

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Petition of Canal Partners Media, LLC)
) MB Docket No. 15-24
For a Declaratory Ruling Concerning Use)
of Last-In-First-Out Preemption with)
Respect to Candidate Advertisements)

REPLY COMMENTS OF GRAY TELEVISION, INC.

Gray Television, Inc. (“Gray”), the parent company of Gray Television Licensee, LLC, the licensee of 57 full power stations in 44 markets, hereby submits these Reply Comments to encourage the Federal Communications Commission (“FCC”) to deny the petition for declaratory rulemaking submitted by Canal Partners Media, LLC.¹

The Petition asserts that the FCC must prohibit the use of a preemption method commonly referred to as Last-In-First-Out (“LIFO”) because it “violates Section 315(b) of the Communications Act.”² The Petition further argues that if LIFO is permitted, commercial advertisers must be preempted in favor of candidate spots. In essence, the Petition seeks affirmation that candidates should not only be treated as a “most-favored” commercial advertiser, but also as THE favorite advertiser. The arguments made in the Petition to support this distortion of Section 315(b) are simply wrong, as clearly demonstrated by the Opposition of

¹ Petition for a Declaratory Ruling, Canal Partners Media, LLC (“*Canal Partners*”), MB Docket No. 15-24 (September 29, 2014) (“*Petition*”).

² Petition at 5.

the National Association of Broadcasters (“NAB”).³ Gray strongly supports the Opposition filed by NAB and encourages the FCC to deny the Petition.

The Commission’s rules do not prohibit broadcasters’ use of the LIFO method for preempting spots. When a station offers multiple classes of time, there must be a clear distinction between the classes based on a “demonstrable benefit such as varying levels or assurances of preemption protection, scheduling flexibility, or special make-good benefits.”⁴ Stations must clearly disclose the benefits and risks of each class of time,⁵ as well as the likelihood that the candidate’s spot will clear.⁶ Indeed, the FCC confirmed that a candidate must accept the same risks as a commercial advertiser to receive the same benefits.⁷

So long as the benefits and risks of each preemptible class of time are disclosed and applied equally to commercial advertisers and political candidates, LIFO is not prohibited by the Commission’s rules, much less the Communications Act. The amount of advertising time a station has to sell is necessarily finite, and LIFO is a valid method for stations to determine which spots will air when the amount of advertising time purchased exceeds available inventory. Provided that candidates, like commercial advertisers, are made aware of the preemption priorities applicable to a particular class of time (which may include use of the LIFO method), a candidate is no worse off than any other commercial advertiser who faces the choice of buying in a lower-priced class of time and taking the risk of preemption or instead buying time in a higher-

³ Opposition of the National Association of Broadcasters (“NAB Opposition”).

⁴ *Codification of the Commission’s Political Programming Policies*, 7 FCC Rcd 678 at 691 (1991).

⁵ *Id.*

⁶ *Id.* at 698.

⁷ *See Codification of the Commission’s Political Programming Policies*, 7 FCC Red 4611 at 4615 (1992) (“[I]f a commercial advertiser pays a lower price for a class of time for assuming a specific prospective risk of nonclearance, a candidate should get the benefit of the same low price so long as the candidate assumes the same prospective risk of preemption.”)

priced class to ensure that their spots will clear. The Communications Act does not require anything more.

Moreover, in adopting the lowest unit charge requirements, Congress did not intend for candidates to receive more favorable preemption treatment than commercial advertisers. Rather, as succinctly explained in the NAB Opposition, Congress “intended to provide candidates for public office broadcast time ‘consistent with any given station’s commercial transactions.’”⁸ For example, when discussing lowest unit charge, the Senate emphasized that the requirement “makes use of each broadcaster’s own commercial practices rather than imposing ... an arbitrary discount rate applicable to all stations without regard to their differences.”⁹ The House, meanwhile, recognized that a “station may preempt the time for the advertisement for that of another advertiser who is willing to pay the higher or fixed rate.”¹⁰

In addition to its lack of legal support, the Petition also lacks factual support. Petitioner’s chief concern with the LIFO approach – that it typically disfavors candidates – is simply not true. As demonstrated in the NAB Opposition, “the amount of lead time for advertisement purchases by both candidates and commercial advertisers varies and ... both purchase time at the last minute and also well in advance.”¹¹

⁸ NAB Opposition at 6 (citation omitted).

⁹ *Id.* at 6 (citation omitted).

¹⁰ *Id.*

¹¹ *Id.* at 15.

Gray supports the NAB Opposition and encourages the Commission to act promptly to deny the Petition.

Respectfully submitted,

A handwritten signature in black ink that reads "Kevin P. Latek". The signature is written in a cursive style with a horizontal line underneath the name.

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