The CBS Television Network Affiliates Association (the “CBS Affiliates”), which represents almost two-hundred independently-owned and operated television stations that are affiliated with the CBS Television Network, respectfully comments in reply to the Petition of Canal Partners Media, LLC ("Canal Petition")\(^1\) requesting a declaratory ruling that the preemption of political candidate advertisements under a “last-in-first-out” (“LIFO”) system violates the lowest-unit-charge provision of 47 U.S.C. § 315(b). At stations where a LIFO policy is in effect, advertisers are given the choice of purchasing a “fixed” advertising spot for a higher rate or, for a discounted rate, a spot that carries a risk of preemption.\(^2\) Preemption is determined by the order in which the spots were purchased; earlier purchasers enjoy a lower risk of preemption than later purchasers, and vice-versa. The Canal Petition seeks a declaratory ruling that political advertisers—but not commercial advertisers—who purchase these preemptible

---

\(^1\) Petition for a Declaratory Ruling, Canal Partners Media LLC, MB Docket No. 15-24 (Sept. 29, 2014) ("Canal Petition").

\(^2\) Some stations may have multiple classes of preemptible time with different benefits and characteristics.
spots must be treated as if they were the first purchasers regardless of when the purchase actually occurred. We support the Opposition of the National Association of Broadcasters (“NAB Opposition”), which argues convincingly that the Canal Petition should be denied because it seeks preemption rights that are more favorable than those enjoyed by the most favored commercial advertiser.

I. THE CANAL PETITION SEEKS MORE THAN JUST EQUAL TREATMENT

Under Section 315(b) of the Communications Act, broadcasters must offer political candidates the “lowest unit charge for the same class and amount of time for the same period” during certain pre-election and pre-primary windows. Section 315 does not, however, require broadcasters to treat political advertisers more favorably than any commercial advertiser, which is exactly what the Canal Petition seeks.

Under the rule contemplated by Canal, a commercial advertiser purchasing a preemptible class of time could be preempted by any political advertiser, regardless of which advertiser placed its order first. In contrast, a political advertiser would be guaranteed priority against all other commercial advertisers in the same class, even if he or she purchased the spot the day before the desired air date. Thus, the Canal Petition seeks a system wherein political candidates are “essentially afforded ‘fixed’ status at a preemptible rate;” a result that “according to the language and legislative history of Section 315(b), was specifically rejected by Congress.”\(^3\) As the Commission has explained, “if a commercial advertiser pays a lower price for a class of time for assuming a specific prospective risk of nonclearance, a candidate should get the benefit of the same low price,” but only “so long as the candidate assumes the same

prospective risk of preemption.”⁴ As explained above, a political candidate under the Canal Petition’s system would enjoy a significantly lower prospective risk than a commercial advertiser buying the same class of time at the same rate, even if the commercial advertiser purchased the time much further in advance and the candidate came in with an eleventh-hour purchase.

The CBS Affiliates agree with NAB that the Canal Petition is also procedurally infirm. Because “the FCC’s policies on classes of time and preemption, based on long-standing statutory requirements, have been settled for over two decades,”⁵ there is no “controversy” or “uncertainty” that would provide the basis for a declaratory ruling.⁶

II. POLITICAL CANDIDATES ARE NOT SYSTEMATICALLY DISADVANTAGED UNDER A LIFO SYSTEM

Not only is the Canal Petition’s legal argument faulty, but its factual predicate is not supported by the evidence. The Canal Petition asserts, without citation, that political candidates are unable to purchase advertising time far in advance because “running a political campaign is like building an airplane while flying it.”⁷ Data collected by NAB, however, demonstrates that political candidates, like commercial advertisers, often purchase advertising time long before it airs.⁸ Thus, as explained in the NAB opposition, the Canal Petition does not provide evidence upon which the Commission could reasonably conclude that political candidates are systematically disadvantaged by a LIFO preemption system.

---

⁴ Id. at 4315 (emphasis added).
⁵ NAB Opposition at 9.
⁶ See 47 C.F.R. § 1.2.
⁷ Canal Petition at 6.
⁸ NAB Opposition at 12-17.
III. CONCLUSION

For the reasons stated above, as well as those explained in the NAB Opposition, the Petition for Declaratory Ruling should be denied.

Respectfully submitted,

THE CBS TELEVISION NETWORK AFFILIATES ASSOCIATION

By:

Jennifer A. Johnson
Eve R. Pogoriler
David M. Parker*
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street N.W.
Washington, DC 20001
202-662-6000

Counsel for the CBS Television Network Affiliates Association

* Not admitted in the District of Columbia; supervised by principals of the Firm.

March 17, 2015