Free and Reduced-Rate Television Time for Political Candidates

July 7, 1997

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Summary

Among its profound effects on modern society, television has played a critical role in changing the way our nation's politics have been conducted in the post-World War II era. Politicians have increasingly used broadcast media and especially television to communicate directly with voters. Paid 30- and 60-second commercials have become a vital force in the conduct of today's elections.

While there has been a dearth of reliable data on spending on TV in elections, recent studies show that in the aggregate broadcast media spending (including radio and TV air time, production costs, and consultant fees) constitutes about 27% of campaign budgets in House races, 40-45% in Senate races, and at least 50% in presidential races. While these data contradicted higher anecdotal estimates, they still showed a major role for broadcast advertising, particularly at the national and statewide levels. Still other data show the importance broadcast ads play in more competitive races, in which more than 60% of campaign funds may be spent on broadcast advertising in Senate races for example.

Because of the significance of television and concerns about the level of money in elections, Congress, in 1971, sought to curb political advertising costs through a limit on advertising spending, later repealed, and a requirement that broadcasters provide lowest unit rate air time to political candidates, still in effect.

As the debate over rising campaign expenditures and fund-raising pressures on candidates has intensified, many observers have looked to proposals for free broadcast time or for further rate reductions to alleviate the perceived problems. Since 1960, 163 such proposals have been offered in Congress. They would require broadcasters or the federal government to absorb the costs of this "free" or discounted time. Most of these proposals also condition candidate receipt of free or reduced-rate advertising on adherence to voluntary spending limits.

Supporters contend that these proposals offer ways to curb the role money plays in elections, to make elections more competitive by providing underfunded candidates greater access, and, through time and format requirements, to help improve the level of political discourse in elections. Opponents question whether reducing the costs of broadcast advertising would in fact reduce the role of money, as opposed to merely allowing some candidates to buy even more exposure. They also doubt whether there is any formula for distributing this benefit that accounts for the wide differences in media costs, market reach, and political realities in different electoral jurisdictions. They further argue that free-time requirements would constitute an unconstitutional "taking" from broadcasters. Supporters deny this and contend that broadcasters can be required to provide free or reduced-rate TV time under their license obligations.

This report provides an overview of free and reduced-rate TV time and discusses the policy, constitutional, and legal issues it raises. The focus is on

television, although much of the debate and many of the specific proposals apply equally to radio.

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Acknowledgments

Joseph E. Cantor and Denis Steven Rutkus prepared the section entitled “Background and Public Policy Issues.” Kevin B. Greely prepared the section entitled “Legal and Constitutional Considerations. Joseph E. Cantor compiled appendix A, and George Walser, Senior Bibliographer, Library Services Division, prepared appendix B.

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Background and Public Policy Issues

The importance of television advertising as a communication medium in modern political campaigns, along with public concerns over rising campaign expenditures, has led to proposals to reduce the cost of candidate broadcasts. Such proposals would require either broadcasters to provide free or reduced-rate time to candidates or the federal government to subsidize those costs. These proposals are not a recent development; they first appeared in the 1960s as bills in Congress and even earlier as suggestions from prominent citizens.

In the last several years, however, calls for requiring broadcasters to provide free time to candidates have increased. Both Congress and the Federal Communications Commission (FCC) are being urged to implement such a requirement as a condition of broadcast licenses.

Free and reduced-rate proposals have been offered with the primary stated goal of reducing campaign costs. Proponents say that this would make candidates less reliant on campaign contributions, and elections more competitive, by assisting the poorly funded challengers of incumbents. Most supporters express the secondary or concomitant goal of improving the quality of political debate, by linking format or time requirements to the offer of cost-saving benefits. Such requirements seek to promote greater candidate accountability and to reduce the negativity in modern political advertising.[1]

While this report is about the political use of television and proposals to change the rules thereof, much of it is equally relevant to radio as well. Just as current federal law requiring broadcast discounts to political candidates applies to radio and television, the issues and many, if not most, of the legislative and other proposals discussed here would apply to radio advertising as well. While the words "broadcast" and "television" are often used interchangeably in common parlance, leading to some confusion, the decision to focus on television in this report is a

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[1]The cost aspect of the debate is reflected in: Chuck Alston, "Forcing Down Cost of TV Ads Appeals to Both Parties," *Congressional Quarterly*, vol. 50, Mar. 16, 1991, p. 647-52; Max Frankel, "Target the Tube," *The New York Times Magazine*, Dec. 1, 1996, p. 42-44. The quality of political debate is stressed in: Frank J. Farenkopf, Jr. and Charles T. Manatt, "Fight the Dumbing Down of TV Politics," *Wall Street Journal*, Apr. 10, 1996, p. A16; Curtis Gans, "Attack Ads Subvert First Amendment," *Roll Call Politics*, vol. 42, Jan. 23, 1997, p. 12.

deliberate one, reflecting the popular perception of TV's unique role in today's politics.

Spending on TV in Contemporary Elections

Since its first successful use by political candidates in the 1960s, television has been widely accepted as critically important in U.S. elections at both the national and statewide levels. Broadcast news and debates give candidates coverage; but, beyond that, paid broadcast advertising is a method within a candidate's control to get his or her message out directly and unfiltered to a large and diffuse electorate.

Anecdotal information has long been available, but reliable, comprehensive data on the extent of TV usage by candidates has been difficult to obtain. Since the enactment of the Federal Election Campaign Act (FECA) of 1971 and subsequent amendments,[2] comprehensive, systematic disclosure of contributions and expenditures in federal elections has been required. But while each expenditure in excess of $200 must be itemized, candidates do not aggregate expenditures by functional category (*e.g.*, totals for TV advertising, polling, etc.). Also, because broadcast time is often purchased by consultants, it is difficult to determine from candidate filings the portion of their resources devoted to broadcast advertising.

Without official sources to rely upon, observers have had to make use of various studies, surveys, and estimates to gauge the cost of paid political advertising on television.[3] The task of scholars and other observers has been made simpler since a study of spending in 1990 congressional elections was done by *Los Angeles Times* reporters Dwight Morris and Sara Fritz;[4] subsequent versions were conducted independently by Morris for the 1992 and 1994 congressional elections and the 1996 presidential election.[5] These studies broke new ground by examining every itemized entry in every candidate's Federal Election Commission (FEC) reports and assigning

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[2]P.L. 92-225; as amended by P.L. 93-443 (1974); P.L. 94-283 (1976); P.L. 96-187 (1979).

[3]"1986 Candidates Spent Less Than 25 Percent of Funds on Broadcast Time; NAB Calls Focus of Campaign-Cost Debate on Radio, TV Unwarranted," Testimony of Edward O. Fritts (NAB), in: U.S., Congress, House, Committee on House Administration, Subcommittee on Elections, *Campaign Finance*, hearings, 100th Cong., 1st sess., May 21, June 2, 16, 30, and July 14, 1987 (Washington: GPO, 1987), pp. 671-80; U.S., Library of Congress, Congressional Research Service, *Expenditures for Campaign Services: A Survey of 1988 Congressional Candidates in Competitive Elections*, by Joseph E. Cantor and Kevin J. Coleman, CRS report 90-457 GOV (Washington: Sept. 12, 1990) 132 p.; ——- *Summary Data on 1988 Congressional Candidates' Expenditure Survey (Addendum to CRS Report 90-457 GOV)*, by Joseph E. Cantor and Kevin J. Coleman, CRS report 90-526 GOV (Washington: Nov. 8, 1990) 6 p.

[4]Sarah Fritz and Dwight Morris, *Handbook of Campaign Spending: Money in the 1990 Congressional Races* (Washington: Congressional Quarterly, 1992), 567 p.

[5]Dwight Morris and Murielle E. Gamache, *Handbook of Campaign Spending: Money in the 1992 Congressional Races* (Washington: Congressional Quarterly, 1994), 592 p.; 1994 study as yet unpublished; Ira Chinoy, "In Presidential Race, TV Ads Were Biggest '96 Cost by Far," *Washington Post*, Mar. 31, 1997, p. A19.

each to a functional category. This widely respected study found that TV played less of a role than that indicated by the largely anecdotal conventional wisdom.[6]

According to these studies, major-party Senate candidates in 1992 spent 42% of their funds on electronic media advertising—including payments to media consultants, direct radio *and* TV air time purchases, and production costs. Major-party House candidates that year spent 27% of their resources on electronic media. These percentage levels were similar in both 1990 and 1994.[7] (The dollar values in 1992 were $91.8 million for the Senate and $88.2 million for the House.)[8] While these figures present a different picture from prevailing opinion, they still show that electronic media advertising constitutes the single largest category of aggregate Senate and House campaign expenditures.[9]

The percentage gap between House and Senate data reflects the wide differences in the size of the constituencies generally represented and the relative appropriateness and cost-effectiveness of using an expensive medium like television. The larger the jurisdiction, the more likely TV advertising will play a major role in campaign strategy. Nowhere is this more evident than in presidential races: Morris's study of the 1996 presidential election found that 52% of President Clinton's and 46% of Senator Dole's campaign budgets were spent on electronic media advertising ($59.1 million and $53.9 million, respectively). In the general election phase only, 63% of Clinton's campaign budget and 61% of Dole's went into broadcast advertising.[10] In contrast, in many House races, particularly in densely populated urban areas, TV may be so expensive as to be beyond the reach of many candidates. In these areas, radio and print advertising and direct mail are relatively more important. In 1990, more than one-fourth of House incumbents spent no money at all on broadcast advertising.[11]

While these data suggest a less important role for broadcast advertising than has been widely thought, the aggregate statistics mask some important observations. First, broadcast media generally consume a larger share of the campaign budgets of challengers and open seat contenders than of incumbents. Second, the larger the state (in Senate races) and the more competitive the election, the more reliant on broadcast advertising candidates are likely to be. A 1994 study by the Committee for the Study of the American Electorate (CSAE) examined the most competitive congressional

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[6]Fritz and Morris, *Money in the 1990 Congressional Races*, p. 53.

[7]Eliza Newlin Carney, "Tuning Out Free TV," *National Journal*, vol. 29, Apr. 12, 1997, p. 701.

[8]Morris and Gamache, *Money in the 1992 Congressional Races*, p. 6, 10.

[9]In the Morris-Gamache study of 1992, Senate campaign spending totaled $219.1 million, including 43% for all advertising ($93.4 million), 24% for overhead (rent, salaries, travel, etc.) ($53.3 million), and 20% for fundraising ($43.7 million); of the $323.2 million spent in House races, 30% went for all advertising ($96.9 million), 24% went for overhead ($77.2 million), and 13% for fundraising ($41.3 million).

[10]Chinoy, "In Presidential Race, TV Ads Were Biggest '96 Cost by Far."

[11]Fritz and Morris, *Money in the 1990 Congressional Races*, p. 54.

races between 1976 and 1992.[12] The aggregate CSAE data reveal that in these competitive races 48% of Senate campaign budgets and 41% of House campaign budgets were devoted to broadcast media advertising (compared with 42% and 27%, respectively, in the Morris-Gamache study of all candidates). Broadcast advertising became notably more important in competitive House races from 1976 to 1992. There was some increase in Senate races, but more notable were the fluctuations based on the size of states electing Senators in a given year (*i.e.*, broadcast media played a lesser role in 1978, 1984, and 1990 than in other years, because many of the largest states did not elect Senators in those years). The CSAE contended that more money was being spent on media in recent elections than in earlier ones because candidates were using it more, not because of any notable increase in rates.

Both the Morris-Gamache data and the CSAE data reflect broadcast spending from the candidates' perspective. Other data, presented from the broadcasters' perspective, are also available. Following the biennial elections from 1960-1972, the FCC undertook a survey of radio and TV broadcasters and issued reports on aggregate charges to candidates (federal, state, and local). Since this practice was discontinued, study of this topic has had to rely on estimates from various sources. The Television Bureau of Advertising (TVB), a New York group sponsored by the broadcasting industry, has estimated total political ad expenditures on television broadcast networks and local TV stations since 1970. Covering political advertising by candidates at all levels, TVB estimated spending levels at $12.0 million in 1970 and $24.6 million in 1972, a presidential election year. Compared with the most recent presidential election year, the increase from 1972-1996 represents a more than 300% increase, when controlled for inflation. These and the earlier FCC data on TV political ad revenues are presented in table 1.

Table 1. Cost of TV Political Advertising: 1960-1996[a]

Year	Network	Spot/Local	All[b]
FCC Survey of Political Broadcasting[c]			
1960	$2,927,235	$7,125,087	$10,052,322 *(53,284,099)*
1962	–	12,534,144	12,534,144 *(64,904,528)*
1964	4,063,640	19,713,295	23,776,935 *(120,341,971)*
1966	–	18,921,105	18,921,105 *(91,344,766)*
1968	8,881,023	29,096,706	37,977,729 *(171,227,175)*

[12]Committee for the Study of the American Electorate, *Use of Media Principal Reason Campaign Costs Skyrocket*, press release, Washington, July 26, 1994. [Competitive races were defined as those decided by less than 8%; and, in the House, in districts with at least 3 such races in this period.]

Year	Network	Spot/Local	All[b]
1970	–	$31,608,742	$31,608,742 *(127,819,887)*
1972	$4,967,623	32,240,135	37,207,758 *(139,663,520)*
Television Bureau of Advertising[d]			
1970	260,900	11,789,000	12,049,900 *(48,727,560)*
1972	6,519,100	18,061,000	24,580,100 *(92,263,205)*
1974	1,486,200	21,781,600	23,267,800 *(74,051,071*)
1976	7,906,500	42,935,700	50,842,200 *(140,195,250)*
1978	1,065,800	56,545,000	57,610,800 *(138,637,033)*
1980	20,699,700	69,870,300	90,570,000 *(172,456,710)*
1982	861,900	122,760,300	123,622,200 *(200,998,168)*
1984	43,652,500	110,171,500	153,824,000 *(232,290,510)*
1986	459,300	161,184,000	161,643,300 *(231,403,593)*
1988	38,520,700	189,379,500	227,900,200 *(302,261,280)*
1990	–	203,313,300	203,313,300 *(244,069,294)*
1992	73,816,000	225,807,400	299,623,400 *(335,073,750)*
1994	–	354,961,400	354,961,400 *(375,799,215)*
1996	33,824,000	366,661,900	400,485,900

[a] Data include federal, state, and local candidate spending in primary and general elections.
[b] Data in this column are shown in current dollars and, in italics, 1996 constant dollars, based on the Consumer Price Index, in: U.S., President, *Economic Report of the President* (Washington: GPO, 1997), Feb. 1997, p. 365.
[c] From FCC series: *Survey of Political Broadcasting*, various years [compiled from station logs of actual charges].
[d] Source: Data compiled by Competitive Media Reporting's Media Watch Service, in press release of Television Bureau of Advertising, Jan. 22, 1997.

The data in table 1 demonstrate, among other things, the problem in drawing conclusions about the level of political broadcast advertising. The TVB data, which

are widely quoted today, are at variance with those of the FCC for their two overlapping years (1970 and 1972), just as they do not easily square with the earlier data from the candidates' perspective. While at first glance the TVB data may appear to be underestimated, the variances among the sources consulted may also be a reflection of the widely different methodologies used (*e.g.*, the candidate data includes production and consultant charges, while the FCC and TVB data reflect air time only).

One other useful statistic is an estimate by the National Association of Broadcasters "that political ads accounted for only 1.2% of total ad revenues" in 1996.[13] (This figure can be looked at in the context of an estimated $36.2 billion in TV advertising revenues in 1995, the most recent year for which estimates are available.)[14] In some local markets, broadcasters note that political ads often comprise a notably larger share of advertising revenues than the national average.[15]

1971 FECA Provisions to Control Political Broadcast Costs

The 1971 FECA (P.L. 92-225) contained two provisions to curb candidates' expenditures on advertising: a mandatory spending limit on campaign advertising in federal elections and a requirement that broadcasters provide the lowest unit rate (LUR) for radio and TV ads purchased by political candidates. While the former was repealed by the 1974 FECA Amendments, the latter has remained in effect.

Mandatory Spending Limit on Campaign Advertising. As Congress considers curbing spending on broadcasting advertising, it is worth noting that limits on media advertising expenditures were enacted in the early 1970s and were in effect for one election cycle. Then, as now, concerns were raised about the costs of elections, with campaign advertising seen as a major factor therein.

The limits imposed in the 1971 FECA grew out of legislation passed by Congress in 1970—the Political Broadcast Act (S. 3637)—but vetoed by President Nixon.[16] That legislation imposed limits on TV and radio spending by all candidates for federal office and governor.

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[13]Carney, "Tuning Out Free TV," p. 702.

[14]"Leading National Advertisers," *Advertising Age*, vol. 67, Sept. 30, 1996, p. S54.

[15]Testimony of James C. May, Executive V.P. of N.A.B., in: U.S. Congress, House, House Administration Task Force on Campaign Finance Reform, *Campaign Finance Reform*, hearings, 102nd Cong., 1st sess., May 23 and 28, 1991 (Washington: GPO, 1991), p. 90.

[16]U.S. Congress, House, Conference Committee, *Political Broadcasting*, report to accompany S. 3637, 91st Cong., 2nd Sess., H. Rept. No. 91-1420 (Washington: GPO, 1970); Neal Gregory, "Political Report : Both Parties Pledge Broad Action on Campaign Spending Reform Next Year," *National Journal*, vol. 2, Nov. 28, 1970, p. 2604-10; David W. Adamany and George E. Agree, *Political Money: A Strategy for Campaign Financing in America* (Baltimore, MD: The Johns Hopkins University Press, 1975), p. 71-3.

The 1971 act, however, covered all communications media (including newspapers, magazines, and billboards). The limit for all federal candidates was set at the greater of $50,000 or 10 cents per eligible voter, or in 1972: $52,150 for House campaigns, between $52,150 and $1.4 million for Senate candidates, and $14.3 million for presidential. No more than 60% of these amounts could be spent on radio and television (or, $31,290, $31,290 to $850,000, and $8.5 million, respectively). The limits applied separately to primary and general elections (and runoffs).[17]

The limits established in the 1971 act were in effect only for the 1972 elections. Broadcast spending in non-presidential elections dropped significantly from 1970, but it was not clear to what extent this resulted from the limits, from the expectable diversion of funds to the presidential contest that year, or from the new lowest unit rate requirements. (Also, the limits may not have been taken too seriously; 14 House and Senate candidates exceeded the limits in 1972, but none were prosecuted by the Justice Department.)[18] The 1974 FECA amendments replaced the communication limits with overall spending limits on all federal candidates, because Congress saw a continued "alarming rise in the cost of campaigning for federal office."[19] These mandatory limits were held unconstitutional in the Supreme Court's *Buckley v. Valeo* decision [424 U.S. 1 (1976)].

Lowest Unit Rate Requirement. Another provision of the Federal Election Campaign Act of 1971 that aimed to reduce candidate advertising costs on television—the "lowest unit charge" requirement—remains in effect today.[20] This provision directs broadcasters (including cable systems), during the 45 days preceding a primary election and the 60 days preceding a general election, to charge legally qualified candidates for public office "the lowest charge of the station for the same class and amount of time for the same period." Congress enacted the lowest unit charge (LUC) requirement "to ensure that candidates are treated as favorably as the most favored commercial advertisers during the pre-election period."[21] Under this provision, *all* candidates—federal, state, and local—are entitled to the lowest unit charge.

In 1972, shortly after its enactment, the terms of the LUC provision were interpreted by the Federal Communications Commission, the federal agency which

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[17]U.S. Congress, House, Conference Committee, *Federal Election Campaign Act of 1971*, report to accompany S. 382, 92nd Cong., 1st Sess., H. Rept. 92-752 (Washington: GPO, 1971), p. 839-41; *Dollar Politics: The Issue of Campaign Spending*, vol. 2 (Washington: Congressional Quarterly, Inc., 1974), p. 2-8.

[18]Adamany and Agree, *Political Money*, p. 75-76, 79.

[19]U.S. Congress, House, Committee on House Administration, *Federal Election Campaign Act Amendments of 1974*, report to accompany H.R. 16090, 93rd Cong., 2nd Sess., Report no. 93-1239 (Washington: GPO, 1974), p. 637.

[20]Section 315(b)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 315(b)(1).

[21]U.S. Federal Communications Commission, "Licensees and Cable Operators Reminded of Lowest Unit Charge Obligations," Public Notice (Washington: Aug. 4, 1988), p. 2. (Hereafter cited as FCC, 1988 Public Notice.)

enforces campaign broadcasting regulations under the Communications Act. "Class" of time, the FCC said, referred to a station's rate categories—the two most significant being fixed (nonpreemptible) and preemptible; "amount of time" referred to the length of the time purchased (such as 30 seconds or 60 seconds); and "same period" referred to classifications of time within a broadcast day established by the station, such as prime time or drive time.[22]

Over the years the FCC's interpretations of the lowest unit charge provision have followed the sales practices of the broadcasting industry. In 1972, for example, the FCC determined that rate changes during the pre-election periods that occurred as a result of a station's normal business practices, such as changes based upon audience ratings or seasonal variations, were valid bases for price differentials within the same class of time.[23] In 1988, the commission recognized that commercial advertisers typically buy preemptible time which is offered at price levels that change frequently, even weekly, according to supply and demand. Under the circumstances, the FCC said, the lowest unit charge for a preemptible class of time was to be calculated according to the lowest price *any* advertiser paid for a spot which "cleared" a particular time period or "daypart" (for example, radio drive time or "morning news" time) during the particular week in question.[24]

By the late 1980s, however, questions had arisen as to whether the LUC provision was proving effective in making the most favorable commercial advertising rates available to candidates. A 1988 study of broadcast campaign spending, by the Center for Responsive Politics, offered this assessment:

> All accounts indicate that lowest unit rate succeeded in reducing campaign costs during the first few elections [after enactment of the Federal Election Campaign Act of 1971]. But since 1971 most television stations and some radio stations have abandoned the use of rate cards which set advertising rates, adopting in its place a system best described as an auction. Political consultants, campaign managers and members of Congress all agree that in the decade and a half since it took effect, lowest unit rate has become eviscerated by changes in the way broadcasters sell advertising time.[25]

In July 1990, the FCC initiated an audit of 30 television and radio stations to ascertain compliance with political programming laws, particularly the LUC provision. Less than two months later, the commission, in releasing its preliminary findings, reported that 80% of the TV stations and 40% of the radio broadcasters audited failed to give political candidates the lowest available rates as required by the

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[22]Use of Broadcast and Cablecast Facilities by Candidates for Public Office, 34 FCC 2d 510, 525 (1972) (1972 Public Notice).

[23] *Ibid*.

[24]FCC, 1988 Public Notice, p. 3.

[25] Center for Responsive Politics, *Beyond the 30-Second Spot: Enhancing the Media's Role in Congressional Campaigns*, Washington, D.C., 1988, p. 72.

LUC statute. The audit's "most significant finding," the commission said, was that "at a majority of the stations, political candidates have paid higher prices than commercial advertisers because sales techniques encouraged them to buy higher-priced classes of time." The commission fined two of the television stations $25,000 each for LUC violations.[26]

In the wake of its audit, the commission concluded that over the previous decade, radio and television stations had developed more complex systems of pricing commercial advertising—which frequently were not made available to candidates. Summarizing the commission's findings, the *National Journal* reported:

> .... Stations typically offer commercial advertisers a "fixed" rate, which is the most expensive and guarantees that an ad will appear at a certain time; a "prevailing" or effective" rate, which has a high likelihood of being broadcast as planned; and a "preemptible" rate, the cheapest and likeliest to be preempted by another advertiser that pays a higher rate.
>
> The stations told the government inspectors that candidates chose to buy higher-priced fixed time to be assured that their ads would air exactly as ordered, but the FCC found that the stations had encouraged the candidates to spend more money by not telling them about the intermediate rate. The FCC also concluded that the stations had frustrated the intent of Congress by encouraging their sales staffs to negotiate with commercial advertisers but to adopt a take-it-or leave-it policy with political campaigns.[27]

In response to an increasing number of questions about the lowest unit charge—"from candidates as to their rights and from broadcasters on what they must do to comply"[28] — the FCC in 1991 initiated a proceeding aimed at clarifying its LUC and related political programming policies.

In late 1991 and then again in 1992, new FCC policy statements were issued.[29] In these statements, the commission underscored its concern with preventing "abuse by a station taking undue advantage of candidates' special needs," particularly in the

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[26]See "Mass Media Bureau Report on Political Programming Audit," inserted in its entirety by Sen. Mitch McConnell, "FCC Audit of Political Advertising," *Congressional Record*, daily edition, vol. 136, Sept. 13, 1990, p. S13061-64. See also Margie G. Quimpo, "FCC Finds Candidates Overcharged," *Washington Post*, Sept. 8, 1990, pp. C1-C2 and Walter Pincus, "Costs of Political Ads Down Sharply Since '90, *The Washington Post*, Jan. 13, 1991, p. A9.

[27] Jerry Hagstrom, "Ad Attack," *National Journal*, vol. 24, Apr. 4, 1992, p. 811.

[28]"FCC Seeking Way Out of `Lowest Unit Charge' Confusion," *Broadcasting*, vol. 120, June 17, 1991, p. 21. *Broadcasting* also noted that the FCC audit results had given rise to "an increased number of candidates demanding refunds from stations," with some of the candidates filing suits in state and federal courts.

[29]U.S. Federal Communications Commission, "Codification of the Commission's Political Programming Policies," Report and Order, December 23, 1991 (Released), 78 p., and Memorandum Opinion and Order, June 11, 1992 (Released), 48 p.

form of special premium-priced classes of nonpreemptible time sold only to candidates. Accordingly, the commission stated that henceforth stations, among other things,

- would only be permitted to sell to candidates premium-priced fixed or nonpreemptible time only if (a) such a class were offered on a *bona fide* basis to both candidates and commercial advertisers and (b) no lower-priced, *i.e.*, preemptible, class of time sold to commercial advertisers was "functionally equivalent to the nonpreemptible class";[30]

- were not precluded from offering a candidate-only nonpreemptible class of time at a discount to political advertisers;[31] and

- were required to provide candidates with timely "make goods" if they had provided a time-sensitive "make good" to any commercial advertiser during the past year."[32]

The revised LUC rules also put new emphasis on broadcasters' disclosure obligations. Candidates, the commission said, "must have full information about the discount privileges associated with various classes of time to enable them to make informed purchases of advertising time and to ensure parity of treatment with commercial advertisers." Hence, broadcasters had "an affirmative duty to disclose, and to make available, to candidates all discount privileges made available to commercial advertisers."[33]

Since the issuance of the FCC's revised LUC policies in 1991-92, it is not altogether clear how effective the lowest unit charge has been. The policy goal of the LUC provision, it will be recalled, has been to ensure that broadcasters treat candidates as favorably as the most favored commercial advertisers during the pre-election period. To promote compliance with the LUC provision, the National Association of Broadcasters distributed to its members detailed summaries of the FCC's revised statements in 1992, stressing that "broadcasters must have a working familiarity not only with the commission's new rules, but also with the body of FCC

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[30]FCC, 1992 Memorandum Opinion and Order, p. 19.

[31]*Ibid*.

[32]*Ibid.*, pp. 30-32. A "make good" is an offer by the station to air or "make good" an advertiser's preempted spot at another, usually later, date, in the same daypart as originally purchased, rather than make a refund to the advertiser.

[33]*Ibid.*, pp. 35-36. At a minimum, the FCC said, disclosure should include: (a) a description and definition of each class of time available to commercial advertisers complete enough to allow candidates to identify and understand what specific attributes differentiate each class; (b) a complete description of the LUC and related privileges, such as priorities against preemption and "make goods" prior to specific deadlines, for each class or time offered to commercial advertisers; (c) the station's method of selling preemptible time based on advertiser demand, with the stipulation that candidates will be able to purchase at these demand-generated rates in the same manner as commercial advertisers; and (d) an approximation of the likelihood of preemption for each kind of preemptible time.

political broadcasting policy that preceded the 1992 rule revisions."[34] In November 1993, a Committee on House Administration report, analyzing the lowest unit rate provision, concluded that "most broadcasters make a good faith effort to comply with the complex campaign advertising rules."[35] Nonetheless, the Committee said, the FCC audit had clearly demonstrated the need for legislation to "clarify and simplify the rules in order to make them more easily understood, implemented, and enforceable."[36]

More recently, in a December 1995 speech, the chairman of the FCC, Reed Hundt, spoke of the difficulties in enforcing the lowest unit charge provision:

> This rule takes a lot of work to apply and doesn't work well in practice.
>
> The problem is that the rules require the candidates, the station and often the FCC to identify the "lowest unit charge." Not surprisingly, in each month, in each market, for each station, that charge can be difficult to calculate—especially because stations do not typically offer a commercial rate equivalent to the government-defined "lowest unit charge." The result is doubly bad: the FCC has to get intimately involved in the commercial activities of broadcasters and the legal regime still makes media access extremely expensive for candidates.[37]

However, a contrasting, more positive viewpoint of the LUC is that it has succeeded in significantly lowering the cost to candidates of purchasing campaign air time. This view was recently expressed by a National Association of Broadcasters spokesman, who said that the lowest unit rate provision translates into a 30 percent discount for advertising time purchased by candidates. This view, along with the observation that broadcasters already provide candidates with "thousands of hours of free air time" in the form of news coverage and free debate time, was offered by

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[34] National Association of Broadcasters, "FCC Revised Political Broadcasting Rules and Policies," [1992] p. 1.

[35] U.S. Congress. Committee on House Administration, *House of Representatives Campaign Spending Limit and Election Reform Act of 1993*, report to accompany H.R. 3, 103d Cong., 1st sess., H. Rept. 103-375, Part 1 (Washington,: GPO), p. 69. The committee noted the "recent industry-wide program initiated by the FCC and the NAB to educate broadcasters about their responsibilities to candidates regarding broadcasting advertising," which the Committee said "has the potential to do much to improve compliance."

[36] *Ibid.* "The availability of both preemptible and nonpreemptible spots for candidates," the committee report also said, "creates both the incentive and opportunity for broadcasters to discriminate against candidates." Accordingly, the committee said it was reporting legislation, H.R. 3, which would enable candidates to buy nonpreemptible advertising spots from broadcast stations and cable television operations in pre-election periods "at the lowest commercially available rates."

[37] Reed Hundt, Chairman, Federal Communications Commission, "Revitalizing Democracy in the Information Age," Speech as prepared for delivery, December 8, 1995, Woodrow Wilson School, Princeton University, Princeton, New Jersey.

the NAB as an argument against current proposals that broadcasters be required by Congress or the FCC to provide free time to federal candidates.[38]

Free and Reduced-Rate Time: Support Outside Congress

Supporters of free broadcast time have long looked with favor on European and other nations that provide free political time as a cornerstone in their electoral systems. Most major democracies, including Great Britain, France, Germany, and Japan, and other nations such as Russia, provide some form of subsidized air time.[39] (In many nations, however, broadcast stations are owned or controlled by the government; and most nations have parliamentary systems of government. Providing air time to a handful of political parties is far less complicated than providing it to the hundreds or thousands of candidates who compete in America's candidate-centered elections.)

In the United States, several studies and commission reports beginning in 1969 added momentum from outside Congress to the support for free and discount time. These studies include:

- 1969: *Twentieth Century Fund's Commission on Campaign Costs in the Electronic Era*. Proposed enactment of "voter's time," through which broadcasters would provide six prime-time, 30-minute segments to each major party presidential candidate (and a lesser amount for minor parties) within 35 days of the general election, to be shown simultaneously by the major networks; the federal government was to reimburse broadcasters for 50% of the commercial rate. Report was confined to presidential elections, but urged extension to congressional elections (involving more complicated logistics), with broadcasters charging no more than 50% of the lowest commercial rate to candidates.[40] A large number of bills in Congress in the early 1970s, especially in the 93d Congress, were based on the idea of "voters' time."

- 1978: *Harvard University's Campaign Study Group.* Proposed that broadcasters provide candidates with rate discounts, with stations allowed to deduct lost advertising revenue from their gross income.[41]

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[38]Amy Keller, "FCC Gets Ready To Force Free TV Issue," *Roll Call*, vol. 42, Apr. 17, 1997, p. 25.

[39]U.S., Library of Congress, Law Library, *Campaign Financing of National Elections in Selected Foreign Countries*, Report LL97-3 (97-1552), May 1997, pp. 5-6.

[40]*Voters' Time: Report of the Twentieth Century Fund Commission on Campaign Costs in the Electronic Era* (NY: Twentieth Century Fund, 1969), 72 p. (The commission was headed by Newton Minow and included Dean Burch, Thomas Corcoran, Alexander Heard, and Robert Price.)

[41]Campaign Study Group, Institute of Politics, Kennedy School of Government. Harvard University, *Increasing Access to Television for Political Candidates: A Report with* Recommendations, Cambridge, MA, July 20, 1978.

- 1988: *Center for Responsive Politics.* Advocated providing to House and Senate candidates four 30-minute prime-time segments within four weeks of a general election. Broadcasters could impose format requirements and, in dense urban areas, select candidates for this benefit.[42]

- 1991: *Harvard University's Barone Center on the Press, Politics and Public Policy*. Proposed that networks and cable stations set aside time on the last nine Sundays of a presidential general election for at least two presidential and one vice-presidential debates, five live interviews with presidential candidates, and one final presidential candidate address.[43]

The common themes in the recommendations of most of these commissions and study groups were to elevate the quality of political discourse and to provide *some* amount of free time. Essentially, the reports proposed additions to the current system of paid broadcast advertising, rather than complete substitutions for it.

During the 1980s, calls for free or reduced-cost time appeared in the op-ed columns by political practitioners and commentators.[44] (Such support was also voiced in testimony at congressional hearings; see Appendix B.)

In 1990, in an effort to break the stalemate over campaign finance reform, Senate Majority Leader George Mitchell and Minority Leader Bob Dole appointed a group of outside experts to make recommendations for the Senate's consideration. One of the panel's recommendations was that every TV and radio broadcaster be required to provide eight hours of free time to political parties each year: two to each major national party committee and two to each state party committee. The parties would use the free time as they saw fit to benefit congressional and other candidates, and both parties and candidates would be free to purchase unlimited additional time at existing rates.[45] As with some of the reports cited above, these experts saw their plan as only part of a solution to the campaign finance issues.

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[42]Center for Responsive Politics, *Beyond the 30-Second Spot.*

[43]Joan Shorenstein Barone Center on the Press, Politics and Public Policy. John F. Kennedy School of Government, Harvard University, *Nine Sundays: A Proposal for Better Presidential Campaign Coverage* [prepared by John Ellis], 1991.

[44]See: Max M. Kampleman, "Cut Campaign Costs, Not Spending," *The New York Times*, Dec. 20, 1989, p. A27; Charles Krauthammer, "Why Candidates Should Get Free TV Time," *The Washington Post*, Oct. 24, 1986, p. A27; Arthur Schlesinger, "Election Aftermath: Money and Meaning," *Wall Street Journal*, Nov. 18, 1986, p. 32; "The $676,000 Clean-Up" [editorial], *The New Republic*, vol. 195, Dec. 1, 1986, p. 7-9.

[45]Campaign Finance Reform Panel, *Campaign Finance Reform: A Report to the Majority and Minority Leaders, United States Senate*, Mar. 6, 1990, pp. 14-16. (The panel included: Herbert E. Alexander, Jan Witold Baran, Robert F. Bauer, David B. Magleby, Richard Moe, and Larry J. Sabato.) The panel's media recommendations were based on a Twentieth Century Fund paper by one of the panelists: Larry J. Sabato, *Paying for Elections: The Campaign Finance Thicket* (NY, Priority Press Publications, 1989), pp. 25-42.

Free Time Effort in 1996. In February 1996, Rupert Murdoch, head of the Fox television network, announced that his network would give leading presidential candidates a series of free prime time segments in the month before the November election. His plan, which he urged other networks to adopt as well, included one-half hour for each candidate on election eve and 10 one-minute segments in the month preceding the election for each candidate to address selected major issues. Murdoch attributed his proposal to his perception that candidates' pursuit of millions of dollars for campaign advertising was corrupting the political process. He favorably cited the British approach, with "short campaigns, free television time, and little money in the system."[46]

The Murdoch challenge to other networks was endorsed the following week by journalists Walter Cronkite and Paul Taylor, who said that the idea "just might lift American political campaigns out of their televised swamp."[47] They urged networks to give each presidential candidate from two to five minutes every night in the final month of the election, using a "talking-head" format (*i.e.*, the candidate speaking directly into the camera for the full segment). Each segment would be carried simultaneously on all networks. Cronkite's and Taylor's emphasis was less on the money raised and spent on TV than the "bread-and-circus blur of 30-second attack ads and 8-second sound bites" on broadcast news shows. They pursued their proposal through the establishment of the *Free TV for Straight Talk Coalition*, which brought together prominent citizens to advance the free-time idea to the networks.[48]

The coalition did not fully achieve its ambitious goal. The networks refused to subscribe to the uniform format of candidate messages with simultaneous broadcast. However, most of the networks did provide a series of free candidate segments between September and November, in varying lengths (90 seconds to 2½ minutes), formats, and time slots. All segments used the talking-heads format.[49]

A voter survey and analysis by the Annenberg Public Policy Center concluded that the 1996 experiment met with mixed success. On the positive side, the center found that the free-time segments had contributed "positive discourse "and useful information to the campaign. However, it found that few voters saw the segments, certainly in comparison with those who were reached by debates, paid advertisements, and news stories, and those who saw the sequence tended to be already well-informed voters.[50] Taylor expressed disappointment with the failure to attain the simultaneous, prime-time showings, but called the "mini-speeches" a first

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[46]Rupert Murdoch, quoted in Lawrie Mifflin, "Fox to Give Free TV Time to Candidates for President," *The New York Times*, Feb. 27, 1996, p. A19.

[47]Walter Cronkite and Paul Taylor, "Politics in Prime Time," *The Washington Post*, Mar. 6, 1996, p. 19.

[48]The Annenberg Public Policy Center of the University of Pennsylvania, *Free Television for Presidential Candidates: The 1996 Experiment*, by Christopher Adsdiewicz, Douglas Rivlin, and Jeffrey Stanger, March 1997, p. 5.

[49]Networks offering free time were: Fox, CBS, NBC, CNN, C-SPAN, PBS, NPR, and UPN.

[50]Annenberg Center, *Free Television for Presidential Candidates*, p. 3.

step and "...better than attack ads and sound bites."[51] The President of the Radio-Television News Directors Association, however, called the effort "just another scam to hijack the airwaves for the benefit of politicians" that neither "improved the political dialogue [nor] increased the enthusiasm of the voters."[52]

Congressional Proposals and Activity

Bills Introduced. Appendix A lists 163 bills introduced in Congress since 1960 to provide free or reduced-rate TV time to political candidates; many of these bills covered radio time as well.[53]

Federal Government Subsidies. In 90 of these bills, the federal government was to reimburse broadcasters or candidates for "free" time, either directly or through communication vouchers. Thus, the time candidates would receive free of charge would constitute a form of public financing of elections. (Eight of the 90 bills also required reduced-rate time.) The first of the 163 bills, S. 2823, introduced in 1960 by Sen. Richard Neuberger (D-OR), would have subsidized broadcast time for federal candidates by providing a 50% reimbursement for broadcast costs.

Broadcaster-Provided Discounts. In 74 of the bills, the principal financing vehicle was a requirement that broadcasters give time to candidates for free or at reduced rates (usually 50% of the lowest unit rate), as a condition of their licenses. In these cases, the broadcaster was to absorb the cost of the benefit. Free time was required in 35 of the bills (including three which required reduced-rate time as well); 50 bills required reduced rates (including the eight that also provided subsidies and the three that also required free time).

Eligibility for Free or Reduced-Rate Time. Seventy-two of the bills would apply to all federal candidates. An additional nine bills would apply only to elections for President, 36 to elections for House seats, 27 to elections for Senate seats, 12 to elections for House and Senate seats, and five to elections for federal and some or all state and local offices. One would provide benefits to the national parties.

Links to Spending Limits. The 123 bills that conditioned the benefits on spending limits appear to have been primarily motivated by the "costs" component of the debate, with benefits acting not only to reduce selected campaign costs but to be a mechanism for promoting the broader goal of curbing overall levels of money spent in elections. In contrast, the remaining 40 bills, which imposed no such

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[51]Howard Kurtz, "Campaign for Free Air Time Falls Short of Organizers' Goals," *The Washington Post,* Oct. 31, 1996, pp. A17-A18.

[52]Ibid.

[53]The table does not include an additional 22 proposals for free TV time only in response to independent expenditures made in opposition to a specific candidate. These bills are enumerated in note 1 in appendix A. The table also excludes the many proposals for instituting and changing the terms and conditions of the lowest unit rate requirement, although many of the bills in the table were aimed at enhancing the cost-reducing effect of the LUR.

condition on receipt of free or reduced-rate time, appear to have been more concerned with the quality of political discourse, with format requirements usually being the one necessary pre-condition.

Hearings. The cost and quality of political broadcast advertising has been the subject of discussion at numerous congressional hearings, under the rubrics of election oversight and broadcast oversight. Appendix B lists 15 published hearings since 1959 which have been devoted substantially to these issues.

Floor Action. Campaign finance legislation passed by the House and Senate in the 101st, 102nd, and 103rd Congresses contained free or reduced-rate broadcast time as a benefit (perhaps along with other discounts or subsidies) to candidates who agreed to voluntary spending limits. While conference committees were never convened in the 101st and 103rd Congresses to reconcile the bills, the 102nd Congress bill was sent to President Bush and vetoed.

H.R. 5400, passed by the House in the 101st Congress, would have required broadcasters to provide participating House candidates with one free TV or radio spot for every two they purchased (in conjunction with voluntary spending limits). This was accompanied by substituting a comparable use requirement for the lowest unit rate provision. (This provision had the support of the National Association of Broadcasters.[54]) The Senate-passed bill (S. 137) provided government-subsidized broadcast vouchers and more favorable terms for broadcast rates to participating Senate candidates.

The 102nd Congress bill (S. 3) contained broadcast vouchers and air time at 50% of the lowest unit rate to participating Senate candidates; this feature, which was not mirrored in the original House version of H.R. 3, was part of the Senate bill as introduced, passed by the Senate, and reported by the conference committee. Prior to its initial passage of S. 3, the Senate voted 79-19 to table an amendment by Senator Roth to replace the bill's spending limits and benefits with a requirement that broadcasters provide free TV time to all Senate candidates in the last 45 days of a general election, provided that no additional time was purchased by those candidates.[55]

In the 103rd Congress, the House passed H.R. 3 to provide voter communication vouchers (on a matching fund basis) to participating House candidates. The Senate passed S. 3 to allow participating Senate candidates to buy air time at 50% of the lowest unit rate. Prior to passing S. 3, the Senate defeated two free TV time amendments: one by Senator Roth, similar to his 102nd Congress amendment, was tabled by a 91-7 vote, and the other, by Senator Pell, to require broadcasters to

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[54] James C. May (NAB), *Campaign Finance Reform*, p. 95.

[55] Senate Election Ethics Act, Roth Amendment no. 262, vote to table, *Congressional Record*, vol. 137, May 23, 1991, p. S12330.

provide free TV time to Senate candidates who abided by S. 3's spending limits, was rejected by a 32-66 vote.[56]

Legislative Policy Options and Issues. Congressional proposals have reflected policy choices on many issues, some of which are identified by the classification in appendix A. Of these, perhaps the two key policy choices are whether the provision of broadcast benefits would be linked with a candidate's voluntary compliance with spending limits and whether free time to candidates would be given at the broadcaster's or the government's expense. These and other issues that have faced policymakers—and will again—are discussed below.

Linkage with Spending Limits? As mentioned in the introduction to the "Background and Public Policy Issues" section, calls for free and reduced-rate broadcast time usually stem from two distinct major goals: reducing the role of money in elections and elevating the quality of political debate through format and time requirements. (See footnote 1 for examples of the respective arguments.) The different emphasis is reflected in the bills that contain spending limits versus those that do not, with the former seeking greater assurance that the overall level of money in the system will be reduced.

Imposing limits on campaign spending, or at least on broadcast spending, offers a greater prospect of reducing the role money plays in elections. This assumes, first, that spending limits can effectively suppress spending, which is open to question given the nation's experience with limits in presidential elections, and second, that one can craft limits that can pass constitutional scrutiny. The linkage of free or lower-cost air time with spending limits has stemmed to a large extent from the Supreme Court's 1976 ruling in *Buckley v. Valeo* that mandatory spending limits were unconstitutional. This led policymakers to consider how to make spending limits appealing enough to candidates to gain their voluntary compliance, with cost-saving benefits increasingly favored as such an inducement. Hence, the reduction in the importance of money would be sought through both the benefit and the obligation. Because the benefits are taken voluntarily by candidates, the government arguably would be free to impose certain conditions on the receipt of those benefits, such as spending limits and format requirements.

Although providing broadcast time for lower costs or for free would tend to reduce the role of money in elections, such a result is not inevitable. Lower costs may be an incentive for well-financed candidates to buy even more air time. Reduced costs might, however, make elections more competitive by making broadcast time more accessible to candidates with fewer financial resources. (This argument is often cited as a worthwhile goal in itself.)

Government Subsidies or Broadcaster Responsibility? While free time proposals may cost the candidate nothing, the cost must be borne by others, generally either the government, through subsidies or vouchers, or the broadcasters.

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[56]Congressional Spending Limit and Election Reform Act of 1993, *Congressional Record*, daily edition, vol. 139: Roth Amendment no. 461, roll call vote no. 150, June 16, 1993, p. S7345; Pell Amendment no. 463, roll call vote no. 155, June 17, 1993, p. S7399.

Many proponents have insisted that broadcasters could be required to provide free or discounted time as a condition of their licenses and that they ought to do so because of the public interest and the revenues they receive from candidates. Opponents assert that the proposals constitute an unconstitutional "taking," that it is unfair to require broadcasters to do more than they already do with LUR and free time for candidate debates, and that, with respect of their goals, the value of these proposals is dubious. In the final analysis, Congress's perception of the political climate could have a strong effect on the choice of provider, with opinion polls in recent years generally showing public opposition to public financing of elections.

While there is fairly close division in the aggregate number of bills, with 55% containing federal subsidies and 45% placing the responsibility on the broadcasters, the trend has been decidedly toward requiring the broadcasters to absorb the costs. Of the 90 government subsidy bills, 85% were offered before the 100th Congress (1987-88); only 15% of them have been offered in the past 10 years. In contrast, only 26% of the 74 broadcaster-provided bills were introduced before the 100th Congress, with 74% of them introduced since then.

Nonpreemptible Time at Lowest Unit Rate? In recent years, many critics of the current political broadcast laws have cited the preemptible nature of time bought at the lowest unit rate, making candidates less likely to avail themselves of a provision that may cause their advertisements to be moved to less desirable time slots. Hence, most bills introduced in recent Congresses have sought to make LUR more effective in suppressing costs by requiring broadcasters to sell candidates nonpreemptible spots at lowest preemptible rates. This idea has gained popularity in part because, unlike most proposals in this area, broadcasters have not opposed it and have voiced some support. (Opposition grows, however, when this proposal is linked with other concepts such as the 50% reduced rate.[57])

Free or Reduced-Rate Time? Bills that place the expense of the cost-saving benefit on the broadcasters have been nearly evenly split between those that require fully free time and those that require time to be sold at a reduced rate, generally 50% of LUR. The choice has often been linked to what conditions were being imposed and what other benefits, if any, were being provided, *i.e.*, how generous to make the incentives for candidates to accept the conditions. Policy-makers have also weighed a balance between the expense they might impose on broadcasters and how easy they wish to make it for candidates to get on the air. Finally, it has been argued that reduced-rate time strikes a certain type of balance between decreasing the need for campaign money without encouraging "frivolous" or non-viable candidates to run by virtue of too generous a benefit.

What Type of Format Requirements? The increased use and prominence of 30-second ads in which candidates are attacked through sophisticated techniques, including images, has become the subject of considerable concern in recent years, with high levels of voter antipathy to such tactics consistently recorded in opinion surveys. Almost invariably, proposals for free or discounted broadcast time are tied to one or more format requirements aimed at improving the tone of political debate.

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[57] James C. May (NAB), *Campaign Finance Reform*, pp. 88, 93-95.

The two most commonly proposed format requirements have included time minimums, to allow for a more thoughtful or rational presentation than afforded in 30 seconds, and the personal appearance by the candidate, to promote a greater sense of accountability for the tone of the message. Sponsors hope that such parameters can reverse what they see as a trend toward negative, nearly defamatory political advertisements. Because the format guidelines would be linked to a benefit voluntarily accepted by candidates, such attempts to influence the quality of political discussion are seen as free of the potential questions of constitutionality that may be inherent in mandatory format requirements.

How to Distribute Time Equitably? This question is of such importance and difficulty that the logistical issues raised by it have contributed heavily to the reasons why none of the proposals outlined above has ever been enacted. These issues are present particularly when contemplating free time in congressional elections, because of the existence of 211 media markets whose "areas of dominant influence" (ADI) have no resemblance to the political boundary lines of states and districts. Broadcast rates among markets reflect the size of the audience reached and vary enormously between rural and urban areas.[58] The rates in the most densely populated areas are high enough to be prohibitive in many, if not most, House races occurring there. Where television is not a cost-effective communications medium to any appreciable extent, mailings, radio, and other forms of advertising have been more appealing to candidates.

The offer of free TV time would result in virtually all candidates seeking to use it, thus presenting a scheduling and financial problem, possibly of enormous proportions, for broadcasters in highly populated areas. The "urban glut" problem is seen in the extreme in the greater New York metropolitan area, which includes 35 to 40 congressional districts and has the highest advertising rates in the nation.[59] For such reasons, some proposals have provided for free time to be distributed by political parties, which would decide which elections in an area warranted use of this limited benefit. Party control would also promote the goal of some observers who wish to strengthen the role of the parties in elections. Not all observers, however, find this goal to be desirable or, given the reality of candidate-centered elections, practicable.

The fairness issue is also present when considering whether to make the broadcast benefit available to just major-party candidates or to minor-party and independent candidates as well. If the latter are to be included, are they to receive the same benefit, or a lesser one, based on some objective standard? These questions, of course, are tied to who is to bear the cost of "free" time, *i.e.*, who is to pay for the level of generosity deemed appropriate.

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[58]Carol Matlack, James A. Barnes, and Richard E. Cohen, "Spend, Spend, Spend," *National Journal*, vol. 22, Jun. 16, 1990, p. 1451.

[59]Center for Responsive Politics, *Beyond the 30-Second Spot*, p. 47-49.

Prospective Action by the FCC

In March 1997, an alternative to Congress instituting a system of free broadcast air time for federal candidates emerged—namely, the possibility of the Federal Communications Commission mandating such a system, without explicit authorization from Congress.

The possibility of the FCC proceeding on its own in this way, without statutory approval from Congress, was raised by President Clinton in March 11, 1997, remarks to a conference on campaign reform. The President contended that free air time for federal candidates was the price that broadcasters should pay for receiving digital (high-definition) TV licenses from the FCC. (Digital technology would permit broadcasters to air at least five channels of video programming where existing analog technology now permits only one channel. At the time of the President's remarks, the FCC was about to begin a long-awaited process of assigning digital channels to existing broadcasters.) The President noted that, although the move from analog to digital signals would give broadcasters "much more signal capacity than they have today," broadcasters had "asked Congress to be given this new access to the public airwaves without charge"—an end result the President found inadequate:

> I believe, therefore, it is time to update broadcasters' public interest obligations to meet the demands of the new times and the new technological realities. I believe broadcasters who receive digital licenses should provide free air time for candidates, and I believe the FCC should act to require free air time for candidates.[60]

The President's call for FCC action raised two issues: First, does the commission have the authority to mandate free air time for candidates without specific statutory authorization from Congress? Second, would a majority of the FCC's members agree to take such action?

A prominent supporter of the President's proposal, FCC chairman Reed Hundt, believes the commission has sufficient authority. In an immediate reaction to the President's remarks, Chairman Hundt said he was "thrilled" by the President's call for FCC action, which the chairman said was necessary "to guarantee that access to the public's airwaves for political debate is reformed in ways consistent with the clear need to fix our campaign process." In the chairman's view, the FCC "has the power, the precedent and the procedures to issue a rule ordering free air time access by candidates ...."[61] A month later, in April 1997, Chairman Hundt revealed that the FCC was drafting a notice of proposed rulemaking to examine the idea of free

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[60]U.S. President (Clinton), "Remarks to the Conference on Free TV and Political Reform and an Exchange with Reporters," *Weekly Compilation of Presidential Documents*, vol. 33, Mar. 17, 1997, p. 334.

[61]Statement of FCC Chairman Reed Hundt on President Clinton's Call for FCC Action To Require Free Air Time for Candidates, March 11, 1997, p. 1.

broadcast time for federal candidates, and he predicted that free air time for candidates could be implemented in time for the 1998 elections.[62]

Others, however, have challenged the FCC's authority to mandate free broadcast air time for candidates. In Congress, Senator Mitch McConnell of Kentucky called Chairman Hundt's initiative "another effort to circumvent lawmakers and circumvent the powers of Congress." FCC rules mandating free air time for candidates, Senator McConnell has asserted, would be "overreaching" by the commission and "would be the subject of protracted litigation."[63]

The appropriateness of unilateral action by the FCC also has been questioned by Senator John McCain, chairman of the Senate Commerce, Science, and Transportation Commitee, whose campaign reform bill in this Congress, S. 25 (the McCain-Feingold bill), includes a provision for free air time for Senate candidates. Senator McCain has commented that it —

> ... would be difficult for the President or Mr. Hundt to act in too sweeping a manner without Congress—both for reasons of legislative requirements, but frankly, also for reasons of getting the kind of support that they need for true campaign finance reform.[64]

The authority of the FCC to require broadcasters to give free air time to candidates has also been questioned by the National Association of Broadcasters, whose officials have indicated their readiness to challenge the constitutionality of such a rule in the courts if the FCC institutes one.[65]

The prospects for the FCC acting to mandate free air time are also complicated by the uncertainty of a majority of the commission's members endorsing such an action. (Each official step in the FCC rulemaking process, beginning with a notice of proposed rulemaking, requires a vote of approval by a commission majority.)

These uncertainties are compounded by the current state of flux in the five-member commission, where one position is vacant, the terms of two other members have expired (with the vacating members choosing to retain office until the appointment of their successors), and with Chairman Hundt on May 27, 1997, having announced his intention to step down from the FCC, before the expiration of his term, as soon as his replacement is appointed.[66] Rachelle Chong and James Quello —the two commissioners whose terms have expired but who have elected to stay in office until replaced by their successors—as well as Chairman Hundt's other

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[62]Keller, FCC Gets Ready , p. 1.

[63]*Ibid.*

[64]Carney, Tuning Out Free TV, p. 702.

[65]Keller, FCC Gets Ready, p. 25.

[66]See, for example, Chris McConnell, "Hundt Closes; Hunt Opens," *Broadcasting & Cable*, vol. 127, June 2, 1997, p. 4.

colleague, commissioner Susan Ness, "historically have opposed new public interest duties for broadcasters."[67]

In early June 1997, a week after announcing his intention to step down from the commission, Chairman Hundt reiterated his call for free air time for candidates and his hope that the commission as a whole would soon launch a formal inquiry to explore public interest obligations of broadcasters.[68]

Policy Issues: A Pro/Con Discussion

Judging from the number and diversity of voices registering their opinion in editorial pages, in public policy forums and coalitions, and in bills introduced in Congress, public discussion of the concept of free or reduced-rate broadcast time for political candidates has long been led by those favoring the idea. To the extent opposition has been voiced, it has usually come from the broadcasting industry. Aside from an obvious concern for the financial impact on themselves, broadcasters have raised legitimate policy concerns. Several of the major arguments on each side are discussed below.

Reducing the Role of Money in Politics. The driving force behind free and reduced-rate proposals has been the desire to decrease the level of money in politics. While such proposals would seem to promote that objective, opponents raise the question whether candidates are not likely to react by simply purchasing more time at lower rates. Candidates with easy access to financial resources may well seek to maximize their advantage. The possibility of lowering the aggregate levels of money in elections would increase if workable, enforceable spending limits accompanied the free or discounted air time (assuming limits could be so designed).

While it is difficult to be certain of the impact on aggregate money levels, it is possible that free or lower-cost advertising time would also result in increased electoral competition. Candidates who now lack adequate resources to buy television time would be better able to afford it and possibly make lopsided contests into more genuine ones. Some who favor free or reduced-rate proposals make this "level playing field" argument. Many observers, however, are not persuaded that money plays too great a role in our elections. These individuals see the level of money as consistent with the costs of other goods and services and as part of the price we pay for debate in a modern, democratic society.

Importance of Television in Campaigns. While proponents focus on television because of the importance of broadcasting in reaching large numbers of people, opponents point to recent aggregate data that show TV's importance to have been exaggerated in anecdotal accounts. Recent, better documented aggregate data show that TV and radio costs account for 27% of House campaign and 42% of Senate campaign budgets; this includes production and consultant costs as well as air

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[67]Marianne Lavelle, "Give Free TV Time to Pols?" *National Law Journal*, vol. 19, March 31, 1997, p. A26.

[68]Chris McConnell, "Hundt Has Not Left the Building," *Broadcasting & Cable*, vol. 127, June 9, 1997, p. 16.

time. Even the aggregate data, however, show broadcast advertising to be the single biggest expenditure category in both Senate and House elections. The more competitive races and the larger states show a much greater role for broadcast advertising: Senate campaign expenditures of 60% or more on broadcast advertising are common. In the absence of official data such as those formerly compiled by the FCC, even today's improved estimates and data compilations are not definitive in this area.

Obligation of Broadcasters. Proponents insist that it is not only constitutional but appropriate for broadcasters to provide free and discount air time that would advance the public interest. They assert that the public, not the broadcasters, own the airwaves. Broadcasters respond that they are already giving political candidates discounted time under the lowest unit rate requirements, which they estimate saves candidates 30% off regular commercial rates.[69] The LUR does appear to be a more effective cost reduction element now than before the 1990 FCC survey discussed above. It would be an even greater cost-saving mechanism if Congress were to prohibit broadcasters from preempting the time purchased under the LUR, as candidates would be less likely to forgo the lower rate in the interest of guaranteed time slots. Such a proposal has had wide support in Congress and has not been opposed by the National Association of Broadcasters.

Broadcasters also contend that they already voluntarily provide free air time to candidates in the form of debate time and news coverage. Furthermore, they note that many candidates refuse to avail themselves of the free debate time. There is, of course, a difference between broadcast candidate debates and broadcast candidate ads. Only in the latter does the candidate have full control over how his or her message is presented, and for that reason the spot ads have come to play the major role they do in our elections.

Thus, broadcasters argue that they are already providing substantial public service at their own expense and that it is unfair to ask them to do substantially more. Opponents also raise the concern that broadcast advertising rates might have to be raised if these proposals were enacted, with commercial advertisers then passing on the higher costs to the consumers.[70] Proponents justify their demands on broadcasters by the billions of dollars worth of digital spectrum licenses that broadcasters will soon receive at no cost from the government.[71] Furthermore, some 105th Congress proposals have provided for exemption procedures for broadcasters who might suffer "significant economic hardship" from the free and reduced-cost requirements. Notable examples are S. 25 (the McCain-Feingold bill) and its House counterpart, H.R. 493 (the Shays-Meehan bill).

Quality of Political Debate. Improving the level of discourse in elections is a goal invariably cited by proponents of free broadcast time. While it is often raised

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[69]Eliza Newlin Carney, "Not Ready for Prime Time," *National Journal*, vol. 28, Jun. 8, 1996, p. 1284.

[70]Billy Tauzin, "Proposals to Give Away Free Broadcast Time Run Counter to Congress's Goal of Less Intrusive Gov't," *Roll Call*, vol. 42 , Jan. 9, 1997, p. 31.

[71]Carney, "Tuning Out Free TV," p. 700.

as a secondary objective, many supporters place particular emphasis on it. They base their hopes not on the reduced costs of advertising but on the conditions which invariably accompany these proposals — conditions that may avoid constitutional objection because they are voluntarily agreed to in exchange for a specified benefit. Supporters believe that lengthier advertisements and such format requirements as candidate appearance would work toward a more rational discussion of issues and a greater sense of accountability, thus reversing the perceived trend toward "negative" advertisements in recent years.

Opponents of free broadcast time observe that negative campaigning has always been a part of our elections and that the age of television only makes it more visible. They note that "negative" ads may simply be comparisons of candidates sharply defined in ways that may make one of those candidates uncomfortable. Rather than a blight on the electoral system, they point out that such communication can have a useful function. "Negative" ads are not inherently mudslinging or character attacks. Even advertisements that do not use the "talking heads" format can contribute to the debate on significant policy issues.

Methods of election communications are chosen based on their presumed effectiveness. While opinion survey respondents overwhelmingly express disapproval of the negative tone of political ads, political consultants insist they are effective. Supporters of free broadcast time may be responding to what citizens claim to want, rather than what experience indicates they are moved by, and many believe it is worth taking a first step toward the kind of political debate so widely espoused.

Policy Conclusions

Regardless of how dominant television is in today's politics, there is little doubt that its role is sufficiently great to be prominent in any discussion of issues pertaining to both campaign financing and the tone of debate in U.S. elections today. Whether as part of a comprehensive legislative package or as an incremental step in a larger process, decreasing the cost and increasing the quality of candidates' TV advertisements continue to loom large among reform goals. While the potential effects of the proposals discussed in this report are subject to debate, they have garnered considerable support across the political spectrum.

If Congress decided to require free or lower-cost broadcast time, a fundamental question, arguably more basic than those discussed above, would have to be answered: How far-reaching should the new rules be? In other words, should the benefits be an *addition* to the existing system, thus injecting an element of a "better" method; or should they be a *replacement* for the current system, with all candidate advertising to be conducted under the proposed price and format requirements? The extent of benefits will have a critical impact on all subsequent policy decisions.

Legal and Constitutional Considerations

Current FCC Authority to Require Provision of Free Air Time

While the Communications Act of 1934 does not confer specific authority upon the FCC to require the provision of free air time for political advertising, the statute may implicitly grant the commission discretionary authority to impose such a condition on prospective and existing broadcast licensees.[72] In granting broadcast licenses and license renewals under the act, sections 307 and 309 direct the FCC to determine "whether the public interest, convenience and necessity will be served."[73] In addition, section 303 authorizes the commission to, "as public convenience, interest or necessity requires... [m]ake such rules and regulations and prescribe such restrictions and conditions... as may be necessary to carry out the provisions of [the] Act."[74]

In carrying out its mandate to ensure that broadcasters operate in the "public interest," the agency has consistently been found by reviewing courts to possess broad discretion to impose technical, structural *and* program related conditions to the grant and retention of a broadcast license. Most notable on this issue is *Red Lion Broadcasting Co. v. Federal Communications Commission*, where the Supreme Court upheld components of the FCC's "fairness doctrine," which required broadcasters to devote air time to opposing viewpoints on issues of public importance.[75] There, the Court held that the agency's public interest mandate provided adequate authority to impose such a requirement and noted the breadth of the FCC's authority under the standard.[76] In addition, reviewing courts have upheld past FCC regulations, encouraging the access of independently produced programming to network owned and affiliated stations, as a valid exercise of the agency's discretion under the public interest mandate.[77]

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[72] Note that section 312(a)(7) has been interpreted as affording "legally qualified candidate[s] for Federal elective office" a right of reasonable access to broadcast time. *See* 47 U.S.C. § 312(a)(7); *Columbia Broadcasting System, Inc. v. Federal Communications Commission*, 453 U.S. 367(1981). However, the provision has not been construed to require broadcast licensees to provide such time free of charge.

[73] *See* 47 U.S.C. §§ 307(a), 309(a).

[74] 47 U.S.C. § 303(r).

[75] 395 U.S. 367 (1969).

[76] *Id.* at 380 ("This mandate to the FCC to assure that broadcasters operate in the public interest is a broad one, a power `not niggardly' but expansive."). *See also National Broadcasting Co. v. United States*, 319 U.S. 190 (1943).

[77] *See Mt. Mansfield Television, Inc. v. Federal Communications Commission*, 442 F.2d 470 (2nd Cir. 1971)(upholding the FCC's prime time access and financial interest and syndication rules); *National Association of Independent Television Producers and Distributors v. Federal Communications Commission*, 516 F.2d 526 (2nd Cir. 1975)(prime

(continued...)

Given the breadth of discretion provided the agency under this standard, it could be argued that the public interest mandate would provide the FCC sufficient authority to require broadcasters to provide free air time for political advertisements. Such a requirement would arguably constitute a valid exercise of the FCC's discretion if it finds that the public benefits that flow from a "free air time" requirement would outweigh the encroachment on broadcast licensees' editorial discretion.[78]

First Amendment Validity of Free Air Time Proposals

In requiring broadcasters to set aside time for the broadcast of political advertisements, free air time proposals raise concerns regarding their validity under the First Amendment to the Constitution. In examining relevant Supreme Court precedent on the issue, however, it appears that such a requirement might well withstand constitutional scrutiny, as applied to broadcasters.

Throughout its First Amendment jurisprudence, the Court has generally afforded more limited First Amendment protection to broadcasters than to other media of expression and has analyzed content-based restrictions imposed upon them under a more lenient standard of review. In *National Broadcasting Company v. United States*, the Court addressed the distinction drawn between broadcasters and other media of expression for First Amendment purposes. Responding to arguments that the FCC was without authority to issue substantive content-based regulations and that such requirements violated broadcasters' First Amendment rights, the Court noted the physical limitations inherent to the electromagnetic spectrum as a scarce public resource that could not accommodate all who wished to utilize it. The Court concluded that because of the radio spectrum's limited physical characteristics, the government has a legitimate interest in developing a licensing scheme that ensures its most efficient and effective use in the public interest. Accordingly, the FCC is not limited under either its governing statute or the Constitution to regulating the technical aspects of the broadcast industry but may impose some forms of content-based regulation in furtherance of this goal.[79]

(...continued)
time access rule).

[78] The commission might find, for example, that such a requirement furthers goals and principles underlying the First Amendment such as the promotion of greater citizen awareness of and debate on issues of public importance and the encouragement of greater participation in the electoral process.

[79] *Id*. at 226-227. Commonly referred to as the "scarcity rationale," this line of reasoning has been the touchstone for governmental regulation of the broadcast media and has been applied to justify other content-based regulatory requirements. *See Red Lion Broadcasting Company v. FCC*, 395 U.S. 367 (1969) ("physical scarcity" used to justify FCC fairness doctrine and personal attack and political editorial rules); *but see Telecommunications Research and Action Center v. FCC*, 801 F.2d 501 (D.C. Cir. 1986), *cert. denied*, 107 S.Ct. 3196 (1987), where the court called into question the continued validity of the assumptions underlying the "scarcity rationale."

The notion that "physical scarcity" justifies a greater degree of government regulation of the broadcast medium was reiterated in *Red Lion*. There, the Court noted that "[b]ecause of the scarcity of radio frequencies, the Government is permitted to put restraints on licensees in favor of others whose views should be expressed on this unique medium..."[80] More recently, the Court reaffirmed the validity of the "scarcity rationale," despite widespread questions about its continued necessity given the emergence of new mediums of expression such as cable and direct broadcast satellite.[81]

In addition to Supreme Court precedent supporting more governmental leeway in regulating the content of broadcasters, other decisions indicate that regulations designed to foster access for politically motivated speakers would be constitutionally permissible. In *Columbia Broadcasting System v. Federal Communications Commission*, the Court held that the statutory right of access for political candidates set out in section 312(a)(7) did not violate the First Amendment.[82] The Court found that the provision "properly balances the First Amendment rights of federal candidates, the public and broadcasters."[83] In addition, the Court noted that the requirement promoted First Amendment principles by "enhancing the ability of candidates to present, and the public to receive, information necessary for the effective operation of the democratic process."[84] The Court distinguished the provision from previous attempts to provide a general right of access to the public, which it invalidated in an earlier opinion.[85] Moreover, in *Buckley v. Valeo*, the Court stressed the importance of providing candidates the "opportunity to make their views known" and of the electorate to "make informed choices among candidates for office...."[86]

In applying the line of reasoning utilized by the Court, it appears that a requirement that broadcasters provide free air time for political advertisements might well withstand a First Amendment challenge. Similar to the provision at issue in *CBS v. FCC*, such a proposal would provide a limited right of access to enable political candidates to present and the public to receive their views on important public issues. In addition, a free air time proposal would arguable promote free speech principles by facilitating a better informed electorate and the more effective operation of the democratic process. Given the status accorded to "political speech,"

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[80] *Red Lion*, supra. at 390. *See also Columbia Broadcasting System, Inc. v. FCC*, 453 U.S. 367 (1981)(spectrum scarcity used to affirm statutory requirement that broadcast stations grant reasonable access to legally qualified candidates for Federal office.).

[81] *See Turner Broadcasting System v. Federal Communications Commission*, 512 U.S. 622 (1994).

[82] *See* n. 1 *supra.*

[83] 453 U.S. at 397.

[84] *Id.* at 396.

[85] *See Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94 (1973).

[86] *See generally*, 424 U.S. 1 (1976).

a reviewing court could find a strong governmental interest in requiring access to broadcast stations for such purposes.

Note however that, given the fact that cable operators apparently enjoy a greater degree of First Amendment protection than do broadcasters, such requirements, as applied to cable television operators would be subject to more intense judicial review. In *Turner*, the Court responded to the argument that regulations governing cable television should be analyzed under the First Amendment standards applied to broadcasters. The Court noted that "the rationale for applying a less rigorous standard of First Amendment scrutiny to broadcast regulation... does not apply in the context of cable regulation."[87]

Thus, as applied to cable, a free air time requirement would apparently be analyzed under the more exacting standard of review normally applied to content-based regulations, under which the government must show a "compelling governmental interest" and that the particular regulation is "narrowly tailored" to achieve the government's objective.[88]

While it appears that the government's interest in promoting greater citizen awareness of public issues and encouraging greater participation in the electoral process might be sufficiently "compelling" to justify a free air time requirement, the constitutional validity of the regulation would ultimately depend upon whether the particular regulatory scheme is the "least burdensome" means available to achieve the government's objective. Relevant to the issue of "least burdensome" alternatives would be any congressional hearings or other factfinding activities undertaken prior to the enactment of any free air time proposal applicable to cable.

Fifth Amendment "Takings" Questions

In addition to First Amendment issues associated with free air time proposals, such initiatives also raise questions regarding whether conditioning a broadcast license on compliance with the requirement would constitute a "taking" of property without just compensation, in violation of the Fifth Amendment. In making the "takings" argument, broadcasters essentially contend that a requirement to provide free air time for political advertisements would deprive them of air time that could be sold to commercial advertisers and thus diminish the advertising revenues that could be realized from the use of the license.

However, relevant statutory provisions and Supreme Court precedent on the issue indicate that a Fifth Amendment "takings" challenge to a free air time requirement would not be actionable, as broadcasters have no right to the grant of a

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[87] *Turner*, n.10 *supra.*

[88] *See e.g. Boos v. Barry*, 485 U.S. 312 (1987). With regard to whether a particular regulation is sufficiently "tailored," the Court has required that the government choose the "least restrictive means [of regulating the speech]" available to accomplish the government's objective "without unnecessarily interfering with First Amendment freedoms." *See Sable Communications of California v. Federal Communications Commission*, 492 U.S. 115(1989).

license or "property interest" in the use of a frequency. Under section 304 of the Communications Act of 1934, applicants for a broadcast license are expressly required to waive "any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of previous use of the same...."[89] In *Federal Communications Commission v. Sanders Bros. Radio Station*, the Court interpreted this provision as a clear expression of congressional intent that "no person is to have anything in the nature of a property right as a result of the granting of a license."[90] Since broadcasters do not have a "property right" as a result of the license, it appears that no "taking" would occur in connection with a free air time requirement.

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[89] 47 U.S.C § 304.

[90] *See* 309 U.S. 470, 475 (1940); *see also Ashbacker Radio Corp. v. Federal Communications Commission*, 326 U.S. 327, 331-32 (1945).

Appendix A: Congressional Proposals for Free and Reduced-Rate Television Time for Political Candidates[a]

Bill (Sponsor)	Govt. subsidy or voucher	Broadcaster provides time		Linked to spending limits	Types of candidates[b]
		Free	Reduced cost		
86th Congress (1959-60)					
S. 2823 Neuberger					F
H.R. 12116 Porter					F
87th Congress (1961-62)					
S. 1555 Neuberger					F
88th Congress (1963-64)					
H.R. 7282 Monagan					P
90th Congress (1967-68)					
S. 1548 Clark					All
S. 1827 Gore					F
S. 2090 Scott					F,G
91st Congress (1969-70)					
H.R. 13721 Macdonald					H,S
H.R. 13722 Macdonald					H,S
H.R. 13751 Kyros					H,S
H.R. 13752 Lowenstein					H,S
H.R. 13935 Morse					H,S
H.R. 14047 Corman					H,S

Bill (Sponsor)	Govt. subsidy or voucher	Broadcaster provides time		Linked to spending limits	Types of candidates [b]
		Free	Reduced cost		
H.R. 14511 Udall					H,S
H.R. 19904 Anderson					F
S. 2876 Pearson					H,S
92d Congress (1971-72)					
H.R. 263 Murphy					H,S
H.R. 824 Keith					F
H.R. 4086 Bennett					F,G
H.R. 5090 Anderson					F
H.R. 5091 Anderson					F
H.R. 5092 Anderson					F
H.R. 6112 Anderson					F
H.R. 7911 Wright					F
H.R. 14804 O'Neill					P
H.R. 15387 Tiernan					P
93d Congress (1973-74)					
H.R. 94 Bennett				[c]	P
H.R. 161 Davis				[c]	F
H.R. 2745 Tiernan				[c]	P
H.R. 7612 Anderson				[c]	F

Bill (Sponsor)	Govt. subsidy or voucher	Broadcaster provides time		Linked to spending limits	Types of candidates [b]
		Free	Reduced cost		
H.R. 7900 Anderson				[c]	F
H.R. 7901 Anderson				[c]	F
H.R. 7980 Udall				[c]	F
H.R. 7981 Udall				[c]	F
H.R. 8345 Mallary				[c]	F
H.R. 8448 Anderson				[c]	F
H.R. 8608 Udall				[c]	F
H.R. 8623 Anderson				[c]	F
H.R. 8742 Brotzman				[c]	F
H.R. 8841 Helstoski				[c]	F
H.R. 8878 Anderson				[c]	F
H.R. 8959 Robison				[c]	F
H.R. 9014 Udall				[c]	F
H.R. 9028 Anderson				[c]	F
H.R. 9037 Conte				[c]	F
H.R. 9053 Wyatt				[c]	F
H.R. 9113 Addabbo				[c]	F
H.R. 9119 Grover				[c]	F
H.R. 9154 Howard				[c]	F

Bill (Sponsor)	Govt. subsidy or voucher	Broadcaster provides time		Linked to spending limits	Types of candidates [b]
		Free	Reduced cost		
H.R. 9223 Anderson				[c]	F
H.R. 9278 Anderson				[c]	F
H.R. 9279 Ashley				[c]	F
H.R. 9280 Brasco				[c]	F
H.R. 9294 Udall				[c]	F
H.R. 9296 Whalen				[c]	F
H.R. 9358 Stubblefield				[c]	F
H.R. 9399 Bingham				[c]	F
H.R. 9610 Harsha				[c]	F
H.R. 9743 Moorhead				[c]	F
H.R. 9773 Udall				[c]	F
H.R. 9814 Yatron				[c]	F
H.R. 9862 Anderson				[c]	F
H.R. 9995 Anderson				[c]	F
H.R. 10063 Udall				[c]	F
H.R. 10146 Anderson				[c]	F
H.R. 10165 Johnson				[c]	F
H.R. 10197 Anderson				[c]	F
H.R. 10197 Anderson				[c]	F

Bill (Sponsor)	Govt. subsidy or voucher	Broadcaster provides time		Linked to spending limits	Types of candidates [b]
		Free	Reduced cost		
H.R. 10305 Patten				[c]	F
H.R. 10342 Udall				[c]	F
H.R. 10463 Young				[c]	F
H.R. 10529 Murphy				[c]	F
H.R. 10536 Anderson				[c]	F
H.R. 10843 Udall				[c]	F
H.R. 11383 Railsback					F
H.R. 11451 Anderson				[c]	F
H.R. 12008 Anderson				[c]	F
H.R. 12042 Reid				[c]	F
H.R. 12157 Dellums				[c]	P
H.R. 13055 St. Germain				[c]	F
H.R. 13600 Ullman					F
H.R. 14606 Vander Veen				[c]	F
94th Congress (1975-76)					
H.R. 1054 Stratton					F
H.R. 1239 Bennett					P
H.R. 13824 O'Neill					P

Bill (Sponsor)	Govt. subsidy or voucher	Broadcaster provides time		Linked to spending limits	Types of candidates [b]
		Free	Reduced cost		
95th Congress (1977-78)					
H.R. 1342 Stratton					F
H.R. 7863 Jacobs					H
96th Congress (1979-80)					
H.R. 3834 Jacobs					H
97th Congress (1981-82)					
H.R. 1451 Stratton					F
H.R. 6047 Jacobs					H
98th Congress (1983-84)					
H.R. 1893 Jacobs					H
99th Congress (1985-86)					
H.R. 122 Jacobs					H
H.R. 761 Stratton					F
S. 2837 Pell					F[d]
100th Congress (1987-88)					
H.R. 480 Jacobs					H
H.R. 521 Stratton					F
H.R. 1817 Stratton					H,S[d]
H.R. 2464 Swift					H

Bill (Sponsor)	Govt. subsidy or voucher	Broadcaster provides time		Linked to spending limits	Types of candidates [b]
		Free	Reduced cost		
S. 593 Pell					H[d]
S. 2923 Gore					P
101st Congress (1989-90)					
H.R. 13 Swift					H
H.R. 197 Jacobs					H
H.R. 2189 Pease					H
H.R. 3947 Regula					H
H.R. 4282 Dyson					H
H.R. 5400[e] Swift					H
S. 137[f] Boren					S
S. 751 Pell					H,S[d]
S. 1575 DeConcini					S
S. 2120 DeConcini					S
S. 2425 Kerry					S
S. 2964 Roth					F
102d Congress (1991-92)					
H.R. 372 Mazzoli					H
H.R. 389 Pease					H
H.R. 878 Jacobs					H

Bill (Sponsor)	Govt. subsidy or voucher	Broadcaster provides time		Linked to spending limits	Types of candidates [b]
		Free	Reduced cost		
H.R. 1177 Synar					H
H.R. 1349 Owens					H
H.R. 2476 Beilenson					H
S. 3[g] Boren					S
S. 6[h] Dole					S
S. 7 Dole					S
S. 53 DeConcini					S
S. 128 Kerry					S
S. 1062 Roth					F
S. 2076 Pell					S[d]
103d Congress (1993-94)					
H.R. 3[i] Gejdenson					H
H.R. 3[j] Gejdenson					H
H.R. 209 Jacobs					H
H.R. 352 Slattery					H,S
H.R. 449 Bliley					Parties[k]
H.R. 1235 Regula					H
H.R. 1396 Beilenson					H
S. 3[i] Boren					S

Bill (Sponsor)	Govt. subsidy or voucher	Broadcaster provides time		Linked to spending limits	Types of candidates [b]
		Free	Reduced cost		
S. 3[j] Boren					S
S. 54 Pell					S[d]
S. 62 DeConcini					S
S. 87 Kerry					S
S. 893 Roth					S
S. 951 Wellstone					S
104th Congress (1995-96)					
H.R. 274 Jacobs					H
H.R. 2271 Slaughter					F,St
H.R. 2566 Smith, WA					H
H.R. 2573 Regula					H
H.R. 2830 English					H
H.R. 2944 Maloney					H
H.R. 3053 Markey					H
H.R. 3505 Farr					H
S. 10 Daschle					S
S. 46 Feingold					S
S. 116 Wellstone					S
S. 1219 McCain					S

Bill (Sponsor)	Govt. subsidy or voucher	Broadcaster provides time		Linked to spending limits	Types of candidates [b]
		Free	Reduced cost		
S. 1389 Feinstein					S
S. 1528 Bradley				[1]	S
105th Congress (1997-98)					
H.R. 84 Slaughter					F,St
H.R. 179 Goodling					H
H.R. 493 Shays					H
H.R. 600 Farr					H
H.R. 1777 Meehan					H
H.R. 2051 Ford					All
S. 11 Daschle					S
S. 25 McCain					S
S. 57 Feingold					S
S. 918 Kerry					S

[a] This table does not include proposals to require broadcasters to provide free TV time solely to allow candidates to respond to opposing independent expenditures (some of the bills in this table, however, contain this feature among their provisions). These 22 proposals are: *97th Congress:* H.R. 7277 (Obey); *98th Congress:* H.R. 2490 (Obey); H.R. 2959 (Hamilton); H.R. 4428 (Obey); S. 1346 (Bentsen); *99th Congress:* H.R. 2844 (St. Germain); H.R. 3045 (Lantos); H.R. 3440 (Neal); H.R. 3799 (Synar); H.R. 4464 (Howard); H.R. 4514 (Weaver); S. 471 (Dodd); S. 1310 (Danforth); S. 1806 (Boren)—which passed the Senate in 1985; *100th Congress:* H.R. 166 (Howard); H.R. 4579 (Obey); *101st Congress:* S. 999 (Hollings); *102d Congress:* S. 522 (Hollings); *103d Congress:* H.R. 2469 (Synar); H.R. 3566 (Meehan); S. 334 (Hollings); and *104th Congress:* S. 1528 (Bradley); S. 1723 (Bingaman).

[b] Key to Types of Candidates: F = all Federal; P = President; S = Senate; H = House; G = Governor; St = State level.

[c] These proposals in the 93rd Congress did not contain spending limits but were predicated on the media limits already in place under the 1971 FECA (repealed by the 1974 Amendments).

[d] Distributed by the national parties.

[e] As passed by House (required one free spot for every two purchased).

[f] As passed by Senate (provided communication vouchers and lower rates).

[g] As introduced, passed by Senate, and included in conference version; vetoed by President Bush.

[h] Conditioned on adherence to *fundraising* targets and limits on PAC donations, out-of-state funds, and candidates' personal expenditures.

[i] As introduced.

[j] As passed (by House or Senate, respectively).

[k] Free time to be given to national and state political parties.

[l] Based on the prior passage of a constitutional amendment to allow mandatory spending limits.

Appendix B: Selected Hearings on Political Broadcasting

86th Congress

U.S. Congress. Senate. Committee on Interstate and Foreign Commerce. Political broadcasting. Hearings, 86th Congress, 1st Session on S. 1585, S. 1604, S. 1858, and S. 1929. June 18, 19, 23-25, 1959. Washington, G.P.O., 1959. 324 p.
HE8693.U6 A5 1959

———-. Presidential Campaign Broadcasting Act. Hearings, on S. 3171. 86th Congress, 2nd session. May 16, 17, and 19, 1960. Washington, G.P.O., 1960. 324 p.
JK524 .A5 1960

87th Congress

U.S. Congress. Senate. Committee on Commerce. Political broadcasting. Hearings, 87th Congress, 2nd session on S. 204, S. 2035, S. 3434, S.J.Res. 193, S.J.Res. 196, and S.J.Res. 209. July 10-12, 1962. Washington, G.P.O., 1962. 236 p.
HE8697.P6 U527

90th Congress

U.S. Congress. Senate. Committee on Commerce. Subcommittee on Communications. Projections: predictions of election results and political broadcasting (sec. 315, Communications Act). Hearings, 90th Congress, 1st session on S.1548, 1859, 1926, 2090, and 2128. July 18-20, 1967. Washington, G.P.O., 1967. 369 p.
"Serial 90-22."
KF26 .C634 1967a

91st Congress

U.S. Congress. House. Committee on Interstate and Foreign Commerce. Subcommittee on Communications and Power. Political broadcasting—1970. Hearings, 91st Congress, 2nd session on H.R. 13721-13722, 13751-13752, 13935, 14047, 14511, and S. 3637. June 2-4, 1970. Washington, G.P.O., 1970. 127 p.
"Serial no. 91-57."
KF27.I5538 1970a

U.S. Congress. Senate. Committee on Commerce. Subcommittee on Communications. The Campaign Broadcast Reform Act of 1969. Hearings, 91st Congress, 1st session on S. 2876. October 21-23, 1969. Washington, G.P.O., 1969. 192 p.
"Serial no. 91-29."
KF26.C634 1969b

92nd Congress

U.S. Congress. House. Committee on Interstate and Foreign Commerce. Subcommittee on Communications and Power. Political broadcasting—1971. Hearings, 92nd Congress, 1st session on H.R. 8627, H.R. 8628 (and related bills). June 8-16, 1971. Washington, G.P.O, 1971. 299 p.
"Serial no. 92-18."

KF27.I5538 1971f

93rd Congress

U.S. Congress. Senate. Committee on Commerce. Subcommittee on Communications. Federal Election Campaign Act of 1973. Hearings, 93d Congress, 1st session, on S. 372 March 7-13, 1973. Washington, G.P.O., 1973. 2 v. (470, 257 p.)
"Serial no. 93-4."
Accompanied by "Appendix A" (257 p.)

KF26 .C634 1973a

94th Congress

U.S. Congress. Senate. Committee on Commerce. Subcommittee on Communications. FCC broadcast reregulation. Hearings, 94th Congress, 1st session. Sept. 17-Nov. 11, 1975. Washington, G.P.O., 1975. 285 p.
"Serial no. 94-60."

KF26 .C634 1975c

98th Congress

U.S. Congress. House. Committee on House Administration. Task Force on Elections. Broadcast media in elections. Hearing held jointly before the Task Force on Elections of the Committee on House Administration and the Subcommittee on Telecommunications, Consumer Protection, and Finance of the Committee on Energy and Commerce, House of Representatives, 98th Congress, 1st session. July 21, 1983, Washington, G.P.O., 1984. 102 p.
"Serial no. 98-72 (Energy and Commerce)"

KF27 .H646 1983a

99th Congress

U.S. Congress. Senate. Committee on Commerce, Science, and Transportation. Clean Campaign Act of 1985. Hearings, 99th Congress, 1st session, on S. 1310. Sept. 10- Oct. 8, 1985. Washington, G.P.O., 1986. 126 p. (Hearing, Senate, 101st Congress, 1st session, S. hrg. 99-491)

KF26 .C69 1985k

101st Congress

U.S. Congress. Senate. Committee on Commerce, Science, and Transportation. Subcommittee on Communications. Campaign Advertising Act. Hearing, 101ST Congress, 1st session on S.743. Aug. 2, 1989. Washington, G.P.O., 1989. 117 p. (Hearing, Senate, 101st Congress, 1st session, S. hrg. 101-227)

KF26 .C6925 1989i

——-. Clean Campaign Act of 1989. Hearing, 101st Congress, 1st session, on S. 999. July 19, 1989. Washington, G.P.O., 1989. 101 p. (Hearing, Senate, 101st Congress, 1st session, S. hrg. 101-310)

KF26 .C6925 1989b

102nd Congress

U.S. Congress. House. Committee on Energy and Commerce. Subcommittee on Telecommunications and Finance. Campaign advertising. 102nd Congress, 1st session, June 13, 1991. Washington, G.P.O., 1992. 138 p.
"Serial no. 102-58."

KF27 .E555 1991g

103rd Congress

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