



Virginia Association of Broadcasters Legal Review



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Legal Memorandum

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Deadlines: **January 18, 2020:** [Lowest Unit Charge Window Opens for VA Stations!](#)

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LUC Window Opens for Virginia Presidential Primary on [January 18, 2020](#)

As you're well aware, it's an election year! Virginia's presidential primary election is scheduled for March 3, 2020. (Virginia's other federal, congressional primary election is still several months off, in June.)

The "lowest unit charge" ("LUC") window for Virginia's presidential primary election will open TOMORROW, on Saturday, January 18, 2020. And, remember, the LUC applies to local and state candidates as well, so the LUC window opening on January 18, 2020, *also* applies to any other elections that happen to have March 3, 2020, primaries.

Under the LUC requirement, during the 45-day period preceding the date of a primary or primary run-off election (and during the 60-day period preceding the date of a general or special election), the charges made for the "use" of a broadcast station by a "legally qualified" candidate may not exceed the LUC of the station for the *same class and amount of time for the same time period*. Remember, the LUC requirement does not mean that a station must sell prime or drive time at a non-prime or non-drive time rate. Nor does it mean that "fixed position" announcements

must be sold at “run of schedule” or “preemptible” rates. The LUC requirement applies only to charges made for the same “class” and “amount” of time for the same “period.” Thus, a candidate who purchases a fixed position announcement in drive time may be charged the same rate charged other advertisers for a fixed position announcement in drive time—except the candidate is entitled to the benefit of a frequency discount even though he or she might not have purchased enough time to have “earned” it.

It is critical to remember that the LUC requirements apply to state and local candidates in the same way they apply to federal candidates, and that the LUC rule does not apply to non-candidate third party political advertisers.

When determining the LUC, stations must remember that, generally, all spots, including bonus spots, must be allocated some value in a package arrangement. To minimize any adverse impact on your station’s LUC during the political windows, stations should have allocated, in good faith, some value to bonus spots included in package arrangements through a separate writing at the time the contract was signed. On the other hand, not all types of advertising must be factored into a station’s LUC analysis; for example, station trade-outs, “billboards,” and program sponsorships are generally not required to be factored into LUC computations.

Candidates may complain if they suspect a station has not provided them with the LUC. Such a complaint may be informal (a phone call to the station or FCC, written demand to the station, etc.), or it may involve a formal written complaint to the FCC. The candidate must do more than merely accuse the station of overcharging in order to invoke the FCC’s enforcement procedure—but not much more. In order to avoid expending the resources and energy necessary to respond to a formal FCC complaint, stations may wish to follow these guidelines:

- If a station receives a candidate’s letter demanding the rebate of alleged overcharges, the station should immediately consult with its own communications counsel and consider how best to respond. (Failure to respond promptly to such a letter may provoke the candidate into filing a formal complaint with the FCC.)
- In order to respond to a written inquiry or complaint concerning overcharges, stations should consult with counsel and evaluate the specific allegations made by the candidate. Determine if the station actually did overcharge the candidate—if so, refund the overage immediately with an explanation of how the mistake occurred.
- An ongoing review of rates charged political advertisers should be conducted by stations throughout the election period. The FCC has suggested that a weekly review would be sufficient. Such ongoing reviews will enable the station to determine if an overcharge has occurred and refund all overcharges in a timely fashion.
- In other circumstances, usually in response to a formal complaint, a station may opt to conduct an internal audit. This should not be done without advance consultation with the station’s own communications counsel. Full internal audits can be time

consuming and expensive. They involve a review of all advertising sold to the particular candidate and other advertisers in the time periods, and an evaluation of whether the price charged the candidate was the “lowest unit charge.”

If your station has not already done so, now is a good time to review your political disclosure statement and ensure that it is up-to-date.

Media Bureau to Host Webinar to Review Changes to Children’s Television Programming Report on January 23, 2020

The Media Bureau will host a webinar on **Thursday, January 23, 2020**, from **1:30 pm to 2:30 pm Eastern Time**, to review the functionality of, and changes to, the Commission’s revised children’s television programming report, according to a recently issued [Public Notice](#) (the “Notice”). Those who attend will be able to email questions about the new reporting form to FCC staff during the webinar, and staff are expected to address those questions at the session’s conclusion.

As broadcasters are likely well aware, the Commission recently revamped many aspects of its children’s television programming reporting obligations. (Because we’ve written extensively about those changes, this memo does not address them; please let us know if you’d like for us to resend our prior memoranda cataloging the changes.) Just as broadcasters’ obligations have changed, so, too, has the information solicited by the Commission’s children’s television programming report form. The January 23 webinar is designed to help broadcasters both identify those changes to the reporting form and successfully fill out and file their first annual reports.

The webinar will be available at the following link:

<https://fccevents.webex.com/webappng/sites/fccevents/meeting/info/6dd8b0eff5034fa0942221d9856a22fd?siteurl=fccevents&MTID=m8e3fd32fb585c9e6a9402c6528ab9782>.

Although you may wish to attend the webinar live (particularly so that you can ask Commission staff any questions that you may have), broadcasters will be able to stream the recording later on the following webpage: <https://www.fcc.gov/general/childrens-educational-television-rules-and-orders>. Additionally, those with disabilities may seek reasonable accommodations from the FCC by sending an email to fcc504@fcc.gov, or by calling the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

If you have any questions concerning the information discussed in this memorandum, please contact your communications counsel or any of the undersigned.

Tim Nelson, Editor

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