REPLY COMMENTS OF THE FBC TELEVISION AFFILIATES ASSOCIATION

The FBC Television Affiliates Association (“Fox Affiliates”)\(^1\) hereby files these reply comments in support of the Opposition of the National Association of Broadcasters (“NAB Opposition”) in the above-referenced docket.\(^2\) As the NAB Opposition points out, if the Commission were to grant the Petition for Declaratory Ruling, the result would require broadcasters to treat political candidates *better* than their best commercial advertisers. This was never the intent of Congress or of the Commission, and, therefore, the Canal Petition must be denied.

I. CANDIDATES MUST BE TREATED LIKE A STATION’S BEST COMMERCIAL ADVERTISER – NOT BETTER.

Canal Partners Media, LLC (“Canal”) has asked the Commission to declare that it is illegal for broadcasters to apply the commonly used Last-In-First-Out or “LIFO” method of preemption when dealing with advertising buys from political candidates.\(^3\) Canal presents a very

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\(^1\) Fox Affiliates is a non-profit trade association whose members consist of local television broadcast stations throughout the country that are affiliated with the Fox television network.

\(^2\) Opposition of the National Association of Broadcasters, Petition of Canal Partners Media, LLC For a Declaratory Ruling Concerning Use of Last-In-First-Out Preemption With Respect to Candidate Advertisements, MB Docket No. 15-24 (filed March 2, 2015).

\(^3\) See Canal Partners Media, LLC Petition for a Declaratory Ruling (“Canal Petition”) (filed Sept. 30, 2014); Supplement to Petition for a Declaratory Ruling (filed Oct. 14, 2014); Second
narrow fact pattern that, on first review, makes it seem like stations that use LIFO are not following the directive that they must treat candidates like their most-favored commercial advertiser. What Canal conveniently leaves out, and what shows through in Canal’s comments on its own Petition, is that the world is not actually so black and white. What Canal is really after is a Commission ruling that will essentially require stations to protect candidate advertisers above all others, as NAB explains. This is not treating candidates like a station’s best commercial advertiser, this is treating candidates better.

Canal posits a scenario where candidates are forced to buy late, and so candidates are always getting preempted. That is not how the market actually works. As required by statute and by Commission rules, stations explain to candidates how they sell time – what classes of time they have, how much each costs, and each class’s estimated chances of preemption. Candidates can then pick the level of risk they are willing to assume. Some candidates, like those represented by Canal, consistently choose the highest level of risk to get the lowest rates, whereas their opponents often choose to purchase a class of time at a higher price that has a lower chance of preemption. What Canal is now asking the Commission to bless is the purchase of a highly preemptible class of time at a low rate that, when purchased by a candidate, is protected from preemption. That is not what the political advertising rules require.

The Fox Affiliates agree with Canal that they are obligated to treat candidates like their most favored commercial advertiser. As the Commission has explained, the requirement to afford candidates the treatment given to a station’s best commercial advertiser applies not only to

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4 See, e.g., NAB Opposition at 2-3.
5 Canal Petition at 2-3.
rates but also to sales practices such as “make goods, preemption priorities, and any other factors that enhance the value of a spot.”\(^6\) No one is saying that broadcasters are not willing to follow this mandate. What broadcasters are saying is that nothing in this language states that broadcasters must change their sales practices to protect candidates, which is what Canal is asking the Commission to require broadcasters to do. What Canal ignores in the parade of horrors it attempts to describe is that federal candidates who, for some reason, must buy late are still guaranteed access to stations through statutory “reasonable access” provisions, and all candidates are afforded “equal opportunities” to all opponents’ television buys. With the vast explosion of political advertising in recent years and rumblings about the first $4 billion Presidential campaign coming in 2016, Canal cannot reasonably argue that candidates are at a disadvantage in purchasing power or in access.

Moreover, Canal’s argument relies on an incorrect factual assumption – that candidates are usually last. This is not the case. Stations today already are fielding inquiries from political buying shops about sales practices and prices for the 2016 political cycle. Moreover, candidates may reserve time without paying for it until a week before the air date.\(^7\) Contrary to Canal’s claims, political candidates are buying earlier than ever and laying down schedules, knowing that they cannot be penalized for cancelling just a week in advance. Thus, candidates have ample opportunity to pre-purchase schedules risk-free. That some of them choose not to – even when their opponents are buying early – is not something the Commission’s political advertising rules are intended to address.

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\(^7\) See NAB Opposition at 17, n.36.
II. CANAL’S TRUE COMPLAINT IS NOT WITH LIFO PREEMPTION POLICIES.

In Canal’s Petition, and more clearly in its comments on its own Petition, Canal shows that its true complaint is not really that stations are using the LIFO method of preemption. Instead, Canal claims that stations are using the LIFO method of preemption to “hide their mistakes.” Canal expresses frustration with the disclosure policies of stations and implies that some stations are describing a particular method of preemption but then are actually using another. Canal even describes a station that preempted a candidate’s advertisement without giving the requisite notice.

The Fox Affiliates acknowledge that stations are required to accurately disclose how they sell advertising time so that candidates can make informed purchasing decisions. The Fox Affiliates also agree with Canal that, if a station uses a LIFO method of preemption, the method must be used consistently – in all cases. Whatever method of preemption a station chooses to use – whether it is LIFO, “rate rules,” “spread the pain,” tossing the dice, or some other method – the station must apply the method to candidates in the same way the station applies it to its best commercial advertisers.

Commission rules and the Communications Act, however, do not require stations to change their sales policies or adopt specific sales policies, as Canal requests. Rather, stations must apply their sales policies to candidates in the same manner as they apply them to their best commercial advertisers. Accordingly, if a station that uses LIFO would let its best commercial advertiser bump to the front of the preemption line, it must do the same for candidates as well.

If, however, a station uses LIFO consistently, and fairly, it may apply the same policies to

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8 Canal Comments at 5.
9 Canal Comments at 4-5.
10 Canal Comments at 5, n.10.
11 Canal Petition at 8-9.
candidates. If Canal has a specific complaint about a specific station that is saying one thing and then doing another, that complaint should be pursued on an individual station basis. The Commission should not, however, find that a perfectly legitimate broadcast sales practice is “illegal” for any station to use based on unsubstantiated allegations that a few stations are misusing the practice.

**III. CONCLUSION.**

For the reasons set forth above, the Fox Affiliates support the NAB’s request that the Canal Petition be denied. As currently required, stations should treat candidates like they treat their best commercial advertisers. The Commission has no grounds, however, to require that stations treat candidates better.

Respectfully submitted,

**FBC TELEVISION AFFILIATES ASSOCIATION**

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