Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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 THE
ABC TELEVISION AFFILIATES ASSOCIATION

The ABC Television Affiliates Association ("ABC Affiliates"),[1] by its attorneys, hereby offers its reply comments on the above-captioned Petition for Declaratory Ruling filed by Canal Media Partners, LLC ("Canal").[2]

The members of the ABC Affiliates are among the leading providers of local, state and national news and information in their local communities and markets. As such, ABC Affiliates' member stations' advertising inventory is in high demand by political advertisers. Some members employ a last in, first out (LIFO) pre-emption priority. Some members employ other approaches.

ABC Affiliates are fully supportive of the detailed and well-reasoned comments of the National Association of Broadcasters filed in opposition to Canal's declaratory ruling request. As NAB correctly notes, the relief sought is simply unwarranted as a matter of fact and law.[3]

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[1] The ABC Television Affiliates Association is a non-profit trade association which advocates on behalf of some 163 local television station members before the FCC, Congress and the Courts on matters of common interest.

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

The premise of the Canal request is that because political candidates purportedly purchase commercial time "later" in the buying process than regular commercial advertisers, they are unlawfully disadvantaged by stations that employ LIFO as a preemption priority.[4] Canal's premise is factually and legally unfounded.

Section 315(b) of the Communications Act was designed to ensure that broadcasters afford legally qualified political candidates the lowest unit charge for the same class and amount of time for the same program time period.[5] The legislative history of the Act makes abundantly clear that the purpose of the provision was not to give political candidates rights superior to those of commercial advertisers, but rather to place political candidates "on par" with a station's most favored commercial advertiser.[6] Canal's petition seeks a result plainly at odds with Section 315 and its legislative history. It has been well-settled law for over 40 years that a candidate is to be treated on par with a station's most favored commercial advertiser.[7] Canal seeks to stretch the law beyond the breaking point by suggesting that candidates should somehow be afforded a pre-

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[3] *See* Opposition of the National Association of Broadcasters (filed Mar. 2, 2015) ("NAB Opposition"), p. 5.

[4] *See* Petition at p. 6.

[5] *See* 47 U.S.C. Section 315(b)(1)(A) ("[T]he charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election, to such office shall not exceed . . . the lowest unit charge of the station for the same class and amount of time for the same period".) The lowest unit charge provision of Section 315 was adopted as part of the Federal Election Campaign Act of 1971, Pub. L. No. 92-225. During the floor debates, Senator John Pastore, the floor leader on the legislation, explained that lowest unit charge requires broadcasters "to render to that individual who is running for office the same rate as they do for a commercial advertiser. That is all that it amounts to." 92 CONG. REC. S13290 (daily ed. Aug. 5, 1971) (statement of Sen. John Pastore); *see also* 902 CONG. REC. H11258 (daily ed. Nov. 18, 1971) (statement of Rep. Torbert MacDonald).

[6] S. REP. NO. 92-96 (1971), *reprinted in* 1972 U.S.C.C.A.N. 1773, 1780.

[7] *See* S. REP. NO. 92-96 (1971), *reprinted in* 1972 U.S.C.C.A.N. 1773, 1780.

emption priority superior to a station's most favored commercial advertiser. One other point must also be made with respect to Canal's assertion that candidates buy time "late." This assertion is a canard. As NAB notes, the assertion is so over-broad as to be factually inaccurate.[8] Candidates are in the mix buying advertising at more or less the same time as other advertisers.[9]

One final principle merits the Commission's careful attention. The Commission has never attempted to attempt to dictate how television stations sell their advertising availabilities or what their pre-emption priorities must be. Section 315 has always been interpreted so as to leave to station licensees the ability to establish their own sales systems, policies and practices, subject, of course, to the requirement that political advertisers be treated "on par" with a station's best advertiser.[10] Put another way, whatever a station's sales policies and pre-emption practices may be, the station owes the political candidate a duty to treat him or her no less favorably than its best customer.[11] It would be a mistake for the Commission to embark on the path requested by Canal, and particularly so when considering the paucity of the factual record evidence to support its claim.

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[8] *See* NAB Opposition at p. 15.

[9] *See* NAB Opposition at pp. 15-17.

[10] The Senate Report discussing Section 315 emphasized that this new lowest unit charge requirement "makes use of each broadcaster's own commercial practices rather than imposing on him an arbitrary discount rate applicable to all stations without regard to their differences." S. REP. NO. 92-96 (1971), *reprinted in* 1972 U.S.C.C.A.N. 1773, 1780.

[11] *See* footnote 5, *supra; see also Codification of the Commission's Political Programming Policies*, Report and Order, 7 FCC Rcd 678 (1991); *Codification of the Commission's Political Programming Policies*, Memorandum Opinion and Order, 7 FCC Rcd 4611, 4614 (1992) (Congress did not intend for political candidate advertising to be treated in a fashion superior to commercial advertisers.). During the passage of the Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-55, a provision known as the Torricelli Amendment which would have required preferential treatment of political candidate ads over all other advertisers was, ultimately, rejected by the Senate. *See* 107 CONG. REC. S3366 (daily ed. March 18, 2002) (statement of Sen. Christopher Dodd).

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The ABC Television Affiliates Association urges the Commission to deny the requested declaratory ruling.

Respectfully submitted,

/s/

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