

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

Media General, Inc. (“Media General”), by its attorneys, hereby files these reply comments in support of the Opposition of the National Association of Broadcasters (“NAB Opposition”) in the above-referenced docket and in defense of television stations’ use of a Last-In-First-Out or “LIFO” system of preemption for political advertisements.¹

I. INTRODUCTION

Adopting Canal Partners’ interpretation of Commission requirements would result in political candidates being treated *better* than Media General’s best commercial advertisers, and that cannot and should not be required. Media General owns and operates 71 television stations in markets of all sizes across the country, ranging from San Francisco, California (DMA # 6) to Lafayette, Indiana (DMA # 187). All of Media General’s stations serve candidates in competitive state and local political races, and many of Media General’s stations also serve

¹ FCC Public Notice, “Media Bureau Seeks Comment on Canal Partners Media’s Request for Declaratory Ruling that Station’s Use of Last In, First Out Preemption Method with Respect to Candidates’ Advertisements Violates Section 315(b) of the Communications Act,” DA 15-129 (rel. Jan. 29, 2015); Opposition of the National Association of Broadcasters, Petition of Canal Partners Media, LLC For a Declaratory Ruling Concerning Use of Last-in-First-Out Preemption with Respect to Candidate Advertisements, MB Docket No. 15-24 (filed March 2, 2015). *See also* Canal Partners Media, LLC Petition for a Declaratory Ruling (filed Sept. 30, 2014) (the “Canal Petition”); Supplement to Petition for a Declaratory Ruling (filed Oct. 14, 2014); Second Supplement to Petition for a Declaratory Ruling (filed Nov. 14, 2014) (the “Canal Second Supplement”). The Petitioner in this proceeding is hereinafter referred to as “Canal Partners.”

markets in states that are battlegrounds in national elections, including Iowa, Ohio, Florida, North Carolina, and Pennsylvania. Compliance with the Commission's political advertising rules is an important part of the procedures followed by Media General, and Media General is careful to make sure political advertisers are treated the same as its best commercial advertisers. However, the stations frequently receive requests from political advertising buyers that claim rights to which they are not entitled under the rules. Accordingly, Media General supports the NAB Opposition and urges the Commission to reject the Canal Petition.

II. THE COMMISSION SHOULD REJECT THE CANAL PETITION AND SUPPORT TELEVISION STATIONS' PREEMPTION PRACTICES.

Neither the Communications Act nor the Commission's rules require stations to change their sales policies, or to adopt specific sales policies, as Canal Partners requests. The law requires that stations treat candidates as well as they treat their best commercial advertisers – but stations certainly are not required to provide candidates with better treatment than their best commercial advertisers.²

Contrary to the statutory and regulatory requirement of parity between political and commercial advertisers, Canal Partners asks the Commission to declare it illegal for broadcasters to apply the commonly used LIFO method of preemption when dealing with advertising purchases by political candidates. This practice is routinely applied to commercial advertisers, but Canal Partners objects to its application to political advertisements. As NAB correctly explains, Canal Partners' request far exceeds the statutory and regulatory requirement that stations treat candidates the same way they treat their best commercial advertisers.³ Canal Partners advocates that stations be required to treat candidates *better*, although the political advertising laws and rules provide no basis for that contention.

² See, e.g., 47 U.S.C. § 315(b) (prescribing equal treatment among candidate and commercial advertisers); 47 C.F.R. §§ 73.1941, 73.1944.

³ See, e.g., NAB Opposition at 2-3.

The Commission has determined that the statutory requirement of equal treatment mandates that television stations afford candidates not only the best rates they offer to commercial advertisers but also apply the same sales practices to both types of advertisers, including policies regarding “make goods, preemption priorities, and any other factors that enhance the value of a spot.”⁴ Media General faithfully follows this mandate, but nothing in the statute, the Commission’s rules, or any written Commission directive suggests that broadcasters are required to alter their sales practices or policies to *privilege* candidates over commercial advertisers, which is what Canal Partners seeks.

Canal Partners’ argument that the LIFO method of preemption disadvantages candidates is baseless. While Canal Partners is correct that candidates cannot “spend” money related to an election until they are legally qualified candidates,⁵ it conveniently ignores that candidates are allowed to book time in advance without paying for it until a week before the air date of the advertisement.⁶ Contrary to Canal Partners’ claims, political candidates are booking advertising time and laying down ad schedules at earlier dates with every political cycle, knowing that they cannot be penalized for cancelling as long as they do so a week in advance. Candidates, thus, have ample opportunity to pre-book schedules without financial risk. Furthermore, while Canal Partners points out that different political parties may nominate their candidates on different dates,⁷ any candidate can purchase time in anticipation of nomination and cancel it if his or her

⁴ *Codification of the Commission’s Political Programming Policies*, Report and Order, 7 FCC Rcd 678, 690 (1991); *Codification of the Commission’s Political Programming Policies*, Memorandum Opinion and Order, 7 FCC Rcd 4611 (1992).

⁵ Canal Partners Media, LLC’s Comments, Petition of Canal Partners Media, LLC For a Declaratory Ruling Concerning Use of Last-in-First-Out Preemption With Respect to Candidate Advertisements, MB Docket No. 15-24 at 9 (filed March 2, 2015) (“Canal Comments”).

⁶ See NAB Opposition at 17, n.36.

⁷ Canal Second Supplement at 3-4 (comparing the Georgia Senate primaries with the Democratic nominee determined on May 20, 2014 and the Republican nominee determined on July 22, 2014).

nomination bid is unsuccessful. Indeed, any candidate purchasing advertising time weeks or months before a September through November schedule will not be the “last in” advertiser for any broadcast station, and, therefore, LIFO concerns should not apply.⁸

Finally, while candidates have ample opportunity to pre-book schedules risk-free long before any payment is due, federal candidates who buy late still may exercise their “reasonable access” rights, and all candidates are afforded “equal opportunities” to all opponents’ television buys.⁹ Accordingly, under the political advertising rules as they currently apply, candidates are not at the extraordinary disadvantage that Canal Partners portrays.

III. CONCLUSION

For the reasons stated herein, Media General requests that the Commission deny the Canal Petition.

Respectfully submitted,

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⁸ See, e.g., NAB Opposition at 15-16 and Attachment A.

⁹ See 47 C.F.R. Sections 73.1944 and 73.1941.