



CHAIRMAN

Federal Communications Commission

Washington, D.C.

November 1, 2004

The Honorable John D. Dingell
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
2322 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Dingell:

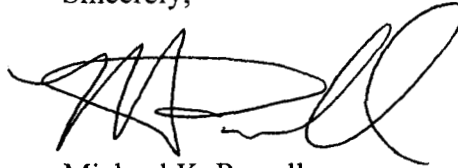
Thank you for your October 28, 2004, letter concerning Pappas Telecasting Companies ("Pappas") and the company's contribution of airtime on several of its California radio and television stations to certain Republican and Democratic County Central Committees in California.

To date, the Commission has received and addressed one formal complaint regarding the Pappas donation of airtime to several County Central Committees in California. The complaint was submitted on October 29, 2004, by a legally qualified candidate for public office in California and alleged that Pappas declined the candidate's request to make equal time available on its broadcast stations free of charge pursuant to Section 315 of the Communications Act. Commission staff immediately conducted a review of the complaint, as well as Pappas Telecasting's response to the complaint, and determined that Pappas had failed to comply with federal law concerning the requirement that broadcasters provide equal opportunities to legally qualified candidates for the same public office. Accordingly, on October 29, 2004, the Commission's Media Bureau issued an *Order* that determined that the complainant was entitled to equal opportunities on the same free basis as her opponent. For your information, I have enclosed a copy of the Bureau's *Order*.

Let me assure you that, prior to the adoption of the Bureau's *Order*, neither the Commission nor its staff "sanctioned" or otherwise approved any Pappas proposal involving the contribution of airtime on its radio and television stations in California or the company's interpretation of its equal opportunities obligations. Indeed, to clarify any misunderstanding about the Commission's posture concerning this matter, on October 29, 2004, the Chief of the Media Bureau issued a statement indicating that no decision had been made regarding the applicability of the equal opportunities requirements to the contribution of airtime by Pappas.

I have attached my responses to your specific questions. Thank you for your interest in this matter and please let me know if I can be of further assistance with this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Powell", with a large, stylized flourish at the end.

Michael K. Powell

Enclosures

Responses to questions

1. Is it your view that a licensee should be permitted to donate time to use the public airwaves it is licensed to use in the public interest to support one political party over others? If yes, why? Would such action serve the public interest? If yes, how?

2. Is it your view that a licensee should be permitted to donate time to use the public airwaves it is licensed to use in the public interest to support one candidate or set of candidates for state or local office(s) over others? If yes, why? Would such action serve the public interest? If yes, how?

3. Is it your view that a licensee should be permitted to donate time to use the public airwaves it is licensed to use in the public interest to support one candidate or set of candidates for federal office(s) over others? If yes, why? Would such action serve the public interest? If yes, how?

Federal law does not proscribe the donation and use of airtime to support a particular cause, including a political party or candidate. Indeed, the Communications Act not only contemplates that broadcast facilities will be used for political purposes, it requires licensees to make facilities available to certain candidates for public offices. Section 312(a)(7) of the Act, for example, provides that a commercial broadcast license may be revoked if the licensee fails to afford candidates for federal elective office “reasonable access” to use its facilities. Generally, however, the law also contemplates balanced or “equal” opportunities for opposing candidates. Thus, if a legally qualified candidate for public office is permitted to use broadcast facilities, whether on a paid basis or not, Section 315 of the Act requires that “all other candidates for that office” be afforded comparable time under comparable conditions, unless the use is within one or more of the statutory news exemptions. The Commission has defined “use” as an appearance by a candidate by voice or picture.

The donation of airtime to a political party or candidate may serve the public interest by increasing awareness of important issues and the party’s or candidate’s position on those issues. Such awareness could provoke discussion of the issues and stimulate greater interest and participation in the political process. Of course, as discussed above, broadcasters who donate time to one political party or candidate may be required to provide comparable opportunities to other political parties and candidates. Whether a broadcaster is obligated to provide equal opportunities, and whether this responsibility has been satisfied, is determined on the specific facts of an individual case.

4. Is it your view that a licensee should be permitted to donate time to use the public airwaves it is licensed to use in the public interest to support third party groups that advocate the election of a candidate or a particular ballot issue during an election over others? If yes, why? Would such action serve the public interest? If yes, how?

Broadcast licensees have discretion concerning the use of their facilities by political groups. Pursuant to Commission policies, however, the donation of time by a broadcaster to a third party advocacy group could require the broadcaster to provide comparable time to other third party advocacy groups. Whether comparable time must be provided is determined on a case-by-case basis.

5. If Pappas goes forward with using the public airwaves to support one political party, candidate, or set of candidates over others, would anything prevent all licensees from donating large amounts of time to use the public spectrum they are licensed to use in the public interest only to their favored party or candidates during the next election cycle?

Unless the time made available by the broadcaster satisfies one or more of the statutory exemptions, both federal law and Commission policy would require that Pappas or other licensees also provide equal or comparable opportunities to other candidates and political parties on a non-discriminatory basis.

6. What conversations has the FCC had with Pappas on this issue? When did these conversations take place and which FCC staff were involved?

Legal counsel for Pappas Telecasting Companies, Ms. Kathleen Victory, contacted Mr. Robert Baker, Assistant Chief, Policy Division, Media Bureau, by telephone on two occasions to discuss the possible legal implications of a donation of airtime by Pappas to certain Republican County Central Committees in California. Mr. Baker handles many political programming matters and often provides informal advice by telephone and e-mail. These conversations took place on October 25, 2004 and October 27, 2004 and Ms. Hope Cooper, Esq., also of our political programming staff, was present in his office during both telephone calls (which were on speaker), and was identified as such to Ms. Victory. In addition, Mr. Michael Perko, Chief of the Bureau's Office of Communications and Industry Information, was present during a portion of the October 27 telephone conversation.

After the Commission received a complaint concerning this matter, Mr. Baker contacted legal counsel for Pappas by telephone on October 29 and requested that the company respond to the complaint. The next day, October 30, counsel for Pappas telephoned Mr. Baker to discuss the company's compliance with the Bureau's *Order*.

7. Please describe in detail any conversations that may have occurred between the FCC and Pappas on this issue? Additionally, please provide me with a copy of any correspondence between the FCC and Pappas that relates to this matter.

The two telephone contacts prior to the filing of the complaint were approximately ten to twenty minutes each and covered two principal issues. The first issue involved the "equal

opportunities” requirement of Section 315(a) of the Communications Act. Specifically, the discussion concerned whether opponents of any Republican candidates for local office designated by the respective Republican County Central Committees for use of any Pappas’ stations would be entitled to free or paid time for equal opportunities purposes. Ms. Victory was unclear about the precise factual circumstances of the Pappas donation and Mr. Baker indicated that this made it impossible to provide any advice on this issue. As to the second issue, whether the Pappas donation was consistent with state campaign finance law, Mr. Baker explained that this issue was wholly dependent on interpretation of California law. Ms. Victory was informed that the Commission would defer to the state on such matters.

Finally, you request copies of any correspondence between the Commission and Pappas regarding this matter. On August 25, 2004, Ms. Victory sent an e-mail describing a potential “scenario” to Mr. Baker, but the e-mail did not mention Pappas. Mr. Baker responded to Ms. Victory’s e-mail on August 26, 2004. Subsequently, on August 31, 2004, Ms. Victory e-mailed a second query to Mr. Baker on the same subject and Mr. Baker sent an e-mail response that same day. Again, the e-mail did not reference any specific circumstances and Ms. Victory reiterated that she was still referring to a hypothetical situation. Ms. Victory’s August 25 e-mail also referred to a telephone conversation the week of August 16, but Mr. Baker does not recall this conversation. Copies of these e-mails, as well as Pappas’s response to the complaint, are enclosed for your information and review.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Equal Opportunities Complaint Filed By)
Nicole Parra Against Pappas Telecasting)
Companies)

ORDER

Adopted: October 29, 2004

Released: October 29, 2004

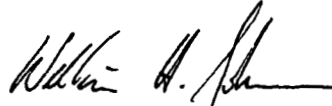
By the Deputy Chief, Media Bureau:

1. The Commission has before it a complaint against Pappas Telecasting Companies (Pappas) filed October 29, 2004, by Nicole Parra, a candidate for Assembly member for the 30th Assembly District in California. The complainant alleges violation of the equal opportunities provision, 47 U.S.C. Section 315(a), as implemented by the Commission's rules at 47 C.F.R. Section 73.1941. Complainant also alleges a violation of the Commission's political file rule, 47 U.S.C. Section 315, as implemented by the Commission's rules at 47 C.F.R. Section 73.1943. At the Commission's request, Pappas filed a response to the complaint on October 29, 2004.

2. The complainant asserts that Dean Gardner, an opponent of hers for the Assembly member seat has received "free airtime" from Pappas on KMPH-TV, Fresno, CA; KFRE-TV, Sanger, CA; and KMPH-FM, Hanford, CA and that her attempt to obtain free equal opportunities from these Pappas stations was rejected. Instead, the complainant contends Pappas offered her campaign equal opportunities at the respective stations' "lowest unit charge." The complainant asserts that the free time made available to Mr. Gardner was part of an overall gift of time by Pappas to thirteen Republican County Central Committees to be distributed to various Republican candidates at the discretion of the Committees. According to complainant, each Committee was given \$25,000. In its response, Pappas argues that the time furnished to Mr. Gardner should not be deemed to be free time for purposes of Section 315.

3. Based upon the facts that have been presented to us, we find that the broadcast time that has been made available to candidate Gardner was furnished free of charge by the referenced stations. In this regard, we note that the letter dated October 13, 2004, from Pappas Telecasting Companies to the Fresno County Republican Central Committee documenting the airtime gift indicated that the time was being given by "Harry J. Pappas **and my affiliated entities**" (emphasis added). The named entities include the licensees of the stations on which Mr. Gardner appeared. Moreover, nothing in the record before us indicates that the stations on which Mr. Gardner appeared were paid for his use. The Commission has ruled that when a candidate is furnished time at no cost, competing candidates are entitled to receive the same amount of free time in comparable time periods. *Carter/Mondale Reelection Committee*, 81 FCC 2d 409 (1980). Thus, under these circumstances, we find that the complainant is entitled to equal opportunities on the same free basis as her opponent. We emphasize that our ruling herein is limited to the specific circumstances of this complainant's request for equal opportunities.

4. With respect to complainant's allegation regarding the political file, licensees are not obligated to mail or fax material from the file. See 47 C.F.R. Section 73.3527(c)(2)(i).
5. Accordingly, IT IS ORDERED that the complaint is granted in part, as indicated above.



William H. Johnson
Deputy Chief, Media Bureau

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Arlington, Virginia 22209
(703) 812-0400

October 29, 2004

BY E-MAIL [Robert.Baker@fcc.gov]

Robert Baker, Esquire
Assistant Chief
Policy Division
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Nicole Parra
Equal Opportunity Complaint

Dear Mr. Baker:

On behalf of Pappas Telecasting, Inc., licensee of KMPH-TV, Visalia, California; KFRE License, LLC, licensee of KFRE(TV), Sanger, California; and Pappas Radio of Fresno, LLC, licensee of KMPH-FM, Hanford, California (collectively "Pappas"), we hereby respond to the "Equal Opportunity Complaint" filed with the Federal Communications Commission ("FCC") yesterday by James C. Harrison, Esquire, on behalf of California Assemblymember Nicole Parra, the legally qualified Democratic party candidate for the 30th Assembly District in California (the "Complaint").

The Complaint asks the FCC to take immediate action against Pappas for its "blatant violation of the Equal Opportunity provisions of the Communications Act and its failure to comply with public access requirements." The Complaint is incorrect on both counts and otherwise makes factually incorrect statements.

The Complaint initially alleges that Pappas has "made \$74,000 worth of free airtime available to Dean Gardner, Assemblymember Parra's Republican opponent..." In the first instance, the time was made available not to Mr. Gardner, but to various Republican County Central Committees for use in their discretion on behalf of state candidates or the Republican party in general. Pappas has no say whatsoever in how the time is allocated among candidates, races, or general issue discussions. Secondly, while Pappas has provided the county committees

with an upper limit on the monetary value of the time to be contributed, it is only the amount of time actually used by the candidate in question which gives rise to any equal opportunities rights. As of the evening of October 28, the total value of spots aired on behalf of Mr. Gardner on Pappas stations was \$3,600.

Pappas does not contest that the airing of spots on behalf of Mr. Gardner gives rise to equal opportunities rights for Ms. Parra. Those equal opportunities rights, however, entitle Ms. Parra to no more than the same amount of time on the same terms as provided to the county committee and used for Mr. Gardner. The time provided to the Committee was time between 5:00 a.m. and 12:00 midnight on a fully pre-emptible basis and based upon availabilities. The lowest unit charge for such time is \$600 on KMPH-TV, \$200 on KFRE-TV, and less on KMPH-FM. Pappas fully acknowledges that it is obligated to make available an amount of time equal to that aired by Mr. Gardner to Ms. Parra for purchase on the same basis.

The dispute arises with the Complaint's characterization of the time used by Mr. Gardner as free time. Such is not the case. In this case, the time made available is an in-kind donation by Mr. Pappas to the Republican County Committees. Attached hereto is a letter from Ben Davidian, Esquire, which demonstrates the legality of such an in-kind donation under California political law. Mr. Davidian is the former Chairman of the California Fair Political Practices Commission and therefore has substantial and specialized personal knowledge of the legalities of the issues at hand under California law.

In essence, Harry J. Pappas, an individual, has agreed to buy time on stations licensed to companies of which he is a principal, and to donate the purchased time to the Republican County Committees for use as those committees designate. Mr. Pappas has indicated an upper limit of his contribution, but he cannot now know the exact amount until it is determined by the committees how much time of the pool made available will actually be used. Once that amount is known, Mr. Pappas will pay the licensee companies for the amount of time actually used. This arrangement thus falls into the category of a third party payment for a political ad that is a use by a candidate, which the Commission has already determined to be paid time and gives rise only to a right for an opposing candidate to purchase time. *Carter/Mondale Reelection Committee, Inc.*, 81 FCC2d 409 (1980) for equal opportunities purposes.

Thus, in essence, what is happening is that an individual is purchasing a commodity, in this case airtime, and making an in-kind donation of what he has purchased to the Republican County Committees. The analysis would be no different if he had purchased a microphone for use in speaking to crowds at a rally. The FCC has no jurisdiction over an individual, non-licensee's actions in this regard, or the political contributions made by an individual to a political party committee. Indeed, FCC action to preclude Mr. Pappas' activities as undertaken would be an unconstitutional burden on freedom of speech.

Furthermore, if the contributions made did somehow violate the FCC's rule or policies, Pappas's actions were undertaken in good faith and as conscientiously as possible. The contributions were offered only after repeated discussions with California counsel, communications counsel, and FCC staff. Pappas relied upon the oral and e-mail advice it

received in good faith. The attached copies of exchanged e-mails shows that Pappas did not take the matter lightly but rather sought informal advice before proceeding and endeavored to act in accordance with that advice. Clearly, therefore, Pappas was seeking to comply with the FCC's rules and policies. If the FCC were now to diverge from that advice and impose any sanction on Pappas, Pappas would thereby be denied due process of law.

The commission by their prompt response to the Complaint filed has demonstrated its willingness and ability to resolve the allegations in the complaint promptly. Pappas requests that a collateral issue be concurrently resolved so that Pappas is not deprived of its due process rights, free speech rights, and its right to rely on the expert agencies written determination in this regard at the same time as the Complainant. Pappas requests that the commission immediately advise whether or not Harry J. Pappas, the controlling shareholder of the Pappas Stations, would trigger any equal time obligations to opposing candidates for the Pappas Stations if Harry J. Pappas individually contributed sums to the selfsame county central committees where such committees can in turn utilize, at their sole discretion, those funds for purchase of comperable amount time at the Lowest Unit Rate.

Finally, the Complaint alleges that Pappas failed to comply with the public access requirements of 47 C.F.R. §§76.1701, 73.1943, in that Pappas failed to mail copies of relevant materials from the political file of KSWT-TV, Yuma, Arizona, to Joey Acuna, Jr. The relevant FCC rule section governing the issue is 47 C.F.R. §73.3526(c)(2)(I), which explicitly excludes the political file from any telephonic requests for mail delivery of public inspection documents. Even if the political file were not excluded from the mail delivery requirement, KSWT-TV would have no obligation to honor Mr. Acuna's telephonic request, since 47 C.F.R. §73.3526(c)(2) only requires licensees who maintain their main studio and public file outside their community of license to honor telephonic mail requests. KSWT-TV is licensed to Yuma, Arizona, and its main studio and public file are located in Yuma. Accordingly, no "public access" violation has occurred.

Should any further question arise concerning this matter, please communicate with this office.

Very truly yours,

Kathleen Victory
Counsel for Pappas

Attachments

cc: James C. Harrison, Esquire (with attachments) **By E-mail** [harrison@rip.com]
MaryBeth Murphy (with attachments) **By E-Mail** [MaryBeth.Murphy@fcc.gov]

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BRIAN T. HILDRETH

October 29, 2004

Via Facsimile and U.S. Mail

Mr. Robert Baker
Assistant Division Chief
Media Bureau, Policy Division
Federal Communications Commission
445 12th Street, SW
Washington, C.D. 20554

Re: Nonmonetary Contributions under California Law

Dear Mr. Baker:

This law firm represents Mr. Harry J. Pappas and his affiliated entities. As you are aware, Mr. Pappas and his affiliated entities have recently made contributions of airtime on some of their radio and television stations to several Democratic and Republican county central committees. The purpose of this letter is to explain certain provisions of the California Government Code and, specifically, the Political Reform Act ("Act") which allow companies to make contributions to state political committees. This firm maintains a specialty practice in political law and election law, and I am the former chairman of the California Fair Political Practices Commission ("FPPC"), the government agency tasked with ensuring compliance of the Act.

I. IN-KIND / NONMONETARY CONTRIBUTIONS IN CALIFORNIA

Under the Act, a "contribution" is any payment made for political purposes unless full and adequate consideration is received. (Cal. Gov. Code, § 82015(a).) The Act's definition of "contribution" also includes "in-kind" or "nonmonetary" contributions. Nonmonetary or in-kind contributions are goods and/or services provided free of charge to a committee, and goods and/or services provided at a discount from the fair market value to a candidate or committee (unless the same discount is given in the regular course of business to members of the public). (Cal. Gov. Code, § 82015(c); Cal. Code Regs., § 18215(b)(3).) Individuals and companies are allowed to make nonmonetary contributions in California. (Cal. Gov. Code, § 82047.)

Letter to Mr. Robert Baker
October 29, 2004
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For example, in a recent advice letter issued by the FPPC, the Commission stated that the owner of a billboard company could contribute (through his company) billboard space to a candidate at a deeply discounted rate. Because the discount was significant when compared to the fair market value of the billboard, the difference between the amount paid by the candidate and the fair market value was considered a "nonmonetary contribution" from the owner of the billboard to the candidate. (Zell Advice Letter, No. A-04-142.)¹

In a separate advice letter, the FPPC determined that under state law, a candidate is not prohibited from receiving a nonmonetary contribution in the form of office space. The only requirement the FPPC placed on the candidate receiving the office space as a nonmonetary contribution was that the candidate was required to disclose the fair market value of the contribution -- the fair market value for the space was to be determined by comparable rental rates for office space in the area. (Cal. Gov. Code, § 82025.5; Sremaniak Advice Letter, No. A-03-092.)

In the same respect, Mr. Pappas and his affiliated entities have made nonmonetary contributions to various party central committees. Individuals and companies make nonmonetary contributions with great frequency to candidates and committees in California. Moreover, as discussed above, California law specifically permits the making of nonmonetary contributions.

II. CONTRIBUTIONS BY AFFILIATED ENTITIES

Section 85311 of the Act defines "affiliated entities." Note that the determination upon which the analysis is made is whether there is shared direction and control between or among the entities. Thus, for purposes of making contributions, the statute states:

"(b) The contributions of an entity whose contributions are directed and controlled by any individual shall be aggregated with contributions made by that individual and any other entity whose contributions are directed and controlled by the same individual.

"(c) If two or more entities make contributions that are directed and controlled by

¹ The Zell Advice Letter determined for reasons inapplicable to the facts at issue here that the contribution in question was improper because it exceeded the applicable individual contribution limit to a state candidate committee. However, that limitation is not at issue in this matter because an individual and his/her affiliated entities may contribute up to \$26,600 per election to a county central committee, which may be used for direct candidate support. Please see the attached contribution chart obtained from the January 2003 edition of the FPPC's official bulletin. In no instance has Mr. Pappas or his affiliated entities contributed in excess of \$26,600 to any county central committee for use in direct candidate support.

Sweeney, Davidian & Greene LLP

Letter to Mr. Robert Baker

October 29, 2004

Page 3 of 3

a majority of the same persons, the contributions of those entities shall be aggregated.

"(d) Contributions made by entities that are majority owned by any person shall be aggregated with the contributions of the majority owner and all other entities majority owned by that person, unless those entities act independently in their decisions to make contributions."

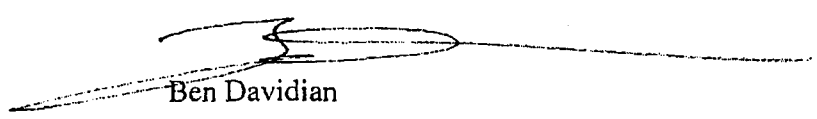
(Cal. Gov. Code, § 85311.)

In his efforts to ensure full compliance with section 85311, Mr. Pappas asked that the statement "[a]irtime furnished by Harry J. Pappas and his affiliated entities" appear in any advertisement aired as a result of the nonmonetary contributions to the various Democratic and Republican county central committees. The phrase was requested by Mr. Pappas and his affiliated entities out of an abundance of caution as the contributions were not made solely by Mr. Pappas, nor were they made solely by his affiliated entities. Under state and federal law, candidates and political committees airing advertisements also have additional disclaimer requirements which are not relevant here.

As a result of the foregoing, we strongly believe the contributions by Mr. Pappas and his affiliated entities were legal, permissible, and acceptable under California law. Further, we strongly believe Mr. Pappas and his affiliated entities have fully complied with the letter and spirit of California law.

Please feel free to contact me should you have any questions or require additional information.

Most cordially,
SWEENEY, DAVIDIAN & GREENE, LLP



Ben Davidian

Attachment

**Per election Limits on Contributions to State Candidates
For Elections Occurring Jan. 1, 2003—Dec. 31, 2004***

Contributor	Legislature	Statewide Elected Officers	Governor
Person	\$3,200	\$5,300	\$21,200
Small Contributor Committee	\$6,400	\$10,600	\$21,200
Political Party	No Limit	No Limit	No Limit

**Calendar Year Limits on Contributions to Other Committees
For Elections Occurring Jan. 1, 2003—Dec. 31, 2004***

Contributor	Committee (Not Political Party) that Contributes to State Candidates	Political Party for State Candidates	Committee/Political Party Not for State Candidates
Person	\$5,300	\$26,600	No Limit

**Proposition 34 Voluntary Expenditure Limits for Candidates for Elective State Offices
for Elections Occurring Jan. 1, 2003—Dec. 31, 2004***

Office	Primary/Special Election	General/Special Runoff Election
Assembly	\$425,000	\$744,000
Senate	\$637,000	\$956,000
Governor	\$6,374,000	\$10,624,000
Lt. Governor, Attorney General, Insurance Commissioner, Controller, Secretary of State, Supt. Of Public Instruction, Treasurer	\$4,249,000	\$6,374,000
Board of Equalization	\$1,062,000	\$1,594,000

*These limits apply also to later elections until they are adjusted again by the Commission.

Kathleen Victory

From: Robert Baker [Robert.Baker@fcc.gov]
Sent: Tuesday, August 31, 2004 9:40 AM
To: Kathleen Victory
Subject: RE: political question

Yes - but again I must emphasize for sake of the licensee not as an FCC matter, but in terms of campaign finance regulations either in the specific state if it's a state or local candidate or the FEC if federal, that the station should make sure the in-kind contribution is handled consistent with the law.

*** Non-Public: For Internal Use Only ***

-----Original Message-----

From: Kathleen Victory [mailto:victory@fhhlaw.com]
Sent: Tuesday, August 31, 2004 9:33 AM
To: Robert Baker
Subject: RE: political question

Bobby, just for clarification - although I am quite sure that I said this when we spoke - but if, in the scenario I presented (summarized below), the in-kind contribution of broadcast time is made by a station/licensee of the station, NOT by a third party contributor who makes an in-kind contribution to a candidate in the form of airtime that the contributor himself paid for or for which the contributor maintained a credit from an earlier media buy, would your response as to the LUR and allocation of the in-kind contribution be the same?

We are trying hard to ensure that we comply with the FCC's rules and policies. Your response is much appreciated.

Thanks,
Kathleen

Kathleen Victory, Esq.
Fletcher Heald & Hildreth, PLC
1300 N. 17th Street, Suite 1100
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tel: 703-812-0473
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-----Original Message-----

From: Robert Baker [mailto:Robert.Baker@fcc.gov]
Sent: Thursday, August 26, 2004 9:59 AM
To: Kathleen Victory

Subject: RE: political question

Good morning Kathleen -

Your recollection of our discussion looks fine to me. I would add one further thought regarding an issue we did not discuss. If, under the circumstances you describe, a competing candidate or party possesses in-kind broadcast time at the same station or another person or entity provides the candidate/party with an in-kind contribution at the station, the opposing candidate(s) would similarly be permitted to use that contribution for equal opportunities purposes. While not likely to come up, I thought it should be considered. I hope this is useful,
Bobby

*** Non-Public: For Internal Use Only ***

-----Original Message-----

From: Kathleen Victory [mailto:victory@fhhlaw.com]

Sent: Wednesday, August 25, 2004 4:17 PM

To: Robert Baker

Subject: political question

Importance: High

Bobby,

I spoke with you last week about a scenario. The following is my synopsis of your response. Could you confirm that my synopsis is an accurate depiction of your response?

If a contributor makes an in-kind contribution of broadcast time allowable under state law to a state political party or to a state committee and assuming that such party or committee uses the time on behalf of a candidate and the spots are actually "uses" as defined by the FCC's rules, policies and case law, then other candidates in the same state race would be entitled to equal opportunities and time at the lowest unit rate ("LUR"). If the spots are not "uses" then the LUR does not apply.

Assuming the spots are uses, then the LUR would NOT be deemed to be \$0. The LUR for the spot "purchased" with some of the contributed funds would be the station's LUR for the amount and class of time in which the spot runs. The LUR for each spot "purchased" would have to be calculated to determine the number of spots/amount of time actually available to the state party/committee/candidate.

You also confirmed that stations may have a candidate only class of time -- which must be a FIXED (non-preemptible) class of time offered at a discount on the current selling level for the class and day part in which the spot(s) are "purchased". While the FCC has never passed upon what amount of discount is acceptable, most stations go with a 5-10% discount. If the party/committee/candidate makes the "buy" several weeks in advance based upon a discount of what the station believes will be the current selling level at the time the spot is to air and it turns out that, in a few instances, the current selling level is actually lower (although not significantly) than the station anticipated, the FCC will not be overly concerned but if the rate is wrong in many instances, then the station must be very careful to make proper rebates.

One other question, which we did not specifically discuss when we spoke last week: Assuming that an in-kind contribution of broadcast time by a station to a FEDERAL candidate would not violate FEC rules/regulations/policies, would the same answer apply: i.e., that for

spots that are uses, other candidates would be entitled to equal opportunities and the LUR would apply and the LUR for spots "purchased" with the contributed time would be station's LUR for the amount and class of time in which the spot runs.

Your response would be greatly appreciated. I need to advise the client ASAP.

Thanks for your help.

Kathleen Victory, Esq.
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