to $859 in the final week of the campaign – almost equaling the $900 non-preemptible rate charged in early September. Even so, just a tiny fraction of candidate ads that aired during the fall campaign were sold at this ever-rising LUC rate; candidates were too concerned about getting bumped, so they purchased ads at the non-preemptible rate, which itself was also rising. By the week before the election, a non-preemptible spot on KYW's 6p.m. news cost $1,065.

Some media consultants even found their rates rising within a given day. "We had a Philadelphia station fax us their rate card one morning in late October and it quoted a $900 price for the slot we wanted," recalled Neil Oxman, head of the Campaign Group, a Philadelphia media consulting firm that handles congressional races across the nation. "When my time buyer called a few hours later to place the ad, she was told, sorry, the price was now up to $1,150."

VOLUME OF CANDIDATE ADS ON KYW-TV IN PHILADELPHIA

Number of Ads Sold, Fall 2000



Non-Preemptible Ads　Preemptible, LUC Ads

Source: Station records; see chart, page 7

Similar patterns played out in hotly contested political markets all over the country as a variety of factors fueled the demand that led to the hike in ad rates. First, demand rose because an increasing number of down-ballot candidates turned to television. Ohio and Michigan, for example, both saw multimillion-dollar campaigns for state Supreme Court. In West Virginia, candidates in countywide races for Circuit Court judgeships took to the airwaves.

Far more important, though, was the explosion in issue advocacy advertising, which prompted stations to raise rates across the board for all advertisers – candidates included. "Soft money party and issue group ads have become the tail that wags the dog," Oxman said. "In the old days, the candidate rate was pegged to the rate that a station's best commercial customer got. Now, the candidate rate is pegged to the rates that the soft-money political advertiser pays. Yes, the candidate can get a discount from that rate, but the discount is on a rate that has gone through the roof."

continued on page 10

NUMBER OF CANDIDATE ADS SURVEYED

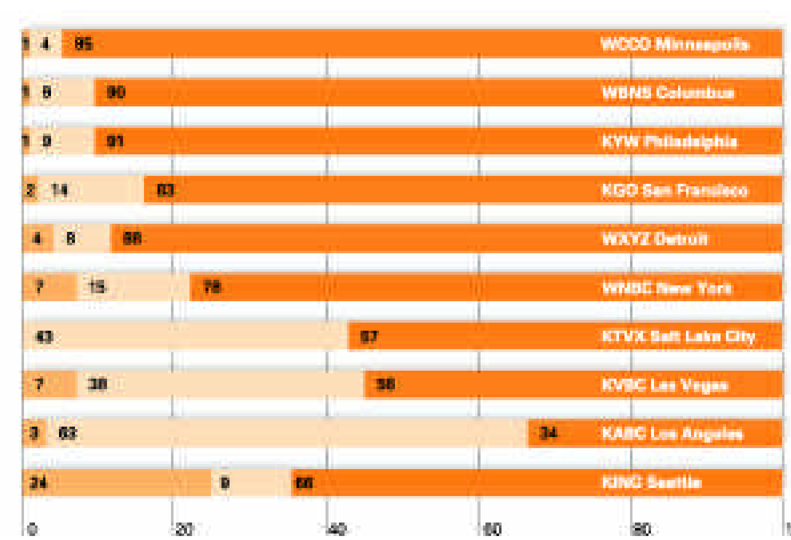
Station	Market	Time Period	Pub. Date	# Ads
WCCO	Minneapolis	07/29 – 11/07	06/28; 09/15	2258
WBNS	Columbus	09/25 – 11/07	10/04	2205
KYW	Philadelphia	04/22 – 11/07	continuous	2408
KGO	San Francisco	10/09 – 11/07	10/12	939
WXYZ	Detroit	09/04 – 11/07	07/27	2114
WNBC	New York City	10/09 – 11/07	10/03	1062
KTVX	Salt Lake City	09/08 – 10/01	07/20	156
KVBC	Las Vegas	07/22 – 11/07	07/31	3435
KABC	Los Angeles	09/25 – 11/07	09/20	481
KING	Seattle	09/25 – 11/06	09/26	1689

THE BIGGEST RIP-OFF IN THE WORLD

Neil Oxman, Democratic consultant, on the price of television time

CANDIDATE ADS SOLD AT LOWEST PUBLISHED CANDIDATE RATE

Percentage of Ads Sold At, Above or Below LUC Per Station/Market, Fall 2000



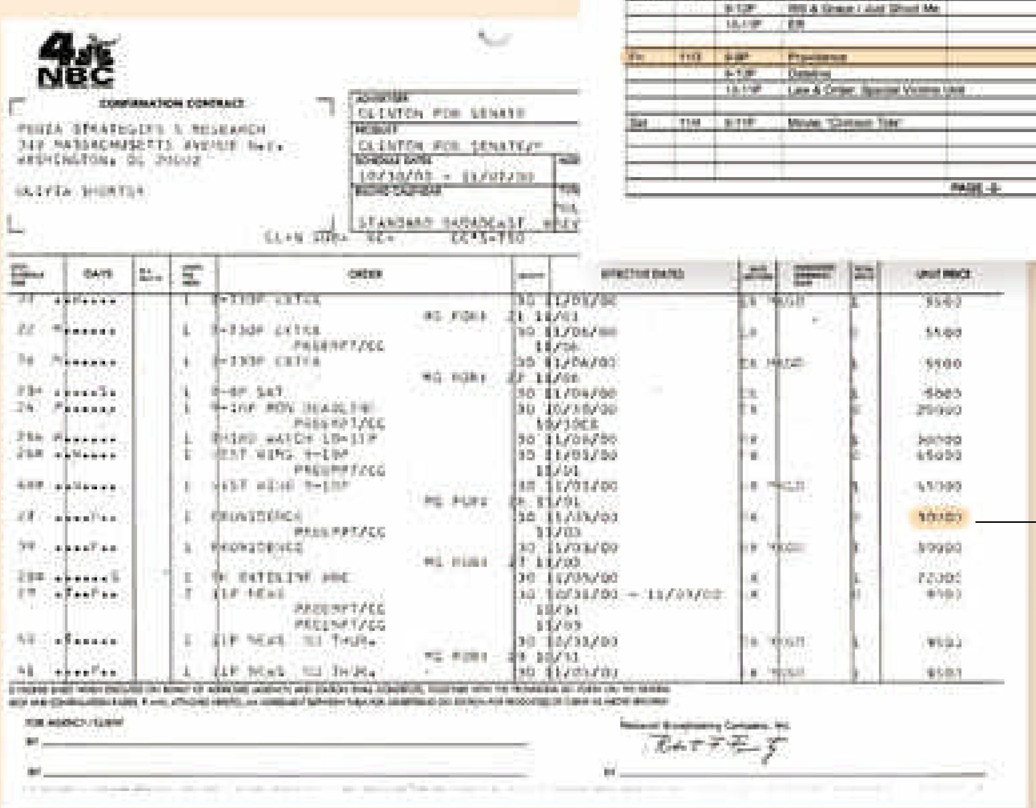
Below LUC　At LUC　Above LUC

Source: Station records, see chart, above

THE GAP BETWEEN THE RATE CARD AND REALITY

New York: Hillary Clinton on WNBC
WNBC's lowest candidate rate rose by 50 percent in the three weeks between Oct. 10 and Nov. 3, driven up by the spike in demand created by the campaign itself. "Yes, we do raise the LUC for candidates from week to week if everyone else's rates are going up," said an ad salesman at WNBC. "We're not supposed to lose money on campaigns, so if the demand is there, we raise the cost of doing business for everyone."

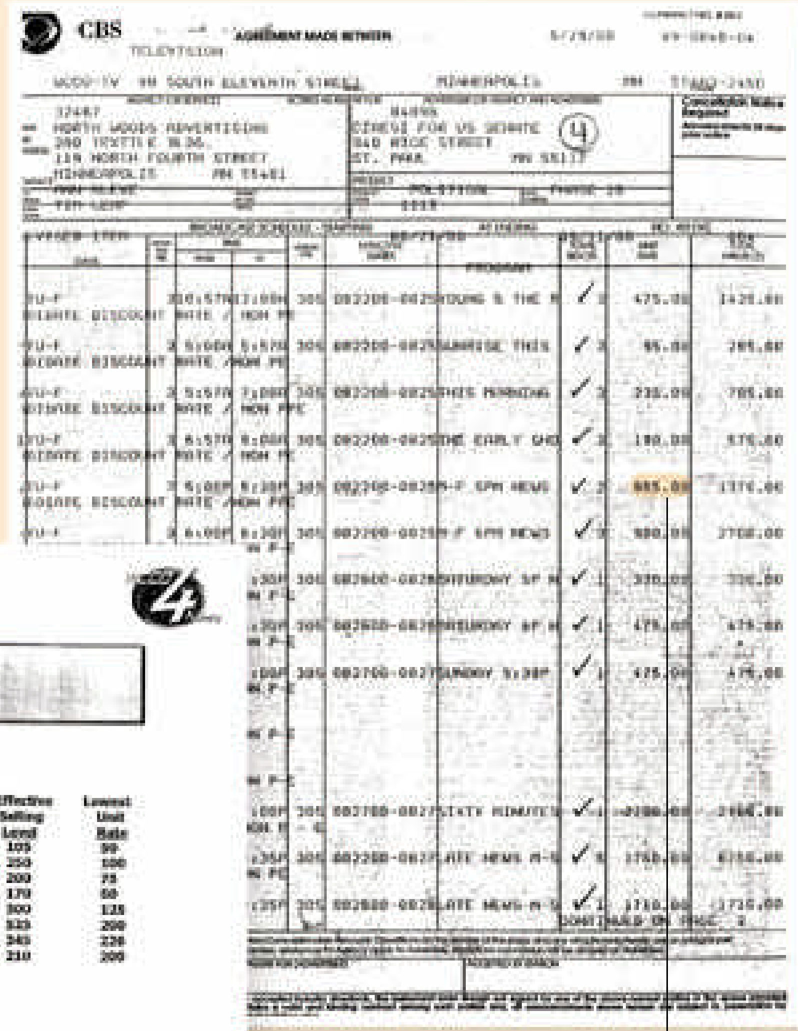

WNBC, NEW YORK
POLITICAL PRIME RATE CARD

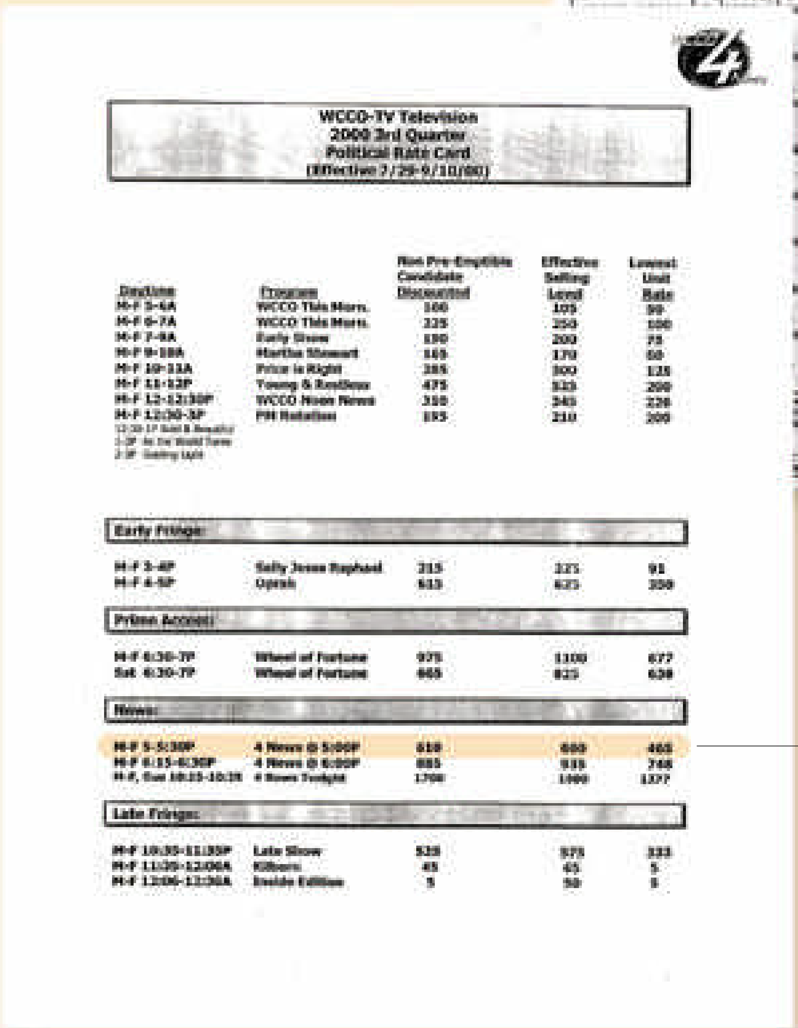

CONFIRMATION CONTRACT

$20,000 – Lowest unit rate listed for the same spot, as published on a WNBC rate card issued Oct. 10, 2000

$30,000 – Actual price paid by Clinton campaign for a pre-emptible spot aired on Nov. 3, 2000

Minneapolis: Mike Ciresi on WCCO
Because the most heavily discounted candidate rate is pre-emptible, stations often encourage candidates to pay higher rates to guarantee that their ads make it on the air. During the height of a campaign, these non-preemptible rates climb even higher. On WCCO in Minneapolis, Senate primary candidate Mike Ciresi paid $685 for a non-preemptible spot on the 5 p.m. local news. That's higher than the rate originally set for a non-preemptible candidate spot and almost 50 percent higher than the pre-emptible rate originally set for that program.


CBS
AGREEMENT MADE BETWEEN


WCCO-TV Television
2000 3rd Quarter
Political Rate Card
(Effective 7/29-9/10/00)

$685 – Actual price paid by Ciresi campaign for a non-preemptible spot on the 5 pm weekday news, aired between Aug. 21 and Sept. 11, 2000

$610 – Non-preemptible candidate rate listed for the same program, as published on a WCCO rate card for the period for July 29 through Sept. 10, 2000

$465 – Pre-emptible rate for the same spot

continued from page 7
A Brigham Young University study of broadcast television political ad spending in 17 hotly contested U.S. Senate and congressional races in 2000 found that the average cost for all political spots (candidates, parties and issue groups) rose from less than $500 in mid-August to more than $1,200 in the final week of the campaign. The same study found that, on average, the candidates in those 17 races paid $694 per spot over the course of the campaign, while the parties paid an average of $953 per spot and the interest groups paid an average of $924.

One illustration of the market-setting power of soft-money political advertising came in New York last fall, when the candidates in the high-dollar Senate race between Hillary Clinton and Rep. Rick Lazio announced in late September that they would forgo soft money-funded television ads. Candidate ad prices that had been rising all fall temporarily dipped, according to data supplied by Lazio media buyer Brad Mont.

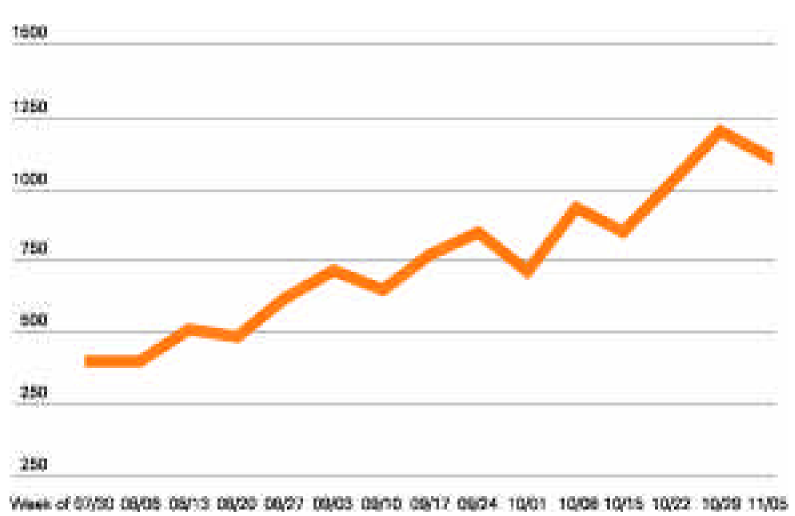
Issue advertising also contributed indirectly to an increase in advertising by candidates, who frequently felt compelled to respond to attacks launched against them by issue groups. Moreover, the sheer clutter of all political ads made each spot less effective – which, perversely, often induced candidates to buy even more spots. In Detroit, for example, 21 different political groups were on the air during the closing weeks of the fall campaign, forcing candidates to buy more ads than in previous years to get their message out. "There's so much clutter on the air, you have to buy at levels that were unheard of a decade ago," Mont said. "A month out from Election Day last year, I was buying 2000 gross rating points per week for Lazio in upstate markets. Ten years ago, for a big-ticket Senate race, I'd be buying maybe 800 GRPs per week at that stage. But it's just so hard to get a message out that you have to hammer, hammer, hammer."[2]

Under this heavy demand, some stations ran out of air time. In Missouri, for example, where ballot initiative advertisers were being charged triple the candidate rates, Democrat Steve Gaw, a losing candidate for Secretary of State, finished the election with $30,000 in the bank; he had been unable to book any air time on television, according to the *St. Louis Post-Dispatch*. Other stations simply refused to sell to non-federal candidates, who are entitled to LUC rates but are not guaranteed access to air time as federal candidates are. Karen Friedman, a Democrat running for the state legislature from suburban Philadelphia was turned away by stations even though she was willing to pay premium rates. Friedman, a former TV reporter, told *BusinessWeek* that she suspected stations were holding out in hopes of charging issue groups even higher prices.

THEY BOUGHT PRIME TIME,
THEN THEY BOUGHT
ALL OF SATURDAY MORNING,
SUNDAY MORNING
AND DAYTIME.

Linda Baumann, Station Manager of ABC affiliate KTMF in Missoula, on political media buyers' demand

DOLLARS PER BROADCAST SPOT



Source: Center for the Study of Elections and Democracy, Brigham Young University

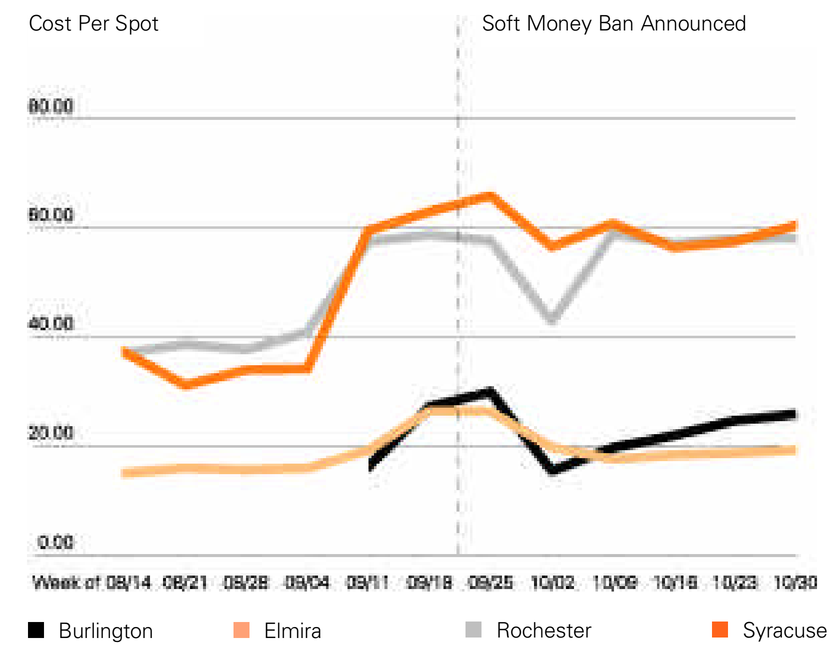
[2] A gross rating point (GRP) is a measure of viewership penetration. Buying 1,000 GRPs in a week means that the typical television viewer in that media market will see the ad 10 times during its week-long run.

Stations had a field day with the rates they charged issue groups, the fastest growing category of political advertiser. Some anecdotal reports from around the country last year:

- In Portland, OR, the Sierra Club found that the price of a 30-second spot more than tripled in less than one month. Political director Dan Weiss told *Roll Call*, "…[W]e got a quote at one price in one market, and it increased by 10 percent the next day."
- In late September, a sales representative for KHQ in Spokane, WA, wrote a memo to a media buyer, saying, "Activity is a lot heavier than the station had anticipated and your schedules are already getting bumped." To guarantee that the spots would air, the media buyer was told to pay $1800 per spot on the Sunday 11 p.m. news, instead of the $600 quoted in August.
- Also in Spokane, Planned Parenthood said that stations offered the issue groups rates that were three times what they were charging product advertisers.
- On KSDK in St. Louis, a spot on the 6 a.m. program "Today St. Louis" cost ballot initiative supporters $5,000 – more than four times the candidate rate, according to sales contracts.
- At the height of the fall campaign, KYW in Philadelphia charged issue groups $4,500 to $6,500 for air time that would have cost product advertisers $2,500 to $3,000, according to *BusinessWeek*.

Still another factor in the rise in political advertising costs is the buy-at-any-cost mindset of many candidates and their media consultants. Unlike product advertisers, who tend to keep a steady eye on the bottom line, candidates can become swept up in the competitive drama of their own campaigns. When an opponent is running a battery of attack ads and has surged in the polls, the candidate needs to have more ad time – now! Moreover, his or her media consultant and time buyer, whose compensation is pegged to a percentage of gross air time purchased, has no great financial incentive to hold costs down.

UPSTATE NEW YORK CANDIDATE AD COSTS



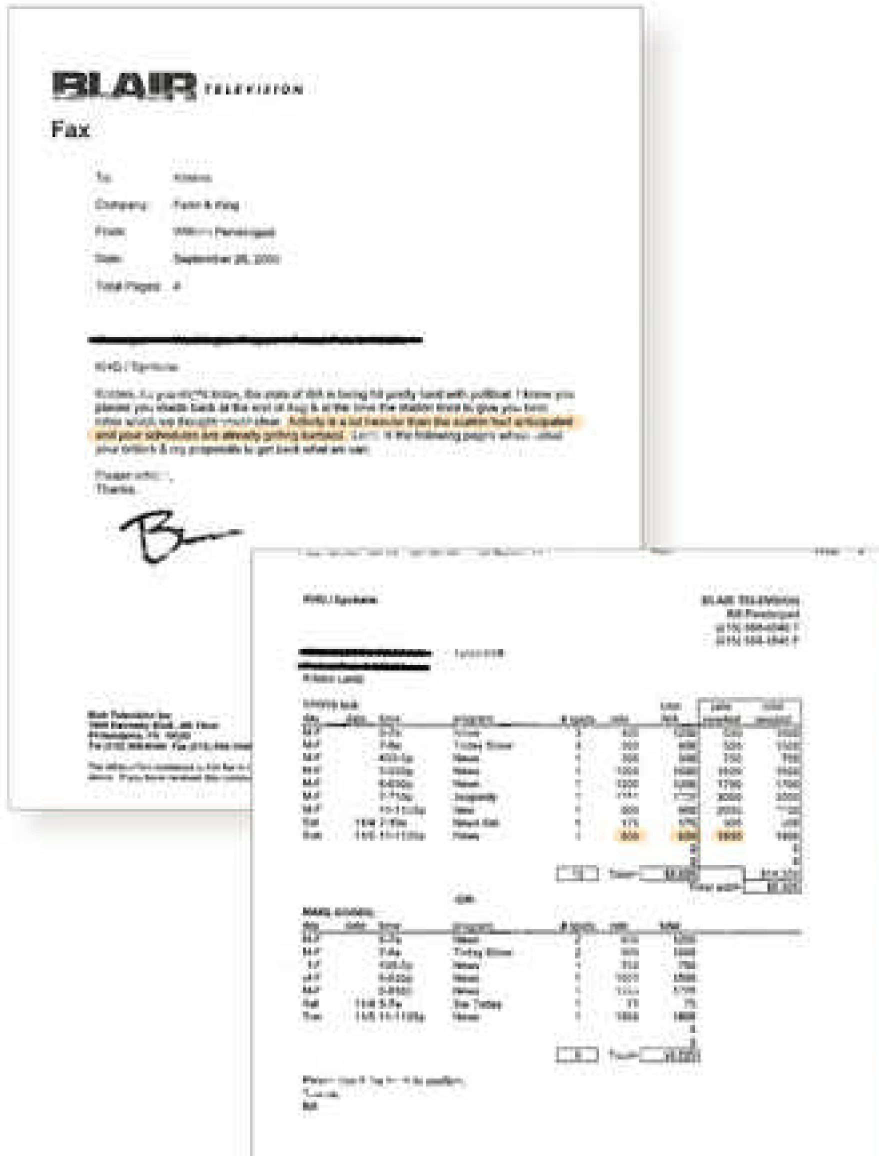
Source: Republican Media Buyer Brad Mont

"Sometimes what drives the prices up are political time buyers who are in a big hurry to spend money," said Dick Hollister, general sales manager at KVBC in Las Vegas. "Maybe the candidate held a fundraiser and took in $30,000 more than expected. So the buyer calls you up the next morning and wants to spend that money right away."

When stations take advantage of such demand spikes, are they breaking the 1971 law? Apparently not. As interpreted and enforced over the years by the Federal Communications Commission, the law says that stations are in compliance if they offer candidates the best rate available for a given "class" of ad time. Over the years, stations have created more and more classes of ad time – immediately preemptible; preemptible with 24 hours notice; preemptible with five days notice; non-preemptible, etc. As long as the candidate gets the lowest rate within a given class, stations are technically in compliance – even though this pricing structure inevitably steers candidates toward the most expensive time.

"Most of the time, I am able to get the best price in a given class of time," said Mont, the Republican ad buyer, "so to that extent, the law does work." Jim Gallagher, director of sales at KYW-TV in Philadelphia, agreed. "At our station, the candidate is not getting gouged," he said. "Conversely, issue group advertisers aren't protected by the law, and they do get get gouged." However, an audit of KYW's own political ad files (see page 7) shows that 91 percent of the candidate spots that aired on KYW last year were sold above the LUC. So when Gallagher says candidates were not "gouged," he means that while they purchased ads at rates well above the LUC (in the case of KYW, the candidate spots sold at rates that were, on average, 73 percent above the LUC in 2000), these rates were still about 10 percent below the prevailing market rate for non-preemptible time during the busy campaign season. "Within the class of time we're selling them, we go out of our way to make sure they're getting the best deal, so we believe we are operating well within the law," Gallagher said.

The FCC agrees. Up through the early 1990s, the FCC encouraged political candidates to lodge formal complaints against stations if they thought they were not getting the full advantage of the LUC system; some of these complaints resulted in broadcasters making substantial compensatory payments to candidates. Since 1995, however, the FCC has encouraged stations and candidates to work out their differences. As a result of this policy shift, there have been no formal complaints since 1995. Bobby Baker, the FCC official who oversees this mediation process, estimated that his office successfully worked out roughly 500 ad pricing and placement disputes between stations and candidates in 1999-2000. But while the LUC law remains on the books, its original intent – to peg candidate ad rates to discount prices paid by volume product advertisers – is no longer served. In practice, the system has come to mean that candidates' rates will be driven up sharply by the demand spike created by the election itself, but not quite to stratospheric levels paid by other advertisers during the campaign season.


BLAIR TELEVISION

Fax

"Activity is a lot heavier than the station had anticipated and your schedules are already getting bumped," says a September memo from a sales representative for KHQ in Spokane, WA, to a media buyer. To guarantee that the spots would air, the media buyer was told to pay $1800 for a spot on the Sunday 11 p.m. news, three times the $600 price quoted in August.

THE PUBLIC INTEREST OBLIGATIONS OF BROADCASTERS

Unlike newspapers, magazines and other communications media, commercial broadcasters have always been public trustees. The Communications Act of 1934, enacted during the early days of radio, granted broadcasters free and exclusive licenses to use the public airwaves, but did so on the condition that they agreed to serve "the public interest, convenience and necessity." Regulations regarding political discourse always have been a part of this public interest standard, even though the most well-known of them – the Fairness Doctrine, which required stations to air competing views on controversial public issues – was repealed by the FCC during the Reagan administration. The political discourse rules that remain in effect are:

Lowest Unit Charge – Guarantees federal, state and local candidates the ad rates given to a station's most favored commercial advertiser.

Reasonable Access – Requires stations to offer air time to federal candidates who can afford to pay for it.

Equal Time – Requires stations that have sold spots to one candidate to give his or her opponent the opportunity to buy comparable air time at a comparable price.

In 1997, the federal government doubled the amount of spectrum space it licensed to television broadcasters in order to facilitate the industry's transition to digital technology. Estimates of the value of this additional spectrum space ranged up to $70 billion. Congress gave it to the broadcasters for free – provoking cries of protest about "corporate welfare" from liberals as well as free-market conservatives.

Against this backdrop, President Clinton appointed an advisory panel to asses how to update the public interest obligations of television broadcasters in the wake of this valuable gift of the public's assets. In the area of political discourse, the panel, which was made up of broadcasters, scholars and public interest advocates, recommended that television broadcasters voluntarily air five minutes a night of candidate-centered discourse in the 30 days before all elections. However, during the 2000 campaign – the first national election conducted after the panel's recommendation – the typical local television station in a major market aired just 45 seconds of candidate-centered discourse per night in the month before November 7, according to a study by the Norman Lear Center at the University of Southern California. The major broadcast networks performed only slightly better, airing just 64 seconds a night of candidate-centered discourse per network, according to an Annenberg Public Policy Center report.

Not only did the broadcast television industry fail to respond to this new recommendation, it reduced its commitment to substantive campaign coverage in 2000. The industry was assailed by critics for cutbacks in debate coverage, issue coverage, convention coverage and overall campaign coverage, as well as for its election night miscalls.

CONCLUSION

In the Information Age, the most precious natural resource the public owns is the airwaves. For seven decades, the government has granted free and exclusive use of the most valuable portions of these airwaves to the broadcast industry, in return for its commitment to serve the public interest. During election campaigns, however, the industry has placed its own bottom line ahead of the public interest. It routinely gouges candidates on their ad rates, violating the spirit if not the letter of a 30-year-old law designed to protect candidates from such practices.

That law has never worked well. The Federal Communications Commission tried to close some of its loopholes in the early 1990s (see Appendix II), but the gouging has grown more pronounced in recent years, largely the result of the flood of soft money into the political process. Moreover, these dynamics are self-perpetuating. Just as more money creates the chance for more gouging, more gouging generates the need for more money.

Given the dismal track record of price controls in market economies, it is hard to see how the LUC system can be fixed. The wiser course is to scrap it altogether and replace it with a robust system of mandatory free air time for parties and candidates who meet qualifying thresholds and agree to an overall voluntary limit on campaign spending.

Such a system would still leave issue group advertisers exposed to the vagaries of air time supply and demand. This is not a bad thing. Issue groups have a right to be heard, but no right to relief from market forces. Candidates are different. They are the ones who stand for office; they are the ones citizens must see and hear in order to make informed choices. They are also the ones who become elected officials and make policy, so any campaign finance system that forces them into a non-stop money chase raises the specter of undue access and influence.

The marketplace of communication in the modern age has created a political system in which the candidates who can make it onto television and into office are usually the ones who can play and win the political money game. This has left our broadcasters enriched and our democracy impoverished. It is time for the industry to become a part of the solution to what ails our political process, not a part of the problem.

APPENDIX I.

TV'S POLITICAL FORTUNES IN 2000

Local television stations monitored in the top 75 media markets, which serve about 80 percent of the nation, took in at least $771 million from Jan. 1 to Nov. 7 from the sale of 1.2 million political ads this year.

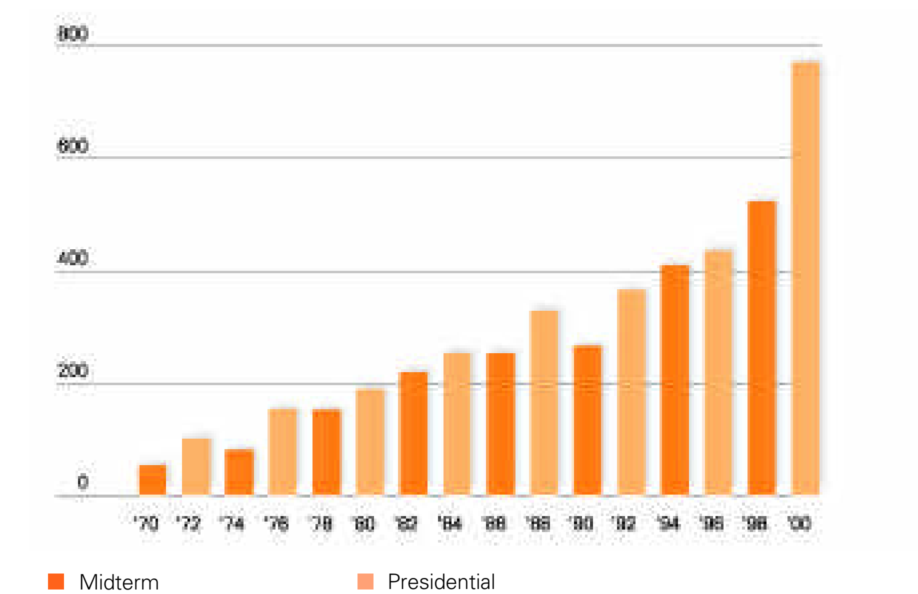
The $771 million figure is a conservative approximation by media researchers at Campaign Media Analysis Group (CMAG); Wall Street estimates of total political ad sales on local television range as high as $1 billion. CMAG's number is lower because it excludes markets outside the top 75 media markets. In addition, a comparison of CMAG estimates with actual station contracts shows that the CMAG figure excludes some issue ads and fails to account for the spike in ad rates leading up to Election Day.

Although candidates rarely buy political ads on national network television, the same corporations that own the networks took in the most political ad money because they also own the most profitable local television stations in the nation's largest local markets. ABC, CBS and NBC combined took in almost $234 million from about 180,000 ads on local stations – nearly one-third of all political ad revenues. For these network-owned stations, that represents about 8 percent of total 2000 ad revenue.

In all, 1,190,936 political ads ran on 484 local stations. That's the equivalent of 595,468 minutes of ads, or 9,924 hours, or 413 solid days of advertising.

TELEVISION'S RISING FORTUNES

Political Ad Sales, 1970-2000, in millions



* Inflation-adjusted to 2000.
Sources: Television Bureau of Advertising (1970-1998); Campaign Media Analysis Group (2000)

POLITICAL AD REVENUE IN 2000

STATE-BY-STATE BREAKDOWN

State	Cost of Ads	# Ads
Alabama	$ 5,768,431.00	20,675
Arkansas	$ 4,857,521.00	16,685
Arizona	$ 7,287,470.00	9,386
California	$ 126,949,363.00	119,492
Colorado	$ 6,326,925.00	8,892
Connecticut	$ 5,373,942.00	7,998
District of Columbia	$ 12,655,392.00	9,136
Florida	$ 58,604,399.00	98,334
Georgia	$ 10,013,114.00	10,740
Iowa	$ 2,591,382.00	10,550
Illinois	$ 16,101,381.00	8,819
Indiana	$ 7,831,176.00	16,698
Kansas	$ 982,665.00	4,260
Kentucky	$ 12,277,401.00	36,765
Louisiana	$ 2,515,181.00	6,498
Massachusetts	$ 12,008,858.00	7,869
Maryland	$ 1,303,721.00	1,926
Maine	$ 4,441,068.00	14,809
Michigan	$ 51,884,797.00	85,640
Minnesota	$ 19,666,109.00	20,540
Missouri	$ 34,962,413.00	65,933
North Carolina	$ 23,363,376.00	58,566
Nebraska	$ 3,032,954.00	12,299
New Hampshire	$ 6,479,052.00	15,140
New Mexico	$ 7,169,600.00	18,871
Nevada	$ 8,837,694.00	18,885
New York	$ 91,406,505.00	74,698
Ohio	$ 41,976,757.00	85,276
Oklahoma	$ 3,883,466.00	9,903
Oregon	$ 12,385,490.00	25,345
Pennsylvania	$ 71,397,786.00	80,558
Rhode Island	$ 5,289,959.00	11,463
South Carolina	$ 2,489,028.00	7,651
Tennessee	$ 6,299,911.00	14,876
Texas	$ 17,447,198.00	25,358
Utah	$ 4,013,282.00	8,197
Virginia	$ 9,785,001.00	30,126
Washington	$ 35,311,427.00	57,750
Wisconsin	$ 10,354,298.00	31,925
West Virginia	$ 5,873,451.00	22,311

WE'RE HAVING THE BEST YEAR WE'VE HAD IN FOREVER.

Jim Gallagher, Sales Director at CBS affiliate KYW in Philadelphia

MARKETS THAT TOOK IN $10 MILLION+

Market	Cost of Ads	# Ads
New York	$ 70,876,045.00	21,969
Los Angeles	$ 63,329,661.00	25,968
Philadelphia	$ 40,781,450.00	26,408
Detroit	$ 33,523,259.00	32,810
Seattle/Tacoma	$ 29,693,344.00	30,150
San Diego	$ 22,491,289.00	32,763
San Francisco/Oakland/San Jose	$ 22,220,711.00	17,997
St. Louis	$ 21,619,964.00	34,889
Minneapolis/St. Paul	$ 19,666,109.00	20,540
Boston	$ 18,461,145.00	22,765
Washington DC	$ 18,297,385.00	12,398
Miami/Fort Lauderdale	$ 16,603,148.00	18,827
Chicago	$ 16,101,381.00	8,819
Tampa/St. Petersburg/Sarasota	$ 15,975,709.00	21,246
Cleveland	$ 14,145,325.00	22,594
Kansas City	$ 13,546,709.00	32,174
Columbus	$ 13,285,103.00	20,900
Pittsburgh	$ 13,208,469.00	16,668
Sacramento/Stockton/Modesto	$ 12,873,991.00	19,871
Orlando/Daytona Beach/Melbourne	$ 12,458,342.00	21,314
Portland	$ 12,385,490.00	25,345
Grand Rapids/Kalamazoo/Battle Creek	$ 11,034,982.00	26,809
Atlanta	$ 10,013,114.00	10,740

TOP 10 STATIONS MAKING THE MOST MONEY FROM POLITICAL ADS

	Station	Market	Affiliation	Cost of Ads	# Ads
1	WNBC	New York	NBC	$ 24,908,126.00	5,860
2	WABC	New York	ABC	$ 21,543,400.00	4,613
3	KABC	Los Angeles	ABC	$ 18,973,358.00	6,326
4	WPVI	Philadelphia	ABC	$ 16,381,925.00	6,170
5	KNBC	Los Angeles	NBC	$ 15,226,532.00	5,201
6	WDIV	Detroit	NBC	$ 14,639,748.00	9,729
7	WCBS	New York	CBS	$ 12,865,230.00	5,546
8	WCAU	Philadelphia	NBC	$ 11,081,000.00	7,232
9	KING	Seattle	NBC	$ 10,623,300.00	8,397
10	KOMO	Seattle	ABC	$ 9,240,714.00	9,073

TOP 10 STATION GROUPS

	Ownership	Cost of Ads	# Ads
1	NBC	$ 83,031,180.00	56,145
2	ABC	$ 82,429,321.00	52,373
3	Paramount/CBS	$ 68,133,713.00	69,669
4	Gannett	$ 49,605,994.00	75,485
5	Fox Television	$ 46,905,461.00	70,109
6	Hearst-Argyle	$ 42,020,558.00	75,600
7	A.H. Belo Corporation	$ 37,578,442.00	62,481
8	Cox Broadcasting	$ 28,028,160.00	35,377
9	Scripps	$ 24,528,035.00	39,991
10	Post-Newsweek	$ 24,182,071.00	25,722

MARKETS THAT SOLD 20,000+ ADS

Market	# Ads	Cost of Ads
St. Louis	34,889	$ 21,619,964.00
Detroit	32,810	$ 33,523,259.00
San Diego	32,763	$ 22,491,289.00
Kansas City	32,174	$ 13,546,709.00
Seattle/Tacoma	30,150	$ 29,693,344.00
Spokane	27,600	$ 5,618,083.00
Grand Rapids/Kalamazoo/Battle Creek	26,809	$ 11,034,982.00
Philadelphia	26,408	$ 40,781,450.00
Flint/Saginaw/Bay City	26,021	$ 7,326,556.00
Los Angeles	25,968	$ 63,329,661.00
Portland	25,345	$ 12,385,490.00
Fresno/Visalia	22,893	$ 6,033,711.00
Boston	22,765	$ 18,461,145.00
Cleveland	22,594	$ 14,145,325.00
Wilkes-Barre/Scranton	22,426	$ 7,027,571.00
Charleston/Huntington	22,311	$ 5,873,451.00
West Palm Beach/Ft. Pierce	22,097	$ 8,388,828.00
New York	21,969	$ 70,876,045.00
Louisville	21,912	$ 8,887,461.00
Orlando/Daytona Beach/Melbourne	21,314	$ 12,458,342.00
Tampa/St. Petersburg/Sarasota	21,246	$ 15,975,709.00
Columbus	20,900	$ 13,285,103.00
Minneapolis/St. Paul	20,540	$ 19,666,109.00

APPENDIX II. THE LUC SYSTEM

A *1997 Congressional Research Service report on free and reduced air time for candidates described the "Lowest Unit Charge" rule and its history. An excerpt:*

… Another provision of the Federal Election Campaign Act of 1971 that aimed to reduce candidate advertising costs on television – the "lowest unit charge" requirement – remains in effect today.[3] This provision directs broadcasters (including cable systems), 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." Congress enacted the lowest unit charge (LUC) requirement "to ensure that candidates are treated as favorably as the most favored commercial advertisers during the pre-election period."[4] Under this provision, **all** candidates – federal, state, and local – are entitled to the lowest unit charge.

… "Class" of time, the [Federal Communica tions Commission] said, referred to a station's rate categories – the two most significant being fixed (nonpreemptible) and preemptible; "amount of time" referred to the length of the time purchased (such as 0 seconds or 60 seconds); and "same period" referred to classifications of time within a broadcast day established by the station, such as prime time or drive time.[5]

Over the years the FCC's interpretations of the lowest unit charge provision have followed the sales practices of the broadcasting industry. In 1972, for example, the FCC determined that rate changes during the pre-election periods that occurred as a result of a station's normal business practices, such as changes based upon audience ratings or seasonal variations, were valid bases for price differentials within the same class of time.[6] In 1988, the commission recognized that commercial advertisers typically buy preemptible time which is offered at price levels that change frequently, even weekly, according to supply and demand. Under the circumstances, the FCC said, the lowest unit charge for a preemptible class of time was to be calculated according to the lowest price any advertiser paid for a spot which "cleared" a particular time period or "day-part" (for example, radio drive time or "morning news" time) during the particular week in question.[7]

By the late 1980s, however, questions had arisen as to whether the LUC provision was proving effective in making the most favorable commercial advertising rates available to candidates.

In July 1990, the FCC initiated an audit of 30 television and radio stations to ascertain compliance with political programming laws, particularly the LUC provision. It found that 80% of the TV stations and 40% of the radio broadcasters audited failed to give political candidates the lowest available rates as required by the LUC statute. The audit's "most significant finding," the commission said, was that "at a majority of the stations, political candidates have paid higher prices than commercial advertisers because sales techniques encouraged them to buy higher-priced classes of time." The commission fined two of the television stations $25,000 each for LUC violations.[8]

In the wake of its audit, the commission concluded that over the previous decade, radio and television stations had developed more complex systems of pricing commercial advertising – which frequently were not made available to candidates. Summarizing the commission's findings, the *National Journal* reported:

> Stations typically offer commercial advertisers a "fixed" rate, which is the most expensive and guarantees that an ad will appear at a certain time; a "prevailing or effective" rate, which has a high likelihood of being broadcast as planned; and a "preemptible" rate, the cheapest and likeliest to be preempted by another advertiser that pays a higher rate.
>
> The stations told the government inspectors that candidates chose to buy higher-priced fixed time to be assured that their ads would air exactly as ordered, but the FCC found that the stations had encouraged the candidates to spend more money by not telling them about the intermediate rate. The FCC also concluded that the stations had frustrated the intent of Congress by encouraging their sales staffs to negotiate with commercial advertisers but to adopt a take-it-or leave-it policy with political campaigns.[9]

…

In late 1991 and again in 1992, new FCC policy statements were issued.[10] In these statements, the commission underscored its concern with preventing "abuse by a station taking undue advantage of candidates' special needs," particularly in the form of special premium-priced classes of nonpreemptible time sold only to candidates. Accordingly, the commission stated that henceforth stations, among other things,

- would be permitted to sell to candidates premium- priced fixed or nonpreemptible time only if (a) such a class were offered on a bona fide basis to both candidates and commercial advertisers and (b) no lower-priced, i.e., preemptible, class of time sold to commercial advertisers was "functionally equivalent to the nonpreemptible class;"[11]
- were not precluded from offering a candidate-only nonpreemptible class of time at a discount to political advertisers;[12] and
- were required to provide candidates with timely "make goods" if they had provided a time-sensitive "make good" to any commercial advertiser during the past year.[13]

…

Since the issuance of the FCC's revised LUC policies in 1991-92, it is not altogether clear how effective the lowest unit charge has been. The policy goal of the LUC provision, it will be recalled, has been to ensure that broadcasters treat candidates as favorably as the most favored commercial advertisers during the pre-election period. To promote compliance with the LUC provision, the National Association of Broadcasters distributed to its members detailed summaries of the FCC's revised statements in 1992, stressing that "broadcasters must have a working familiarity not only with the commission's new rules, but also with the body of FCC political broadcasting policy that preceded the 1992 rule revisions."[14] In November 1993, a Committee on House Administration report, analyzing the lowest unit rate provision, concluded that "most broadcasters make a good faith effort to comply with the complex campaign advertising rules."[15] Nonetheless, the Committee said, the FCC audit had clearly demonstrated the need for legislation to "clarify and simplify the rules in order to make them more easily understood, implemented, and enforceable."[16]

More recently, in a December 1995 speech, the chairman of the FCC, Reed Hundt, spoke of the difficulties in enforcing the lowest unit charge provision:

> This rule takes a lot of work to apply and doesn't work well in practice.
>
> The problem is that the rules require the candidates, the station and often the FCC to identify the "lowest unit charge." Not surprisingly, in each month, in each market, for each station, that charge can be difficult to calculate – especially because stations do not typically offer a commercial rate equivalent to the government-defined "lowest unit charge." The result is doubly bad: the FCC has to get intimately involved in the commercial activities of broadcasters and the legal regime still makes media access extremely expensive for candidates.

[3] Section 315 (b)(1) of the Communications Act of 1934, as amended, 47 U.S. C. 315(b)(1)
[4] U.S. Federal Communications Commission, "Licensees and Cable Operators Reminded of Lowest Unit Charge Obligations," Public Notice (Washington: Aug. 4, 1988), p.2. (Hereafter cited as FCC, 1988 Public Notice.)
[5] Use of Broadcast and Cablecast Facilities by Candidates for Public Office, 34 FCC 2nd 510, 525 (1972) (1972 Public Notice).
[6] *Ibid.*
[7] FCC, 1988 Public Notice, p.3.
[8] See "Mass Media Bureau Report on Political Programming Audit," inserted in its entirety by Sen. Mitch McConnell, "FCC Audit of Political Advertising," Congressional Quarterly, daily edition, vol. 136, Sept. 13, 1990, p. S13061-64. See also Margie G. Quimpo "FCC Finds Candidates Overcharged," *The Washington Post*, Sept. 8, 1990, pp. C1-C2 and Walter Pincus, "Costs of Political Ads Down Sharply Since '90," *The Washington Post*, Jan. 13, 1991, p. A9.
[9] Jerry Hagstrom, "Ad Attack," *National Journal*, vol. 24, Apr. 4, 1992, p. 811.
[10] U.S. Federal Communications Commission, "Codification of the Commission's Political Programming Policies," Report and Order, December 23, 1991 (Released), 78 p., and Memorandum Opinion and Order, June 11, 1992 (Released), 48 p.
[11] FCC, 1992 Memorandum Opinion and Order, p. 19.
[12] *Ibid.*
[13] *Ibid.*, pp. 30-32. A "make good" is an offer by the station to air or "make good" an advertiser's preempted spot at another, usually later, date, in the same daypart as originally purchased, rather than make a refund to the advertiser.
[14] National Association of Broadcasters, "FCC Revised Political Broadcasting Rules and Policies," 1992] p. 1.
[15] U.S. Congress. Committee on House Administration, *House of Representatives Campaign Spending Limit and Election Reform Act of 1993*, report to accompany H.R. 3, 103d Cong., 1st sess., H. Rept. 103-375, Part 1 (Washington,: GPO), p. 69. The committee noted the "recent industry-wide program initiated by the FCC and the NAB to educate broadcasters about their responsibilities to candidates regarding broadcasting advertising," which the Committee said "has the potential to do much to improve compliance."
[16] *Ibid.* "The availability of both preemptible and nonpreemptible spots for candidates," the committee report also said, "creates both the incentive and opportunity for broadcasters to discriminate against candidates." Accordingly, the committee said it was reporting legislation, H.R. 3, which would enable candidates to buy nonpreemptible advertising spots from broadcast stations and cable television operations in pre-election periods "at the lowest commercially available rates."
[17] Reed Hundt, Chairman, Federal Communications Commission, "Revitalizing Democracy in the Information Age," Speech as prepared for delivery, December 8, 1995, Woodrow Wilson School, Princeton University, Princeton, New Jersey

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