

Political Broadcasting 102

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The FCC has elaborate rules that affect a political candidate's access to broadcast media, the advertising rates that a station can charge, the disclosures a broadcast station must make and the right of opposing candidates to "equal opportunities." (47 C.F.R. §§ 73. 1940, 1941, 1942, 1943 and 1944). Only some of these rules apply to noncommercial (NCE) stations.

What Doesn't Apply?

- NCE stations are not required to grant candidates "reasonable access." NCE stations can say "no."
- NCE stations cannot run political ads and are thus not subject to the requirement that ads be available at the station's "lowest unit charge."

What Does Apply?

- A ban on discriminating between candidates in a station's "practices, regulations, facilities or services."
- A requirement that if one candidate is allowed to "use" the station, opposing candidates must be given "equal opportunities."

Who Is A Candidate?

- Someone who has announced an intention to run for a political office,
- Who is qualified to hold that office, and
- Who is eligible to be on the ballot for that office, as the nominee of a party, an independent or a write-in candidate.

What Is A Political "Use" Of A Broadcast Station?

- The appearance of a political candidate whose voice or likeness is readily identifiable.
- The appearance need not be approved by the candidate and need not relate to a political issue.
- The appearance must be "positive," e.g. not part of an attack ad.

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This memo was prepared for the 2016 Public Radio Super-Regional Meeting. It contains information of a general nature and should not be regarded as legal advice.

***Exceptions To The
Definition of Use***

A "use" is not a "use" when the appearance of the candidate appears in a

- bona fide newscast
- bona fide news interview program
- bona fide news documentary in which the appearance of the candidate is incidental
- on-the-spot coverage of a bona fide news event.

Notice Requirements

- The station must place notice of a use (or the denial of a request for a use) in its public file. The notice must explain the station's disposition of the request, including when, and for how long, any use occurred.

- Opposing candidates have 7 days from the date of a non-exempt "use" to demand Equal Opportunities. The station is not required to notify opposing candidates.

- An Equal Opportunities right is a right to reach the same size and type of audience, not a right for "equal time" on the same program.

- The station may not "censor" material that is part of an Equal Opportunities broadcast.

***Other FCC
Requirements***

- NCE stations are prohibited from airing political ads (a sponsored announcement that supports or opposes a candidate).

- NCE stations are prohibited from airing "issue ads" (sponsored announcements that express a "view" on an issue of public importance or interest).

- NCE stations are prohibited from supporting or opposing political candidates, period.

Other Requirements

- IRS rules absolutely prohibit 501(c)(3) organizations from directly or indirectly participating in, or intervening in, any political campaign, either in support of or opposition to any candidate for elective political office.

- Federal Election Commission (FEC) rules prohibit corporate contributions (including free air time) and regulate political debates and selection of debate participants.

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