

ALERT

FCC Media Bureau Says Joint Fundraising Committees and Coordinated Ads Entitled to Lowest Unit Charge

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The Federal Communications Commission’s (FCC or Commission) Media Bureau (Bureau) is weighing in on the question of what political ads are entitled to lowest unit charge (LUC). In a March 30, 2025, Public Notice, the Bureau “remind[ed]” broadcasters that the LUC requirements apply to “(1) authorized committees, including authorized committees that engage in joint fundraising with legally qualified candidates for federal office, and (2) advertisements that qualify as coordinated expenditures of political parties and legally qualified candidates for federal office.”

The Public Notice purports to resolve an issue that has divided broadcasters and political advertisers in recent cycles: which campaign committees are entitled to LUC? This is the first time the FCC has provided formal guidance on this question.

Background

Under LUC requirements, broadcasters must provide candidates with the lowest advertising prices the station charges in the 45 days before a primary election and the 60 days before a general or special election.

This obligation arises under Section 315(b)(1) of the Communications Act, which states:

“The charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election, to such office shall not exceed . . . during the forty-five days

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preceding the date of a primary or primary runoff election and during the sixty days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period.”

The FCC rule implementing this statute, 47 C.F.R. § 73.1942, uses essentially the same language.

Entitlement to lowest unit charge, therefore, turns on whether the buyer qualifies as a “person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election, to such office.”

In a 1972 Public Notice, the FCC stated concisely that: “The provision applies only to broadcasts by candidates for public office.” However, in a 1992 Memorandum Opinion and Order codifying its prior political programming policies, the FCC included “authorized campaign committees” in its description of who is entitled to LUC. The Commission did not provide any explanation for this change and, in fact, cited back to the 1972 Public Notice.

Congress further muddied the waters in the Bipartisan Campaign Reform Act of 2002 (BCRA), when it amended Section 315(b) of the Communications Act. The amendment added a new Section 315(b)(2), which revokes a federal candidate’s entitlement to LUC if “the candidate” fails to provide written certification to the station that “the candidate (and any authorized committee of the candidate)” will not make any direct reference to another candidate for the same office unless the ad includes a “Stand By Your Ad” disclaimer (e.g., “I am John Smith, Candidate for President, and I approve this message”). BCRA did not include its own definition of an “authorized committee,” but instead incorporated the definition used in the Federal Election Campaign Act (FECA).

While these statutory provisions created some ambiguity about whether and which authorized campaign committees are entitled to LUC, the Federal Election Commission (FEC) (through the Solicitor General) appeared to take a narrow view in an October brief in the pending Supreme Court case *National Republican Senatorial Committee v. Federal Election Commission*. Responding to a claim that expanding permissible coordination between parties and candidates would upend the LUC rules, the Solicitor General, citing Section 315 of the Communications Act, wrote that the LUC rules “require broadcasters to charge low rates for candidate spending, but not for party spending—whether coordinated or independent.” Although some observers viewed this as the Administration’s official position, it reflected the opinion of the FEC (and possibly the U.S. Department of Justice), not the FCC, which has jurisdiction over Section 315, and the scope of the LUC’s application was not squarely before the Court.

The Media Bureau’s Interpretation

The Bureau’s Public Notice does not mention the FEC brief and only briefly addresses whether the right to LUC is limited to a candidate or also extends to their authorized campaign committee(s).

The Bureau acknowledges that Section 73.1942 of the FCC's Rules does not include any reference to a legally qualified candidate's "authorized committee." Nevertheless, the Public Notice interprets the language Congress added to Section 315(b) through BCRA, which "repeatedly refers to candidates and their authorized committees" in the context of the BCRA certification and disclosure requirements, as clarifying that candidates and their authorized committees "shar[e] the [LUC] rights it confers." The Public Notice also describes the FCC's reference to "authorized campaign committees" contained in the agency's 1992 Memorandum Opinion and Order codifying certain political programming policies as the Commission's "long held" position.

The focus of the Public Notice is on what constitutes an authorized campaign committee. The Bureau explains that FECA defines an authorized campaign committee as the principal campaign committee or any other political committee authorized and designated by a candidate to receive contributions or make expenditures on behalf of such candidate. While noting that FECA "generally prohibits the designation as an authorized committee a political committee that supports more than one candidate," the Bureau highlights FECA's exception to the general prohibition which "allow[s] candidates to designate as an authorized committee a political committee 'established solely for the purpose of joint fundraising.'" The Public Notice goes on to state that the FCC does not distinguish between types of committees for LUC purposes (e.g., campaign committees or joint fundraising committees).

In addition to clarifying the scope of authorized campaign committees, the Bureau also "restate[d] previous Media Bureau guidance" that while independent expenditures are not entitled to LUC, candidate-party coordinated advertisements are (assuming they comply with all other requirements for LUC). This is the first time the FCC has provided formal guidance regarding candidate-party coordinated advertisements.

Practical Effect on LUC

The Public Notice puts a stake in the ground with the Media Bureau's interpretation of what committees are entitled to LUC. Candidates and the committees supporting them likely will rely heavily on this guidance in seeking entitlement to LUC.

At the same time, the Bureau's position on the application of the LUC to candidate-party coordinated ads in the Public Notice appears to be in tension with, if not directly contradictory to, the position that the FEC recently expressed in its Supreme Court brief.

Broadcast stations that favor a narrower view of who is entitled to LUC will need to evaluate their positions in light of this guidance – particularly given that the Bureau typically resolves political broadcast complaints in the first instance.

Wiley's Media Practice is monitoring how the Public Notice may impact broadcast stations and has extensive experience counseling broadcasters on FCC compliance and advocating for their interests before the Commission. If you have any questions, please contact one of the attorneys listed on this alert or the Wiley attorney who routinely handles your FCC matters.