

Online Political File Webinar – How to Comply & Avoid Pitfalls

June 3, 2014

David Oxenford

David O'Connor

Wilkinson Barker Knauer, LLP

Outline

- July 1, 2014 requirements
- Contents of the Political File
- NAB PB-18 forms (candidates and issue ads)
- Recordkeeping obligations
- Watchdog complaints

July 1, 2014

- Online political files currently required for top 50 “top 4” stations
- This requirement applies to all TV stations as of July 1, 2014
- Stations are not required to upload their political files as they existed prior to July 1, 2014 – this is a going-forward requirement
- Take this obligation seriously – complaints filed; watchdogs looking

Contents of Political File

- All requests to purchase time – or free time that is provided outside of exempt programs
- Whether request was accepted or rejected
- Rate charged
- 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
- Name, address, phone # of ad buyer
- Name of treasurer (candidate) or list of executive officers (most issue ads)
- Use PB-18 or similar forms! Don't take no for an answer

AGREEMENT FORM FOR POLITICAL CANDIDATE ADVERTISEMENTS

(check applicable box)

FEDERAL CANDIDATE **STATE/LOCAL CANDIDATE**

To Avail Themselves Of The Lowest Unit Charge During A Political Window, Federal Candidates Must Sign The Certification On Page 3

Station and Location:	Date:
------------------------------	--------------

I, _____,
being/on behalf of: _____,
a legally qualified candidate of the _____
political party for the office of: _____
in the _____
election to be held on: _____

do hereby request station time as follows:

Broadcast Length	Time of Day, Rotation or Package	Days	Class	Times per Week	Number of Weeks

Attach proposed schedule with charges (if available):

I represent that the payment for the above described broadcast time has been furnished by:

and you are authorized to announce the time as paid for by such person or entity. I represent that this person or entity is either a legally qualified candidate or an authorized committee/organization of the legally qualified candidate.

The name of the treasurer of the candidate's authorized committee is:

This station has disclosed to me its political advertising policies, including: applicable classes and rates; and discount, promotional and other sales practices (not applicable to federal candidates).

THIS STATION DOES NOT DISCRIMINATE OR PERMIT DISCRIMINATION ON THE BASIS OF RACE OR ETHNICITY IN THE PLACEMENT OF ADVERTISING.

To Be Signed By Candidate or Authorized Committee

Date

Signature

To Be Signed By Station Representative

Accepted

Accepted in Part

Rejected

Signature

Printed Name

Title

FEDERAL CANDIDATE CERTIFICATION

In Order For Federal Candidates To Receive The Lowest Unit Charge During A Political Window, The Following Certification Is Required:

I, _____
(name of federal candidate or authorized committee) hereby certify that the programming to be broadcast (in whole or in part) pursuant to this agreement:

does

does not

refer to an opposing candidate (check applicable box). I further certify that for the programming that does refer to an opposing candidate:

(check applicable box)

the **radio** programming contains a personal audio statement by the candidate that identifies the candidate, the office being sought, and that the candidate has approved the broadcast.

the **television** programming contains a clearly identifiable photograph or similar image of the candidate for a duration of at least four seconds, and a simultaneously displayed printed statement identifying the candidate, that the candidate approved the broadcast, and that the candidate and/or the candidate's authorized committee paid for the broadcast.

signature of candidate or authorized committee

printed name

date

AGREED UPON SCHEDULE

(TO BE FILLED IN ONLY IF STATION DOES NOT ACCEPT ALL OF CANDIDATE'S REQUEST)

Broadcast Length	Time of Day, Rotation or Package	Days	Class	Times per Week	Number of Weeks

Attach proposed schedule with charges (if available):

AFTER AIRING OF BROADCASTS:

Attach invoices or Schedule Run Summary to this Form showing:

- 1) actual air time and charges for each spot;
- 2) the date(s), exact time(s) and reason(s) for Make-Good(s), if any; and
- 3) the amount of rebates given (identify exact date, time, class of broadcast and dollar amount for each rebate), if any.

Note: Because the FCC requires that the political file contain the actual times the spots air and the rates charged, that information should be included in the file as soon as possible. If that information is only generated monthly, the file should include the name of a contact person who can provide the times that specific spots aired and the rates charged. The FCC's online political files include a folder for "Terms and Disclosures." NAB suggests that, for stations subject to the online public file rule, the names of contact person(s) be placed in that folder.

AGREEMENT FORM FOR NON-CANDIDATE/ISSUE ADVERTISEMENTS

Station and Location:	Date:
------------------------------	--------------

I, _____
do hereby request station time concerning the following issue:

Broadcast Length	Time of Day, Rotation or Package	Days	Class	Times per Week	Number of Weeks

This broadcast time will be used by: _____

**THIS PAGE MUST BE COMPLETED FOR PROGRAMMING THAT
"COMMUNICATES A POLITICAL MATTER OF NATIONAL IMPORTANCE."
FOR ALL OTHER ISSUE ADS, PLEASE GO TO PAGE 3.**

Programming that "communicates a political matter of national importance" includes (1) references to legally qualified candidates (presidential, vice presidential or congressional); (2) any election to Federal office (e.g., any references to "our next senator", "our person in Washington" or "the President"); and (3) a national legislative issue of public importance (e.g., Affordable Care Act, revising the IRS tax code, federal gun control or any federal legislation).

Does the programming (in whole or in part) communicate "a message relating to any political matter of national importance?"

Yes No

For programming that "communicates a message relating to any political matter of national importance," list the name of the legally qualified candidate(s) the programming refers to, the offices being sought, the date(s) of the election(s) and/or the issue to which the communication refers (if applicable):

I represent that the payment for the above described broadcast time has been furnished by (name and address):

and you are authorized to announce the time as paid for by such person or entity (hereinafter referred to as the "sponsor").

List the chief executive officers or members of the executive committee or the board of directors below (or attach separately):

For programming that "communicates a message relating to any political matter of national importance," attach Agreed Upon Schedule (Page 5)

**THIS PAGE MUST BE COMPLETED FOR PROGRAMMING THAT
DOES NOT "COMMUNICATE A POLITICAL MATTER OF NATIONAL
IMPORTANCE"**

I represent that the payment for the above described broadcast time has been furnished by (name and address):

and you are authorized to announce the time as paid for by such person or entity (hereinafter referred to as the "sponsor").

List the chief executive officers or members of the executive committee or the board of directors below (or attach separately):

TO BE COMPLETED FOR ALL ISSUE ADVERTISEMENTS

THIS STATION DOES NOT DISCRIMINATE OR PERMIT DISCRIMINATION ON THE BASIS OF RACE OR ETHNICITY IN THE PLACEMENT OF ADVERTISING.

The Sponsor agrees to indemnify and hold harmless the station for any damages or liability, including reasonable attorney's fees, that may ensue from the broadcast of the above-requested advertisement(s). For the above-stated broadcast(s), the sponsor also agrees to prepare a script, transcript, or tape, which will be delivered to the station at least _____ before the time of the scheduled broadcasts.

TO BE SIGNED BY ISSUE ADVERTISER (SPONSOR)

<hr/>	<hr/>	<hr/>
Date	Signature	Contact Phone Number

TO BE SIGNED BY STATION REPRESENTATIVE

Accepted

Accepted in Part

Rejected

<hr/>	<hr/>	<hr/>
Signature	Printed Name	Title

AGREED UPON SCHEDULE

For All Issue Advertisements That Communicate a Message Relating to Any Political Matter of National Importance

Broadcast Length	Time of Day, Rotation or Package	Days	Class	Times per Week	Number of Weeks

Attach proposed schedule with charges (if available):

AFTER AIRING OF BROADCASTS:

Attach invoices or Schedule Run Summary to this Form showing:

- (1) actual air time and charges for each spot;
- (2) the date(s), exact time(s) and reason(s) for Make-Good(s), if any; and
- (3) the amount of rebates given (identify exact date, time, class of broadcast and dollar amount for each rebate), if any.

Note: Because the FCC requires that the political file contain the actual time the rate for spots “communicating a political matter of national importance” air, that information should be included in the file as soon as possible. If that information is only generated monthly, the file should include the name of a contact person who can provide the times that and rates for specific spots aired. The FCC’s online political files include a folder for “Terms and Disclosures.” NAB suggests that, for stations subject to the online public file rule, the names of contact person(s) be placed in that folder.

Recordkeeping

- Maintain records for two years
- July 1, 2014 online materials – maintain until July 1, 2016
- Paper political files – maintain June 30, 2014 paper political files until June 30, 2016; discard previous materials on a rolling 2-year basis
- BCRA requirements cover 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
 - If the ad deals with an issue to be decided in Washington DC, it should be included in the file as a national issue of public importance

Recordkeeping, cont.

- In the case of any other (non-Federal, non-candidate) political or issue request (e.g. local zoning or bond issue, state issues):
 - 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.
 - Many stations use the PB-18 issue ad form for this purpose
- Do not post copies of checks!

Watchdog Complaints

- Watchdog groups trolled through the online political files for many top 50, top 4 stations looking for issues, and found a couple of instances where stations did not completely provide all of the information that the FCC's political disclosure rules require.
- Complaints filed with the FCC against 11 television stations on May 1, 2014
- FCC acts quickly – sends letters of inquiry on May 12, 2014

Watchdog Complaints, cont'd

- For example, where an issue ad attacked a candidate and addressed a specific political issue, stations were faulted for not identifying in their public file disclosures **both** the candidate **and** the issue. In several cases, one was disclosed, and not the other.
- Another common issue was the failure to include in the file a list of the principal executive officers or the directors of the sponsoring organization. Several times, one officer was identified, but not the directors or the other executive officers of the sponsor
- Timeliness of the disclosures was also attacked – political files must be updated immediately (generally, same day).

Watchdog Complaints, cont'd

- The complaints ask the FCC to consider more aggressive enforcement, potential fines, and also to issue a Public Notice emphasizing the importance of maintaining accurate, complete and timely online political files.
- Chairman Wheeler: “We take political file complaints seriously and anticipate resolving these [complaints] quickly. Accuracy is just as important as accessibility in providing this kind of information to the American public. I hope this serves as a reminder to all stations of their obligation to maintain political files in accordance with statutory provisions and our Rules.”

Disclosure Statements

- Stations must disclose to candidates all classes of time, discount rates and privileges given to commercial advertisers that affect the value of spots
- Every station should have a standard disclosure statement that is given whenever there is an inquiry for political time.
- Place in online political file? Some do so for convenience; NAB and others recommend against

Contact Information

David O'Connor

doconnor@wbklaw.com

David Oxenford

doxenford@wbklaw.com

WILKINSON BARKER KNAUER, LLP
2300 N STREET, N.W., SUITE 700
WASHINGTON, D.C. 20037
202.783.4141