

[President Obama Declares Candidacy - What Political Broadcasting Rules Should Broadcasters Be Considering Now?](#)

by [David Oxenford](#)

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With the President declaring his candidacy for reelection in 2012, broadcasters thoughts may be turning to that election and the expected flood of money that may come into the political process. But visions of next year's elections should not be distracting broadcasters from their current political broadcasting obligations. I've received many calls this year about whether broadcasters need to provide **lowest unit rates to candidates in the races that are going on in 2011** - including many municipal elections and some special elections to fill various political posts. As [we have written before](#), **if a station decides to sell time to a political candidate in a local race, that sale must be at the lowest unit charge for the class of time sold during the 45 days before a primary and the 60 days before the general election.** While state and local candidates need not be afforded the "reasonable access" that applies to Federal candidates, that merely means that stations do not need to sell these candidates any advertising time at all, or that stations may limit the purchase by state and local candidates to only the dayparts during which the station has more inventory. **But once the time is sold to one candidate in a race, most other political rules - including lowest unit charges, equal opportunities and the no censorship rule, all apply to the local candidate's spots.**

With the President now filing to become a candidate, and many Republican candidates likely to be filing soon, what obligations are imposed on stations? For the most part, there is no effect on the rates to be charged to candidates or their campaign committees - those rates only become **effective 45 days before the primaries** - so the lowest unit charges for Presidential campaigns likely will not kick in until very late this year, or early next, for the early Presidential primaries and caucuses in states like Iowa and New Hampshire. But, **as candidates become legally qualified, there will be reasonable access and equal opportunities obligations that will arise.** Candidates for President can request reasonable access to all classes and dayparts - even outside the 45 and 60 day windows before a primary and general election, respectively. In the case of a Presidential campaign, a candidate becomes legally qualified in all states once he has become legally qualified in 10 states. There may be few Democrats who are to likely to challenge the President, so equal opportunities will most likely be a major issue only on the Republican side. And, [as we've written before](#), the FCC has determined that **most interview programs where the content is under station control - even those that have little news value on the normal day - are deemed "news interview programs" exempt from equal time rules.** Thus, equal time is normally only an issue in making sure that all candidates have equal

opportunities to buy spot time, and in those rare circumstances where a candidate appears on a purely entertainment program (e.g. as a character on a scripted TV show) or where the candidate is themselves a host of a broadcast program - and usually stations ensure that the candidates are long gone from hosting programs once they formally declare that they are running for a political office

Another area where broadcasters need to pay attention is in connection with third party ads dealing with Federal issues. Already, in many contested Congressional districts around the country, there are ads being run sponsored by various political action committees and other interest groups - targeting potential candidates for the House of Representatives or the Senate. Sometimes the ads are subtle digs at the positions that a potential candidate is taking ("call Congressman X and tell him that he should stop voting for bills that are bankrupting the country"), and sometimes they are more direct attacks on the potential candidate. Sometimes they don't directly address a particular politician at all, but are instead directed at an issue being debated in Congress. And sometimes, [as reportedly happened just recently](#), they ask callers to tell a Congressman to vote in a particular way on an issue where he has already voted in the way the ad requests. In any case, **if the ads are dealing with Federal candidates or other issues being considered by the US House of Representatives or Senate, then they are Federal issue ads on which the station must maintain full public file information, similar to that which is kept for any candidate advertising** - the full schedule of advertising that is to be run, the class of time sold, the sponsor of the ad, and even the price that was paid for the spots (see our post [here](#) on the public file requirements for Federal issue ads).

Finally, with the 2012 election fast approaching, stations should start planning for the election season. Some stations are no doubt already selling **long-term contracts that will still be in effect during the primary season**. Stations should be considering how to allocate the purchase price of these long-term contracts to reflect their actual seasonal value - rather than simply booking them as having a flat rate throughout the entire year - including the pre-election lowest unit rate periods. As we wrote in our [Political Broadcasting Guide](#), the FCC allows you, in internal station documents, to allocate for lowest unit rate purposes, the purchase price of a long-term contract in a manner different than shown on invoices given to commercial clients, as long as that allocation more accurately reflects the seasonal value of the spots sold, adds up to the total purchase price of the package, and is not done simply to avoid the lowest unit rate periods. Consult with your attorney to make sure that you properly apply this process, but it could save you money in the long term. For other things that you should be thinking about in preparation for the election, check out our [Political Broadcasting Guide](#).

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