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	)	

REPLIES OF THE NATIONAL ASSOCIATION OF BROADCASTERS

The National Association of Broadcasters (NAB)[1] briefly replies to Canal Partners Media, LLC's comments, which notably are the only comments supporting its Petition for Declaratory Ruling concerning how broadcast stations sell political advertising time.[2] This Petitioner – a political advertising time buyer – asks the Commission, for the first time, to require broadcast stations to afford candidate advertisements more favorable treatment than equivalent commercial advertisements in the same class. Specifically, the Petitioner requests the Commission to declare that broadcast stations selling multiple classes of preemptible time may not use the objective Last-In-First-Out (LIFO) method to preempt

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[1] The National Association of Broadcasters is a nonprofit trade association that advocates on behalf of free local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

[2] Petition for a Declaratory Ruling, Canal Partners Media, LLC (Petitioner), MB Docket No. 15-24 (Sept. 29, 2014) (Petition).

candidate advertisements, even when stations apply this method uniformly to all advertisements.

As NAB discussed in detail in our Opposition,[3] both Congress and the Commission have expressly rejected the basic premise of the Petition – that stations must treat candidate advertisements better than the equivalent commercial ads in a class of time.[4] Because the Petition is not supported by either law or facts, it must be denied.

In its comments, Petitioner utterly fails to remedy the Petition's myriad infirmities, but repeats the unsupported and unfounded factual claims made in the Petition and supplements. Even if the Petition had a basis in law (which it does not[5]), Petitioner to this day still has not provided any analytical data to support its factual premise that candidates are disadvantaged by LIFO preemption. For example, instead of actual facts, Petitioner creates a lengthy hypothetical conversation between a station sales rep and a candidate buyer for a run-off election, which purports to illustrate how candidate ads are disadvantaged.[6] This product of the Petitioner's imagination has no basis in factual or legal reality. To the contrary, during run-off elections broadcasters must ensure that under Section 312(a)(7) of the Communications Act, 47 U.S.C. § 312(a)(7), federal

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[3] Opposition of the National Association of Broadcasters, MB Docket No. 15-24, at 2, 5-9 (Mar. 2, 2015) (NAB Opposition).

[4] *See, e.g., Codification of the Commission's Political Programming Policies*, Memorandum Opinion and Order, 7 FCC Rcd 4611, 4614 (1992) (*Political Reconsideration Order*) (stating that the "language and history of Section 315(b)" of the Communications Act show that Congress "specifically rejected" requiring "stations to provide to candidates essentially non-preemptible time at preemptible rates").

[5] *See* NAB Opposition at 2-3, 5-14.

[6] Comments of Canal Partners Media, LLC, MB Docket No. 15-24 at 13-14, n. 21 (Mar. 2, 2015) (Petitioner's Comments).

candidates have "reasonable access" to their stations.[7] In states where run-off elections are commonplace, such as Louisiana, Georgia and California, station sales, traffic and inventory managers are well-trained to ensure that candidates have access to multiple levels of time, including various classes of preemptible time. Notably, the Petitioner provided no examples of any actual candidates that have been denied access under either statutory requirements or the FCC's codified rules.[8]

Given the Petition's lack of legal validity and factual support, it is unsurprising that only the Petitioner submitted comments supporting the Petition. Unfortunately for the Petitioner's cause, its comments remedy none of the Petition's multiple legal, factual and procedural infirmities.[9]

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[7] In the one federal race Petitioner mentions, there is no evidence that any candidate was placed out of any preemptible class of time because of LIFO, or that all commercial advertiser buys were protected from preemption. *Id*. at 12. Beyond reasonable access requirements, candidates, including those in run-off elections, are also protected by the "equal opportunities" requirement in 47 U.S.C. § 315(a) and 47 C.F.R. § 1941.

[8] Similarly, Petitioner speculates, without factual basis, that broadcasters deliberately oversell airtime. Petitioner's Comments at 3. In decades of discussions with broadcast stations about political programming, not one station has said that to NAB. In reality, advertisers placing orders early (whether commercial or candidates) often buy lower-priced time, recognizing that if higher-priced ads are sold with better preemption rights, ads in lower-priced classes will be preempted. If subsequent advertisers do not buy more expensive time with a higher preemption priority, then all of the lower-priced ads will clear. If a station has sold all available time for ads with low preemption priority – the apparent scenario Petitioner imagines – it would normally inform a potential advertiser that it is sold out of time in a particular class. These procedures are entirely consistent with previous FCC decisions. *See* NAB Opposition at 12, quoting *Political Reconsideration Order*, 7 FCC Rcd at 4615 ("if 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 specific prospective risk of preemption*") (emphasis added).

[9] *See* NAB Opposition at 3-4, 9 (also explaining that Petition's request for a declaratory ruling was improper under the FCC's procedural rules, 47 C.F.R. § 1.2).

For the reasons stated above and in NAB's detailed March 2, 2015 Opposition, the Petition for Declaratory Ruling must be denied.

Respectfully submitted,

NATIONAL ASSOCIATION OF BROADCASTERS

1771 N Street, NW
Washington, D.C. 20036
(202) 429-5430

Rick Kaplan
Jerianne Timmerman
Ann West Bobeck

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