

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Request by State Broadcasters Associations)
For Declaratory Ruling Concerning the) MB Docket No. 07-137
Application of the Commission's Political)
Programming Regulations)

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (“NAB”)¹ hereby files brief reply comments in response in the above-captioned proceeding. State Broadcasters Associations have requested a declaratory ruling² as to whether a broadcast station that participates in Internet sales programs must include the sale price of online-sold airtime in calculating a station’s lowest unit charge (“LUC”) for each class of time sold. The vast majority of commenters observe that, consistent with Commission precedent, Internet sales programs should not be attributed to an individual station’s LUC calculation.³ One commenter, however, LUC Media Group, Inc. states that excluding Internet sales programs from a station’s LUC would “return us to the bad old days,” would increase the cost of campaigns and could possibly result in broadcasters’ dumping large

¹ NAB is a nonprofit trade association that advocates on behalf of more than 8,300 free, local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the Courts.

² Request for Declaratory Ruling of the Named State Broadcasters Associations, filed on June 19, 2007 (“Request”) and placed on *Public Notice* on July 5, 2007 (DA 07-2985).

³ See, e.g., Joint Broadcasters Comments at 3-4 (Aug. 6, 2007); Softwave Media Exchange Comments (“Softwave”) at 7-11, Bid4Spots, Inc. Comments at 7 (Aug. 6, 2007) (“Bid4Spots”); dMarc Broadcasting Inc./Google Comments at 2-3 (“Google”); Rubber City Radio Group Comments at 1-2 (Aug. 6, 2007); Haugo Broadcasting, Inc. Comments at 1-2 (Aug. 8, 2007).

inventory to avoid statutory obligations.⁴ As discussed below, these allegations are without merit.

By wholly ignoring the case law of unwired networks,⁵ LUC Media bypasses Commission policy for the past three decades – the LUC is only to be calculated based on rates given by the individual station *directly* to its commercial advertisers.⁶ The Commission has also addressed the limits on LUC calculations while accounting for emerging technology in the field of advertising sales on multiple stations or channels: in the 1990 *Adlink* decision, the Commission determined that an advertising sales representative for a network of cable television systems, and their subsequent distribution by satellite regionally and nationally, would be excluded from LUC calculations by those individual licensees running the ads.⁷ The policy is consistent with Congressional intent that political candidates, when purchasing time from a broadcast or cable licensee, must be placed on par with a station’s “most favored advertiser.”⁸ As Softwave Media Exchange aptly notes “no commercial advertiser, even the ‘most favored,’ may go directly to an affiliate station and receive a comparable rate to the one set by and accepted through the network.”⁹ Nor, on at least two of the Internet sales programs, can

⁴ See *LUC Media Group, Inc.* Comments at 5-7, respectively (Aug. 6, 2007) (“LUC Media”).

⁵ LUC Media mistakenly equates Internet sales practices as “fire sales.” LUC Media Comments at 3. Fire sales involve last-minute direct purchase orders from commercial advertisers. Internet sales programs are a network of unaffiliated stations that are aggregated dynamically to sell unused inventory, and therefore, are analogous to unwired networks.

⁶ See NAB Comments at 1-6 (Aug. 6, 2007) (citing *Letter to Michael H. Bader*, 56 FCC 2d 840 (1975), *Letter to Robert L. Olender*, 61 FCC 2d 694 (1976), *Political Primer 1984*, 100 FCC 2d 1476 at ¶ 66(f)).

⁷ *Letter to Charles M. Firestone*, 5 FCC Rcd 3255 (1990) (“*Adlink*”).

⁸ S. Rep. No. 96, 92d Cong., 1st Sess., p.27 (1971).

⁹ Softwave Comments at 5.

advertisers even specify on which station(s) their advertisements are to be aired.¹⁰ Moreover, as Bid4Spots points out, the Commission has excluded from LUC calculation transactions where the results are “impossible to predict and in many respects [are] outside the control of the broadcaster.”¹¹ We agree and caution the virtually insurmountable difficulties that all parties would encounter in attempting to attribute the cost per thousand (“CPM”) Internet sales purchases to individual station’s classes of time on an ever-changing basis.

Additionally, LUC Media overlooks the fact that Internet sales programs may benefit candidates who seek to target different demographic groups and give them greater choices in purchasing airtime. Because of the dynamic nature of Internet sales programs, candidates who purchase time from participating online companies rather than directly from licensees may be able to purchase “a network” at a CPM significantly lower than what is available directly from an individual station. Indeed, as Softwave and Bid4Spots note, candidates who purchase time through their Internet sales programs will be given the effective LUC for the types of time purchased by commercial advertisers.¹² Candidates have therefore greater choice in purchasing airtime at discounted rates - either at a CPM through Internet sales programs or per class of time for advertisements or programming directly purchased from stations. Candidate participation in Internet sales programs could thus *reduce*, not increase, the cost of campaigns.

¹⁰ See Bid4Spots Comments at 10 (“an advertiser who participates in Bid4Spots auction cannot construct the auction to target one particular station, and in fact, cannot request that any specific station participate in the auction); Google Comments at 1 (“dMarc’s tools afford advertisers a high degree of flexibility in identifying the most efficient placement of spots, but do not identify any particular broadcast station prior to purchase”).

¹¹ See Bid4Spots Comments at 11 *quoting Robert B. McKenna*, 87 FCC 2d 1016 (1981) (discussing per inquiry advertising); *see also Richard R. Zaragoza*, 4 FCC Rcd 518 (1988) (in which the Commission held contributions given to state associations for Noncommercial Sustaining Announcements do not affect a station’s LUC because of the uncertainty of actual airtimes and station receipts).

¹² See Softwave Comments at 11, Bid4Spots Comments at 14.

Finally, the Commission should dismiss LUC Media’s claims that “broadcasters would go so far as placing a large portion of airtime unsold at the beginning of the political window into Internet sales pools” to avoid statutory LUC obligations.¹³ Internet sales programs comprise a very small portion of a station’s inventory – it is unused inventory that otherwise would lie fallow. It makes little business sense for a station to relocate inventory it could sell directly to advertisers and subsequently receive significantly less revenue through an online-auction process. The Commission should base its policy on reasoned factual analysis, not on unsubstantiated speculation. Alternatively, the Commission may wish to revisit this issue after the 2008 election after all parties have gained experience with evolving online models.

To be clear, broadcasters are committed to fulfilling their requirements under the Communications Act.¹⁴ And broadcast licensees who receive requests from candidates wishing to avail themselves of time that is sold through participating Internet sales programs will be referred to the company that sold the advertising inventory. This is consistent with current practice for all network sales (*e.g.*, sales made through a television network and not through an affiliate station).

¹³ LUC Media Comments at 7.

¹⁴ In fact, it was at the request of State Broadcasters Associations’ members, broadcast licensees, that this issue was formally raised before the Commission.

For the above-stated reasons NAB urges the Commission to reaffirm its precedent and conclude that these Internet sales programs are analogous to unwired networks; therefore, they are excluded from an individual station's LUC calculations.

Respectfully submitted,

A handwritten signature in black ink that reads "Marsha J. MacBride". The signature is written in a cursive, flowing style.

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