March 17, 2015

Oregon Association of Broadcasters

REPLY COMMENTS OF

Oregon Association of Broadcasters

Re: Docket No. 15-24

Petition of Canal Partners Media, LLC

In the Matter of

Federal Communications Commission

Washington, D.C. 20554

With Respect to Candidate Advertisements

Use of Last-In-First-Out Preemption

For a Declaratory Ruling Concerning

Docket No. 15-24
political advertisers are on an equal footing with commercial advertisers. Canals’s petition seeks
at the core of the Commission’s political advertising rules is the goal of ensuring that

even if it was not the “last-in,”

preemptible space, and increases the likelihood that a commercial advertiser will be preempted.

It effectively requires broadcasters to sell political advertisers non-preemptible spots at lower

times. This creates, as the NAB called it, a “last-in, never-out” system for political advertisers.

From this preemption, moving them to the back of the preemption line the minute they purchase

Canals’s Petition asks the Commission to rule that political advertisers must be insulated

where times out not to be counted time available for all preemptible spots purchased.

seniority system common in workplaces, the most recent preemptible ad buy is the first to go if

doing this, but the most common is Last-In, First-Out ("LIFO"). This means that, similar to a

how to determine which preemptible spots are to be, in fact, preempted. There are many ways of

available, there is a chance that the spot may not run. When this happens, the question becomes

on the condition that, if it counts out that there are more preemptible ads sold than there is time

commercial and political advertisers. Under this practice, broadcasters sell spots at a lower rate

LTC (Canals) is the practice by many broadcasters of selling “preemptible” time to both

Reference: Petition for Declaratory Ruling. At issue in the Petition from Canal Partners Media

several of its member television stations, submitted these key commitments in support of the

The Oregon Association of Broadcasters, a nonprofit trade association, and

1 INTRODUCTION
Congress did not intend for them to have. It should not, therefore, apply to the
commercial advertisers. The Commission was correct then in deciding not to give political
Commission intended political advertisers to be subject to the same presumption rules as
mentioned numerous times in both proceedings. It is clear that both Congress and the
Commission's creation of the rules, presumptive primary, was a well-known practice, and was
During both the original enactment of the political advertising principles and the
within the class of spoil they purchased?
sought only to ensure that political advertisers receive the same treatment as other advertisers.
favorable treatment for political advertisers in these regulations, instead, it made clear that it
specific markets and advertising customers, declining to intervene in order to gain more
numerous occasions recognized that stations have a variety of pricing structures which still their
reserved time rules. In fact, as the NAB makes clear in its opposition, the Commission has on
regulations to ensure that primary and secondary follow the equal time, lower-cost, and
consistently followed Congressional intent, limiting its involvement in broadcast-enhanced
The Petition's aim is also contrary to established Commission policy, which has
others in that class.
should they choose to purchase preemptible time, so long as they were given the same terms as
they explicitly did not want to protect political advertisers from having their spots preempted.
legislative history of that act and subsequent Congressional actions on the subject indicate that
political advertisers to receive more favorable treatment than commercial advertisers. In fact, the
meaning that a declaratory ruling in favor of Canal is contrary to Commission Rules.

Congressional intent and Commission precedent, there is no commitment or uncertainty,
"Commission considers or requires uncertainty," Given the clear statements of policy
10 47 C.F.R. § 1.2 allows the Commission to issue a declaratory ruling as a means of
Bell Atlantic Telephone Companies v. FCC, 131 F.3d 1044, 147 D.C. Cir. 1997.

be preempted, even if they pay well in advance, without knowing how many political advertisers
be preempted. This means that a commercial advertiser has no way of knowing whether they might
be preempted by commercial advertisers, regardless of the order in which the spots were
purchased. While there are many systems for doing so, including "mini-auctions," most broadcasters
advocate for a system by commercials candidates ads from
Canal's proposal would completely upset this system by preempting candidates ads from
advance they buy their spots.

because they can more easily predict whether they will be preempted based on how far in
proctor the LIFO model because it is the simplest and most predictable. Advertisers also benefit,
while there are many systems for doing so, including "mini-auctions," most broadcasters
preemptible spot-buying advertisers, feel preempted.

preemptible spots. Advertisers must have faith in the mechanism by which the broadcaster decides who, among the
preemptible spots that have been purchased to air, In order for such a system to be viable,
whether the likelihood of being able to not all the spots in the event that there is not enough time for all
the flexibility of being able to not all the spots in the event that there is not enough time for all
a simple business arrangement: the broadcaster gives the advertiser a lower rate in exchange for
outcomes for political and commercial advertisers alike. A "preemptible spot" system is built on
proposals takes undermining the entire concept of preemptible time, thereby creating worse
C. Canal's Proposal Would Undermine the Preemptible Spot System and

Create an Inclined and Illogical System in its Place.

B. Canal's Proposal Would Undermine the Preemptible Spot System and

ruhings in this proceeding, 10
change course now, I cannot go against Congressional intent; and I may not reverse my own
political, to buy airtime at a discounted rate if they don’t need an assurance that the spot will air
proportionate or public interest announcements. If allows advertisers, both commercial and
Hekkability of preemptible spots where it becomes necessary, whether for other spots, he owns
The LIFO system works. It allows broadcasters to sell airtime while retaining the

C. THIS Petition SOLVES a Problem WHICH DOES NOT EXIST

System

The current LIFO, or last in, first out proposal creates greater uncertainty and unrelenting then does the current LIFO
preemptible commercial advertising. No matter how this circumstance is deal with, the Pet is
will next demand that the FCC regulate their preemptible spots to take precedence over even non-
something it may not have the resources or expertise to perform? Policies political advertisers
believed they could/should be preempted in face? Does the station conduct a mini-auction,
only political spots remain? Does it remain to the LIFO system, meaning that candidates who
preemptible class, but how does a LIFO broadcaster decide which political spots to preempt it
would require broadcasters to prioritize political spots over commercial ones within the
it, as discussed above, political advertisers block to the preemptible class. Canal’s proposal
available, an occurrence which is certainly possible during the busy electoral season, especially
even that there are more preemptible political spots purchased then there are preemptible spots
Canal Imaging. As NAB points out, Canal’s proposal does not deal with what happens in the
This proposal will also potentially create more and more complex, issues than those
preemptible spots entail, harming everyone involved.
preemptible spots, leading to a loss of revenue such that broadcasters may choose not to offer
means that political advertisers will have no interest in paying for more expensive, non-
with it come along after them. This will reduce their willingness to buy preemptible spots. It also
CONCLUSION

For, and the Commission should reflect Canal's attempt to make them do so.

result in an economically not viable FCC regulation. It is, therefore, a reasonable system to break a voluntary, functioning system in order to achieve a favorable economic outcome. Canal's petition is to make the specification, of which it is, non-preemptible. This petition is to make the specification, of which it is.

Despite a baseless claim that political advertisers are uniquely susceptible to being

Preempted because of the unique characteristics of political campaigns, a claim inherently deceive the NAB's opposition, the only real issue facing a political advertiser who wishes
March 17, 2015

Commission to serve the public interest by denying Channel's Petition and whose member station's signing on to those Reply Comments join with the NAB in urging the FCC to reconsider the petition for a waiver of the rules. This was not Congress's intent when it set out the political advertising principles. It was Commission discretion to determine what commercial advertisers and commercial broadcasters feel they might save some money. Congress and its clients, rather than being disadvantaged by the current rule, seek to have the rule be on the same footing, and subject to the same rules, as commercial broadcasters.

Consequently, the petition is denied.

I hereby certify that I am the undersigned.

Respectfully submitted,

[Signature]

[Handwritten Signature]

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[Signature]

[Handwritten Signature]
Station KGW, Portland, OR
DJ Wilson

Station KOBI, Medford, OR,
KLSR-TV, Eugene, OR,
KEVU-CD, Eugene, OR, and
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Station KTVZ, Bend, OR, and
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