

**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 NBC TELEVISION AFFILIATES**

Jennifer A. Johnson
Eve R. Pogoriler
David M. Parker*
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street N.W.
Washington, DC 20001
202-662-6000

Counsel for the NBC Television Affiliates

* Not admitted in the District of Columbia;
supervised by principals of the Firm.

March 17, 2015

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REPLY COMMENTS OF THE NBC TELEVISION AFFILIATES

The NBC Television Affiliates (“NBC Affiliates”)¹ respectfully comment in reply to the above-mentioned Petition for Declaratory Ruling² concerning the use of “last-in-first-out” (“LIFO”) preemption with respect to political candidate advertisements. We support the Opposition of the National Association of Broadcasters (“NAB Opposition”), which explains that the Federal Communication Commission (“Commission”) should deny the Canal Petition, primarily because it seeks preemption rights for political candidates that are *more* favorable than those afforded to equivalent commercial advertisers. Because the Canal Petition is legally, factually, and procedurally defective, we agree with NAB that it should be denied.

I. INTRODUCTION

On December 29, 2014, Canal Partners Media, LLC (“Canal”) submitted a petition to the Commission seeking a declaration that a broadcaster’s preemption of a political

¹ The NBC Television Affiliates is an association of broadcast television stations that are affiliated with the NBC Television Network. Members of the NBC Television Affiliates operate approximately 225 stations.

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

candidate's advertisement under a LIFO system violates the lowest-unit-charge provision of 47 U.S.C. § 315(b). Under the LIFO system, which many broadcasters have used for years, preemption of spots in the affected class of time is determined based on the order in which advertisers purchased air time. Advertisers who purchase spots first are the last to be preempted, and those that purchase time closer to the air-date run a higher risk of preemption. Canal argues that in order to comply with the 47 U.S.C. § 315(b), broadcasters offering preemptible time on a LIFO basis must treat political candidates as if they were the first-in-time purchasers, regardless of when their purchases actually occurred. In other words, the Canal Petition would require broadcasters to offer political candidates the reduced price of a preemptible advertisement, but with protection against preemption not available to the other advertisers purchasing time in the class.

The NBC Affiliates agree with the NAB that this petition is legally, factually, and procedurally defective, and therefore should be denied.

II. THE CANAL PETITION LACKS ANY LEGAL BASIS

Section 315(b) of the Communications Act provides that during the period preceding an election, broadcasters must offer political candidates the “lowest unit charge for the same class and amount of time for the same period.” This rule requires broadcasters to treat political candidates as “on par” with the station’s “most favored commercial advertiser[s].”³

As explained in the NAB Opposition, the Canal Petition seeks more than just equal treatment for political candidates—it requests preemption rights that are substantially *more*

³ S. REP. NO. 92-96 (1971), *reprinted in* 1972 U.S.C.C.A.N. 1773, 1780.

favorable than those held by any of their commercial counterparts. This result would directly contradict the Commission’s interpretation of the statute. Indeed, the Commission has concluded that Congress “specifically rejected” a legal regime wherein “the candidate is essentially afforded ‘fixed’ status at a preemptible rate.”⁴ And yet that is exactly what the Canal Petition seeks: the right of a political candidate to purchase advertisements at a price that is reduced to reflect a risk of preemption, but to be afforded special protection under a Last-In-*Never*-Out rule that would effectively prevent preemption from ever occurring (at least until *all* other spots in the class have been preempted).

The NBC Affiliates agree with NAB that the widely-used LIFO preemption system satisfies the lowest-unit-charge requirement by offering political candidates exactly the same rates, tied to exactly the same preemption risks, as other advertisers. Under this system, all advertisers—political and commercial—have the choice of purchasing a fixed spot for a higher rate or a preemptible spot discounted to reflect the risk of preemption. Under the system envisioned by the Canal Petition, a political candidate, but not a commercial advertiser, could purchase a cheaper class of time that would function more like a more expensive, fixed class. In fact, a political candidate could only be preempted by another political candidate, and, as the NAB Opposition notes, the Canal Petition fails to explain how a broadcaster would determine the relative preemption rights of two advertisers that it is required to treat as the first purchaser. The system sought by the Canal Petition is, in short, legally baseless, unfair, and entirely unworkable.

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

III. THE CANAL PETITION LACKS A SUFFICIENT FACTUAL BASIS

The Canal Petition also asserts that political candidates are systematically disadvantaged by a LIFO preemption system because these candidates, “as an industry, buy airtime late when compared to commercial advertisers.”⁵ This assertion contradicts actual data collected by the NAB, however, which demonstrate that political candidates and commercial advertisers alike purchase advertisements at various times prior to the date they air. We agree with the NAB that the Canal Petition presents insufficient evidence upon which the Commission could reasonably conclude that political candidates are systematically disadvantaged by a LIFO preemption system.

IV. THE CANAL PETITION IS PROCEDURALLY INFIRM

Lastly, the Commission may issue a declaratory ruling only when there is a “controversy” or “uncertainty” in need of resolution.⁶ The NBC Affiliates agree with NAB that because “the FCC’s policies on classes of time and preemption, based on long-standing statutory requirements, have been settled for over two decades,”⁷ no basis for a declaratory ruling is present. Thus, the petition should also be denied as procedurally infirm.

V. CONCLUSION

For the reasons stated above, as well as those explained in the NAB Opposition, the Petition for Declaratory Ruling should be denied.

⁵ Canal Petition at 6.

⁶ NAB Opposition at 9 (citing 47 C.F.R. § 1.2).

⁷ *Id.*

Respectfully submitted,

THE NBC TELEVISION AFFILIATES

By:



Jennifer A. Johnson
Eve R. Pogoriler
David M. Parker*
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street N.W.
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202-662-6000

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