

Broadcasters Challenge FCC's Political Ad Requirement

Broadcasters have gone to court to challenge new rules adopted by the Federal Communications Commission last month requiring television stations to post online the rates that political candidates pay for political ads.

The National Association of Broadcasters has filed a petition against the FCC's rules making TV stations post information online about political ads, including the rates broadcasters charge political candidates and groups that run issue-related political ads. TV stations are already required to make such information public but currently it is only available at the stations themselves.

The NAB has argued that requiring stations to post ad rates online will put them at a competitive disadvantage. They say it's unfair that only broadcasters are required to post such information, while other video providers such as cable operators are exempt. Before the FCC adopted the order, broadcasters offered to post information on who bought the political ads and how much they spent in total, but the FCC rejected the compromise.

"The commission's changes to broadcasters' disclosure obligations and other operations as well as other action taken in the FCC order will directly and adversely impact NAB and the broadcasters it represents," NAB said in the petition it filed with the U.S. Court of Appeals. "NAB seeks relief from the commission's actions on the groups that it is arbitrary,

"NAB seeks relief from the commission's actions on the groups that it is arbitrary, capricious, in excess of the commission's statutory authority, inconsistent with the First Amendment and otherwise not in accordance with law."

capricious, in excess of the commission's statutory authority, inconsistent with the First Amendment and otherwise not in accordance with law."

FCC officials argue that the move is long overdue and will help provide more transparency about political spending. At the same time, they say it's costly and time consuming to obtain rate information directly from stations.

"The public file rules are a common-sense update by the FCC to move from paper to online access to public information in the digital age," an FCC spokesman said in a statement. "The rules are consistent with Congress's directive to ensure public availability while providing cost savings for broadcasters." ■

Article courtesy of Juliana Gruenwald from The National Journal.

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Virginia Association of Broadcasters

75th Annual Summer Convention

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Local Ad Dollars Moving to Mobile/ Online; Radio & TV 'Hold Their Own'

According to BIA/KELSEY's Media Ad View reports, local advertising spending will experience a compound annual growth rate of 2.6% between 2011 and 2016, with revenues climbing from around \$132 billion to more than \$150 billion. BIA/KELSEY expects spending to increasingly shift from traditional media and direct advertising to digital alternatives. Mobile and online will account for the largest increase in local ad spending, nearly doubling from \$11.1 billion in 2011 to \$21.8 billion in five years (CAGR: 14.4%).

BIA/KELSEY's Media Ad View reports provide a detailed picture by advertiser category of trends and competitive market intelligence across the entire local advertising spectrum. The Media Ad View analysis shows the major source of advertising in the mobile and online space will be technology/telecom, which will spend \$5.1 billion by 2016 (up 80.7%). Other top spending categories include retail (\$4.5 billion), automotive (\$2.6 billion) and health care (\$815.3 million).

"While we expect to see changes in ad spending in some advertising categories,

it is significant to note that television and radio continue to hold their own, while out-of-home, online and mobile are having an impact on the overall share," said VP/Chief Economist MARK FRATRIK. "Newspapers are also positioned very well to continue to drive online ad revenues."

This year's Media Ad View revenue reports break down 12 primary categories for advertisers into 94 detailed business categories, further analyzing the spending in each of the 210 local television markets and the U.S. Census' 362 Core Based Statistical Areas. The results provide a detailed picture of the spending in each market around business categories like automotive, education, financial/insurance, general services (i.e., legal, accounting, design), government/political/religion, health care, leisure/recreation, media, real estate, restaurants, retail and technology/telecommunications. The reports also include an analysis of online spending distribution to examine what dollars are being spent online and where. ■

Article courtesy of All Access Music Group.

Liquor Ads Make Huge Breakthrough on Broadcast Networks

With broadcast networks loosening their rules and accepting hard liquor ads, liquor brands have been on a veritable stampede to get into TV advertising, reports *Advertising Age*.

"We felt that it was important to speak to our core consumer [21- to 29-year-old men], and in order to do so we needed to have a presence on television," said Amanda Blanco, brand manager for Jägermeister, which aired its first TV ad this month.

In doing so, Jägermeister followed what lately has seemed like a stampede of liquor brands to TV as marketers seek broad awareness for product launches or to build new buzz on old brands.

While the effort includes plenty of digital, "TV was a great place to launch that idea and tell the story in a compelling and visually stimulating way," said Diageo spokesman Dan Sanborn. In a move to reach more Hispanics, the marketer made a major upfront buy last year on Univision Communication's Galavision cable network for brands such as Ketel One and Johnnie Walker, as well as on every Univision-owned and -operated station. Diageo expects to continue the relationship this year.

CBS has started accepting liquor ads during late-night programming, while ABC has been taking liquor ads during "Jimmy Kimmel Live" for several months. NBC started airing spirits ads after 11 p.m. this spring. ■

Support for FM on Cell Phones Grows

Four out of five (81%) Americans who own a cell phone would consider paying a small, one-time 30 cent fee to access local radio on a mobile phone. That's according to a new Harris Interactive survey commissioned by the National Association of Broadcasters. The cost is how much it's estimated to include the microchip on a mobile phone. Three-quarters (76%) of adults say they'd use the feature, up from 66% in 2010.

Local weather and music are the top two reasons survey participants would listen to their local stations on their cell phones. Seven out of 10 cell phone owners indicated that having a radio built into their cell phone, capable of providing local weather and emergency alerts in real-time, would be "very" or "somewhat" important. The number was higher – nearly eight out of 10 adults – for those with children in the home.

"The results of this survey demonstrate again a significant and growing demand for radio-capable cell phones in the U.S.," NAB EVP Dennis Wharton says. "We're hopeful that as demand

for this capability becomes more apparent, wireless carriers will voluntarily offer this feature or activate radio chips already in their devices. Radio-enabled cellphones are a standard feature in much of Europe and Asia. From a public safety perspective alone, there is a strong case to be made for wireless carriers to also voluntarily activate radio chips in cellphones in the U.S."

The NAB hopes the survey will encourage wireless companies to add FM capabilities to all handsets. But the CTIA-The Wireless Association says consumers who want FM-enabled devices can buy them. "The market already delivers a variety of FM-enabled handsets," VP Jot Carpenter says. He says there's "considerable marketplace evidence" that consumers prefer using mobile apps over FM.

The survey was conducted online between April 18 and May 1, 2012 among more than 2,000 U.S. adults (age 18+). ■

Article courtesy of Inside Radio. They can be found online at www.insideradio.com.

"The results of this survey demonstrate again a significant and growing demand for radio-capable cell phones in the U.S."

NAB's Smith Defends "Original" Wireless: Broadcast

NAB President/CEO delivered a message to Capitol Hill pointing out the immense value that broadcast television brings to the overall US economy, and suggests they protect broadcast's free service in the face of those who wish to replace it with a fee service. Smith said that Congress struck a fair balance between broadcast and those wishing to acquire more spectrum for mobile wireless service – it allows television broadcasters to opt out of the business, but also allows those who see a future in broadcast television to continue to provide service. Smith noted 186K jobs and \$30B in economic activity directly attributable to broadcast television, leading to a ripple effect involving perhaps 1.5M jobs and \$716B.

- ▶ The number of TV households continues to grow
- ▶ A significant percentage of minority and foreign language-speaking households are over-the-air only households.
- ▶ Young adults are also taking the OTA-only path, resulting in a significant growth curve for OTA-only homes
- ▶ Broadcast programs continue to top the charts – amounting to about 95 out of the top 100 shows in a typical week
- ▶ Events like the Super Bowl, the Academy Awards and many others are available to all without a subscription fee
- ▶ Perhaps most important of all, broadcast is the go-to source for news and information in times of emergency.

In the latter category, Smith noted that times of emergency are precisely when mobile wireless and its inefficient one-to-one transmission method is rendered useless – when every stressed citizen goes for their cell phone at the same time, the system overloads and simply shuts down. But the broadcast one-to-many transmission method continues to function normally, getting vital information out to the public precisely when it is most needed. Smith repeated the call for a comprehensive spectrum inventory to determine how severe the alleged spectrum crunch really is. ■

Article courtesy of Dave Seyler from rbr.com.

HUMAN RESOURCES

Age Discrimination Suits Likely to Increase

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Ever since the Supreme Court decided *Gross v. FBL Financial Services* in 2009, the accepted notion among employment lawyers was that employees who alleged age discrimination would have a more difficult time establishing their claims than those employees alleging other forms of discrimination. In *Gross*, the Court held that a plaintiff claiming employment discrimination under the Age Discrimination in Employment Act (ADEA) must prove that age was a “determining factor” for the adverse employment action that gave rise to the plaintiff’s lawsuit. In making its ruling, the Court emphasized that the text of the ADEA did not authorize “mixed motive” claims, i.e., that a plaintiff could also prevail by establishing that age was at least a “contributing factor” in the adverse employment decision and the employer could not show that it would have taken the same action in the absence of age as a motivating factor.

The *Gross* decision brought an almost immediate reaction from Congress. In 2009, lawmakers introduced legislation in the House and Senate, the “Protecting Older Workers Against Discrimination Act” (POWADA), that was aimed at overturning *Gross*. The legislation was the subject of two Congressional hearings in 2010. Despite some apparent interest in this legislation, it failed to advance. On March 13, 2012, a bipartisan group of legislators reintroduced POWADA in the Senate. The proposed legislation again explicitly rejects the Supreme Court’s decision in *Gross v. FBL Financial Services* and specifically states that plaintiffs need not demonstrate that age was the sole cause of an adverse employment practice to establish claims under the ADEA. The legislation has been referred to a Senate committee for a hearing.

Regardless of whether POWADA, or some similar version of the legislation, is ultimately



passed by Congress, the number of age claims filed in state and federal discrimination agencies is likely to continue to increase. Recent surveys indicate that many older employees are choosing to continue working long past the traditional retirement age of 65. With advances in health care allowing people to live longer and growing concerns about saving enough money for retirement, more and more employees are retiring at a later age. An aging employee population results in higher employer expenditures for wages and health benefits as well as work-related accidents with more severe outcomes. Thus, an employer may have legitimate reasons for wanting to reduce the average age of a workforce. Employers should resist the urge, however, to ask older employees about their plans for retirement. Courts have found persistent questions about retirement to be sufficient evidence of age bias.

Problems can arise when an employer is forced to reduce its workforce because of economic conditions. It is tempting to layoff higher paid employees during a reduction in force (“RIF”). Unfortunately, the highest paid employees may also be the oldest employees in the workforce. Although courts have held that an objectively measurable factor

such as salary is a legitimate non-age factor an employer can use when making layoff determinations, employers cannot target older employees for a RIF simply because such employees are beyond retirement age and making a lot of money. It is unlawful for an employer to discriminate against older employees based on a stereotype that they “should be retired by now.”

Sometimes, an employer’s impermissible motive for selecting older workers for a RIF is all too obvious. The Equal Employment Opportunity Commission (“EEOC”) recently announced that it had reached an agreement with Central Freight Lines, Inc. to settle an age discrimination lawsuit for \$400,000. According to the EEOC, the company discriminated against eight former dockworkers because of their ages by selecting them for a RIF. In its federal court lawsuit, the EEOC charged Central Freight Lines with using the RIF as a ruse to fire the dockworkers, some of whom had worked at the company for 20 or more years and were 50 years old and older. There was evidence the workers were called names like “grandpa,” “old farts” and “old bastards” by a supervisor, the same person who was tasked by the employer with preparing a list of the men to be terminated. According to the EEOC, the company also changed its attendance and disciplinary policy so that the men were suddenly put on corrective action and made eligible for termination under the new policy. The company then replaced the older employees with younger hires.

On the first day of a scheduled eight-day trial, the attorneys for the parties reached an agreement to settle the case by consent decree. In the consent decree, the company agreed to pay \$400,000 to the dockworkers and train management and supervisory personnel at Central Freight’s Dallas and Fort Worth Terminals on equal employment opportunity policies and procedures. The company also committed to enforce a written policy against age discrimination.

Employers should also not use mandatory retirement policies to ensure a younger workforce. With rare exceptions, such policies will be found to violate the ADEA. There is no upper limit on age protections under the ADEA. In 2011, Houston-based Metallic Products Corp. was ordered to pay \$60,000

to settle an age discrimination lawsuit that accused the manufacturer of enforcing a mandatory policy requiring employees to retire at age 70. The plaintiff had alleged in his lawsuit that he was advised by company officials that he would be required to retire once he reached 70. He was fired from the company on his 70th birthday. In addition to paying the plaintiff \$60,000, Metallic Products Corp. was also required to sign a consent decree agreeing to rescind its unlawful mandatory retirement policy.

In another recent case, the EEOC announced that Kelley Drye & Warren, a Manhattan law firm with over 300 attorneys, had agreed to pay \$574,000 to an attorney who was forced to give up his equity in the firm because of his age. According to EEOC, the law firm maintained a policy requiring attorneys who wanted to practice after reaching age 70 to forfeit all ownership interest in the firm and be compensated instead through discretionary bonuses. As a result, an attorney who turned 70 in 2000 but continued to practice law full-time at the firm was significantly underpaid. The firm has agreed to abandon the policy.

Although early retirement incentive plans (“ERIPs”) that provide continued health insurance coverage and/or cash bonuses are a legitimate tool for encouraging employees to retire early, it is clear that such plans must be voluntary. The ADEA, as amended by the Older Workers Benefit Protection Act of 1990, provides an affirmative defense for employers who can prove that their ERIPs are voluntary and “consistent with the purposes” of the statute. The test for “voluntariness” is whether a reasonable person would have concluded that he or she had a choice to accept or reject the early retirement offer.

An aging workforce can offer valuable experience and wisdom, but with that added value comes an increased risk of age discrimination litigation. Older employees will not go quietly into the night if they feel they have been forced out of positions because of their age. Careful planning and analysis of the demographics of the workforce before and after a proposed RIF is the best defense against age discrimination claims. ■

“Careful planning and analysis of the demographics of the workforce before and after a proposed RIF is the best defense against age discrimination claims.”

Article courtesy of John G. Kruchko and Paul M. Lusky, Kruchko & Fries.

How to Submit to the VAB Job Bank

Jobs that are printed in the newsletter are pulled directly from the online Job Bank. To include your listing:

- ▶ Go to www.vabonline.com. Login with your user name and password.
- ▶ Be sure to include your station ID or company name, information on how the applicant can apply and where to send the applications materials.

Account Executive FT Lynchburg, VA

The sale of television and web advertisement to new and existing accounts, the supervision and follow-through of all sales, and the development of new clients as defined by the Sales Manager. Advanced education in the field of Marketing and Advertising or equivalent sales background. Sales aptitude with one year previous television or media sales experience preferred. Disciplined, self-motivated individual. Automobile and valid Virginia driver's license. Please apply in writing to Director of Human Resources, WSET-TV, P. O. Box 11588, Lynchburg, VA 24506-1588. Applications may be obtained at the station from 8:30 a.m. to 5:30 p.m., Monday through Friday, or online at www.wset.com. No phone calls please! EEO/M/F.

Satellite Truck Operator FT Lynchburg, VA

Maintains and operates satellite truck for scheduled news, weather and sports events, along with breaking news coverage and special projects. Flexible hours and on-call availability are required. Successful candidate will maintain a Commercial Driver's License (CDL) and be familiar with DOT logs and documentation. Previous television and Video-Journalist experience a plus. Must have high school diploma. Experience with television broadcast maintenance and television microwave or satellite RF equipment maintenance. Valid Virginia Driver's license within 30 days of employment and Commercial Driver's License required. Good driving record. Basic knowledge of video, audio, and RF television systems. Ability to maintain satellite truck electronic systems and equipment. Must physically

qualify to drive a commercial motor vehicle or receive a waiver from the FMCSA. Good communication and organizational skills. Must be able to read and speak English well enough to carry on conversation, understand highway traffic signs and signals, and fill in information on reports and records. Please apply in writing to Director of Human Resources, WSET-TV, P. O. Box 11588, Lynchburg, VA 24506-1588. Applications may be obtained at the station from 8:30 a.m. to 5:30 p.m., Monday through Friday, or online at www.wset.com. No phone calls please! EEO/M/F.

Production Assistant PT (PM hours) Lynchburg, VA

Primarily responsible for in-studio production assistance, including the operation of Camera, Audio, character generator, or etc. as assigned by shift supervisor. Also responsible for field technician assistance for Creative Services as needed. Knowledge of television production or willingness to learn. Knowledgeable in the operation of personal computers. Basic understanding of audio-visual components. Some knowledge of electronics preferred, but not necessary. Available to work irregular hours and holidays. Also available for long hours during special circumstances. Please apply in writing to Director of Human Resources, WSET-TV, P. O. Box 11588, Lynchburg, VA 24506-1588. Applications may be obtained at the station from 8:30 a.m. to 5:30 p.m., Monday through Friday, or online at www.wset.com. No phone calls please! EEO/M/F.

Reporter FT Lynchburg, VA

The Reporter position is primarily responsible for gathering news

and then preparing the information gathered for on-air presentation. This individual will write news copy, prepare voice-overs, perform stand-ups, and provide direction to the technical crew regarding the emphasis and production of the story. Strong communication skills required. Advanced Education in the field of Broadcast Journalism or equivalent broadcasting work experience. Available 24 hours per day, seven days per week, and for extended periods of overtime, if needed. Valid Virginia Driver's license within 30 days of employment. Ability to lift and transport standard camera equipment. Available to travel overnight to off-site locations, including foreign destinations, for extended periods of time, if needed. Access to an automobile if needed for transportation. Please apply in writing to Director of Human Resources, WSET-TV, P. O. Box 11588, Lynchburg, VA 24506-1588. Applications may be obtained at the station from 8:30 a.m. to 5:30 p.m., Monday through Friday, or online at www.wset.com. No phone calls please! EEO/M/F. Applicants for positions in the News Department should submit a non-returnable DVD resume tape with letter, resume, and references.

Traffic Assistant/Bookkeeping Danville, VA

Join the team of Piedmont Broadcasting Corporation(WAKG/WBTM), boasting of over 80 years of locally operated radio broadcasting excellence. Assistant Traffic Director/Bookkeeper Applicants should have five years experience in working with Darts radio traffic, Peachtree bookkeeping and Quest payroll systems This full time position offers health care benefits, vacation pay,

and 401(k) plan. Please send your resume to Betty Parrish Piedmont Broadcasting Corporation, 710 Grove St., Danville VA 24541. You can also apply online at wakg.com and click on info. EOE.

**Production/On-air
Danville, VA**

Production Assistant/On-Air Personality Applicants should have five years experience in both production and on-air work. Music scheduling, station appearances, the ability to voicetrack and knowledge of cool edit, are essential parts of this position. This full time position offers health care benefits, vacation pay, and 401(k) plan. Please send your resume to Betty Parrish Piedmont Broadcasting Corporation, 710 Grove St., Danville VA 24541. You can also apply online at wakg.com and click on info. EOE.

**Photojournalist
Richmond, VA**

Photojournalist – NBC12, Richmond's No. 1 news operation seeks Photojournalist with 2 years experience and proven initiative in news gathering. Send cover letter with salary requirements, resume and non-returnable demo tape to Nancy Kent Smith, News Director, NBC12, P. O. Box 12, Richmond, VA 23218. Drug/MVR Screening. EOE M/F/H/V.

**Production Assistant
Winchester, VA**

TV3 Winchester is seeking an energetic Production Assistant to fill a part time position. Candidates should have a good attitude and be motivated to learn. Previous experience, in camera operations and digital editing, is a plus. Please send your cover letter & resume to jobs@tv3winchester.com or mail to TV3 Winchester 633 Millwood Ave. Winchester, VA 22601. Drug-free workplace. EOE.

**Program Director - WVBE/WVBB
Roanoke, VA**

WVBE and WVBB Mel Wheeler Inc. has a rare opening for a Program Director for WVBE/WVBB ("The

Vibe") in the Roanoke-Lynchburg market. Responsibilities include overseeing the programming strategy and execution of the station; music programming and scheduling; scheduling and coaching on-air staff; station imaging; overseeing promotion and marketing; web and social media initiatives; and maintaining and growing community involvement. Candidates should have prior experience as a Program Director, assistant program director or music director; proficiency with Selector and digital automation and ability to perform an on-air shift as needed. Familiarity with both the Adult Urban format - along with a working knowledge of website content management - is preferred. A high school diploma or equivalent is required; some college preferred. Candidates must possess excellent verbal and written communication skills. To apply: Email to cskinner@wheelerbroadcasting.com Visit our website at www.vibe100.com.

**Marketing Director
Richmond, VA**

Marketing Director: WWBT, the #1 news station in Richmond, VA seeks talented, experienced Marketing Director to lead the marketing and promotional efforts of WWBT & WUPV, the Shared Service Agreement station and two multicast stations. Successful candidate must have high level of urgency, ability to multi-task, create and execute strategic plans for marketing of the station, be a creative

and critical thinker, understand the importance of All screens, our news product, station brand marketing, sales promotions, social media and understand and interpret market research for utilization in growing station ratings. Candidate should have proven successful track record and at least 5 years experience at a local TV station. Bachelors Degree in marketing, broadcast communications or related field preferred. Qualified candidates only submit cover letter and resume to Mr. Kym Grinnage, VP & General Manager, WWBT, 5710 Midlothian Turnpike, Richmond, VA 23225 or email kgrinnage@nbc12.com. No phone calls please. EOE-M/F/D/V.

**Digital Account Executive
Portsmouth, VA**

This position will be responsible for aggressively pursuing digital media ad sales with local direct clients and with interactive and traditional advertising agencies. This individual will sell all digital properties including display, mobile, text, social media, SEM, and SEO. They will demonstrate an ability to think creatively, sell strategically, and communicate effectively internally and externally. 2+ Years of Sales experience is required and digital or media sales experience is preferred. Please send your resume to Lisa Taylor Digital Sales Director WAVY/WVBT 300 Wavy St. Portsmouth, VA 23704.

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LEGAL REVIEW

This article is the second of a two-part series discussing equal opportunities. To view last month's article visit www.vabonline.com.

This legal review should in no way be construed as legal advice or a legal opinion on any specific set of facts or circumstances. Therefore, you should consult with legal counsel concerning any specific set of facts or circumstances.

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Equal Opportunities for Political Candidates for 2012 Political Season

Last month, we began a discussion of the equal opportunities laws and requirements relating to “legally qualified” candidates for public office who “use” a station’s facilities. As discussed last month, the general rule for equal opportunities is that a station which permits a “legally qualified” candidate for public office to “use” its facilities must also afford “equal opportunities” to all other candidates for that office who make a timely demand. There are, of course, exceptions to the general rule, as discussed below.

▶ **Network Programming Is Not Exempt.** Appearances by candidates on network programs will trigger “equal opportunities.” In such cases, the “equal opportunities” requirement is ultimately the station’s obligation if the network does not provide “equal opportunities” upon a proper request. Thus, network programming is not exempt.

▶ **Programming Containing Station Talent Is Not Exempt.** Sometimes, stations have on-air talent who run for political office. When the on-air talent has one or more opposing candidates in their political race, stations may have to make a difficult decision about whether to leave the talent on the air and subject the station to potential equal opportunities demands for free time or to temporarily take the talent off the air. Stations should make such decisions carefully and, preferably, after consultation with the station’s regular employment lawyers.

▶ **Some Appearances Are Exempt from the “Equal Opportunities” Requirement.** Even if the broadcast constitutes a “use” by a “legally qualified” candidate, the “equal opportunities” requirement does not apply to an appearance by a candidate on any of the following types of programs:

- Bona fide newscasts, including specialized news shows such as “Entertainment Tonight” and “Inside Edition.”
- Bona fide news interview programs that are regularly scheduled in which newsworthy guests are occasionally featured and the host controls the interview process (e.g., “Meet the Press,” “Face the Nation,” “Nightline,” “Today,” “Good Morning America,” “The Tom Joyner Radio Program,” “Politically Incorrect with Bill Maher,” “Donahue,” “Face to Face,” “Larry King,” “The Howard Stern Show,” and similar shows). Stations must be careful to ensure that all elements of this exemption are present. For example, radio shows on which the Mayor, Sheriff, or other local official provides a weekly update of local affairs may or may not qualify for the exemption—if a local official who is running for office has control over the content presented on the show and is not being interviewed by the show’s host, or if the local official is the host of the

show, then the appearance by the local official is not exempt and the appearance would trigger the equal opportunities rule. Stations should carefully evaluate appearances made by local officials who are running for office.

- Bona fide news documentaries if the appearance of the candidate is incidental to the presentation of the subject (s) covered by the news documentary.
- On-the-spot coverage of bona fide news events including, but not limited to, political conventions and activities incidental thereto.

▶ **More About “On-the-Spot Coverage of Bona Fide News Events”—Debates and Special Programming.** With respect to the exemption for candidate appearances during “on-the-spot coverage of bona fide news events,” a couple of points warrant further discussion. First, the FCC has ruled that the broadcast of a debate between candidates qualifies as “on-the-spot coverage of a bona fide news event” so long as (1) a decision to broadcast a debate is a bona fide journalistic decision and the format of the debate is determined by the station or an independent third party; (2) there are structural safeguards to ensure that no candidate will be favored or disfavored in the broadcast; and (3) all station decisions are based on bona fide news judgments—there must be reasonable, objective standards for deciding which candidates to include and which to exclude. The FCC also has made clear that political candidate debates that meet the three factors and are sponsored by broadcast stations are exempt from the “equal opportunities” requirement.

Second, the FCC has ruled that special programs featuring candidate interviews and candidate discussions qualify as “on-the-spot-coverage of a bona fide news event” provided that the decision to broadcast the special programs is a bona fide journalistic decision based on bona fide news judgments and that there are structural safeguards designed to avoid favoritism towards one candidate or the other. The “on-the-spot” element of the news event exemption is not lost when programming is taped and shown at some later date so long as the broadcast is of a “reasonably recent event.” Many stations have used this ruling to provide “free time” to candidates for the discussion of public issues in increments of 5, 15, or even 30 minutes.

▶ **Consult with Communications Counsel.** Stations that receive an equal opportunities request may wish to consult with their communications counsel prior to granting (or denying) the request. ■

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