PUBLISHED BY
Davis Wright Tremaine LLP

A Webinar Refresher on the FCC's Political Broadcasting Rules - Computing Lowest Unit Rates in Spots Sold as Part of Advertising Packages

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October 18, 2011

While the off-year elections of 2011 are not yet history, the Lowest Unit Rate period for the 2012 Presidential election will soon be upon many stations in the early primary and caucus states. Last week, **Bobby Baker, the head of the FCC's Office of Political Programming**, and I conducted a **webinar for 13 state broadcast associations** to provide a refresher on the political broadcasting obligations of broadcasters. The webinar covered all the basics of the political broadcasting rules - including **reasonable access, equal opportunities, lowest unit rates, the public file and sponsorship ID obligations**, and the issues of **potential liability of broadcasters for political advertising not bought by candidates but by PACs, unions and other interest groups**. PowerPoint slides from the presentation are available here, and the video of the presentation can be accessed here by members of the state associations that were involved. Additional information about the FCC's political broadcasting rules can be found in our Davis Wright Tremaine ***Guide to Political Broadcasting***.

One particular issue came up in the webinar that warrants additional discussion and clarification. Rate issues are always the most difficult to explain, and the questions concerning package rates are among the most confusing. The FCC has said that stations cannot force a candidate to purchase a package of spots containing multiple ads of different classes. Instead, stations must break up the price of packages into their constituent spots and, if the package spots are running during a Lowest Unit Charge period (45 days before a primary or Presidential caucus or 60 days before a general election), determine if the spots in that package affect the lowest unit rates of the classes of time represented by advertising spots contained in the package. For instance, if you sell a package of 10 morning drive spots with a bonus of 2 overnight spots on your radio station for $100, you need to break up the package price and allocate it to the spots from the two classes of time in the package - the morning drive and the overnight spots. So some of that $100 package price gets applied to the 10 morning drive spots (say, for example, $96) and the rest (for example, $4) is assigned as the value of the 2 overnight spots. Thus, in this package using this allocation, the unit rate for morning drive spots would be $9.60, and the unit rate for overnights would be $2. You then take these rates, and see if you have sold spots for these classes of advertising time at lower rates. If so, the package has no effect on your LUR. If not, the spots in the package may reduce the LUR for one or both classes of time. In such cases, the determination of which classes' LUC will be lowered may be affected by the allocation of the package price that you make.

The allocation itself is supposed to be done at the time that the package is being written, so you should be looking at packages that you are writing now, as some are likely to still be running during the LUC window. By making these allocations wisely, you can preserve rate integrity in high value time periods (if no allocation is made, it could be assumed all spots are of equal value - in our example dramatically reducing the value of the morning drive spots). The allocation is an internal station document - not one that needs to go in your public file - so you write it down and put it in a station file, only to be disclosed if the FCC requests it. The allocation that is made is one made by the station for the purposes of computing the true value of the spots in a package for LUC purposes, and need not be the same allocation that is shown on the face of any invoice provided to the purchaser of the advertising time.

The allocation of a package price only needs to be made when the spots are sold on the same station. Packages that include spots sold on multiple stations need not affect the LUC on any individual station (though the package price should offered to candidates should allow the candidate to get the benefit of volume discounts, even if they don't buy in volume). Network spots (wired or unwired) similarly don't affect the rates at any single station in that network.

The allocation process also can be of benefit to stations, as it can be used to allocate the price of spots in long-term packages, even if all the spots are all of the same class. In many presentations, Bobby Baker has talked about how stations can take long term contracts, that may show a uniform rate for spots over a long period - like a full year's contract - and allocate the total purchase price by the true value of the spots. For instance, if you sell a year-long package of 1200 spots to be run in prime time over the course of 12 months for $12,000, and the advertiser pays $1000 per month for 100 spots per month allowed under the contract, the value of the spots for LUC purposes need not be $10 per spot. Instead, if there are real economic differences in the 12 month period that are reasonable (and are not set up to simply inflate the price of spots during the LUC periods), the station can allocate the package price differently than what is shown on the invoice that the commercial advertiser receives - allocating, for instance, a lower value to spots that run during January and February when the demand for spots is less, and higher values in the fourth quarter when holiday shopping may drive demand higher. But remember, the allocation must add up to the total package price. This allocation can also be used for sports packages, where an advertiser buys a season worth of games, but the games within the package against big rivals may in reality command higher prices, while those against also-ran teams may be less valuable. These kinds of allocations are used to help value spots at their real economic value, as opposed to some arbitrary average that does not reflect the demand-based changes that are evident in any station's yearly advertising sales cycle. Again, the allocation should be done when the package is written, in writing, in an internal document maintained in the station's internal files.

This is a complicated area, and broadcasters not fully understanding this process should consult their counsel. While it may seem complicated to compute, and a paperwork burden, it does allow stations to preserve the value of spots that run in more highly valued dayparts when such spots are sold in combination with spots in less valued dayparts or with spots to be run at less valuable times. So look at your packages carefully, as the packages that you are writing now may affect the value of the spots of various classes of time within those packages if those spots run during the LUC periods.

We will, from time to time, write more about political advertising issues that may arise. So check back from time to time, or look at our archive of past articles on political broadcasting topics, here.