

Dear Friends:

Summer finds Szabo Associates continuing to celebrate 25 years in business! More than 600 friends attended our Silver Anniversary Party on May 20th at the BCFM convention in Orlando. Then on June 8th, the annual Szabo company barbecue picnic was held at Lake Lanier, Georgia. One of the highlights was getting those two 130-lb. pigs on the grill at 2 A.M.! Of course, the chickens, fixin's, beverages, and fun came later.

With another election upon us this year, I've been thinking about Szabo's many years of active involvement in issues that affect media collections and credit. Among our primary activities are keeping abreast of the ever-changing political climate, events, policies, and government regulations that can have a significant impact on the ways we conduct business and taking a proactive role in their outcome. This issue's feature article discusses one such event as well as some we might expect in the next few years.

On our calendar of upcoming events are the Yellow Page Publishers Association convention, at which I've been invited to speak, on September 27th through October 2nd in Marco Island, Florida.

Best wishes for a great summer,



Pete Szabo, President
Szabo Associates, Inc.

Should Broadcasters Extend Credit to Political Candidates?

Governmental Regulations Cause Confusion and Concern

Here's a scary scenario: An election committee for a congressional candidate purchases, on credit, time on your station for campaign spots. The campaign ends and the election committee dissolves, still owing \$30,000 to your station for spots aired. Since the committee no longer exists, the candidate did not personally guarantee payment, and attempts to collect the debt have been fruitless, your station decides to write off the loss. Bad enough, right? But wait . . . things get worse. The unpaid debt is deemed an illegal political contribution, and your station faces prosecution for breaking the law.

Sound a bit far-fetched? Well, let us assure you that it seemed within the realm of possibility in view of a 1992 statement issued by the Federal Communication Commission, which was subsequently modified. The following is an account of what did happen, what could have happened as a result, and what still could happen as governmental regulations of broadcast media continue to evolve.

A 1992 FCC staff ruling was issued in response to an inquiry from a firm whose clients included political candidates. The firm expressed concern that a growing tendency existed among stations to "unreasonably extend the period prior to actual airing of advertising when pre-payment was required" and asked the

Commission to ensure that an "unreasonable and unnecessary burden" was not placed on the firm's clients.

In its response, the FCC declared that where a candidate or its agent has an "established credit history," "requiring any advance payment is inappropriate if the station would not so treat commercial advertisers or their representatives under the station's customary payment/credit policies."

This far-reaching statement seemed to represent a significant departure from long-standing FCC policy of allowing—and industry practice of requesting—payment in advance for political advertisers and subsequently created a wave of protest among members of the broadcast industry. Among the voices of dissent were Szabo Associates, Inc., who, in a letter to the secretary of the FCC, pointed out numerous reasons why credit extension to political candidates was ill-advised, and Michael Bader of the law offices of Haley, Bader & Potts, which filed an Application for Review of the decision on behalf of several broadcast groups.

We maintained that if credit extension were mandatory, as the FCC statement suggested, a number of serious problems for broadcasters as well as the potential for abuse would

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Credit to Political Candidates?

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result. Specifically, we argued the following:

1. Stations would have to apply the same credit test to political advertisers that they apply to commercial accounts. This is not an easy task, since some candidates may be personally wealthy but have no legal obligation to fund their own campaigns. Fly-by-night campaign structures would demand credit, as would recently unemployed candidates. A general credit history is of little value since candidates, their financial support, and their campaign committees have a lifespan of the election season. An accurate financial statement issued one week might be inaccurate the next. Additionally, every new election committee represents a different legal entity from those in a prior campaign.

2. Long-standing FCC policies would be repudiated and broadcasters would be trapped between FCC and FEC (Federal Election Commission) laws. Among the practical implications of forcing broadcasters to evaluate candidates' creditworthiness is that it invites the very discrimination that it seeks to prohibit. The practice particularly favors incumbents, who are more likely to have an advertising history with the station as well as larger campaign coffers than challengers. Although cash-in-advance advertising creates an unfair advantage for the candidate with the "big bucks," credit extension for political advertising widens the gap even further between wealthy and not-so-wealthy candidates. Incumbents could also intimidate stations in their districts with threats of legislative reprisal into extend-

ing credit to them, denying credit to opposing candidates, or "making a deal." In any case, extending credit to any candidate who is employed or may become employed by a government, which has within its realm of authorities the control over station activities as well as undue influence over licensing decisions, clearly infringes on ethical standards.

If one candidate is extended credit and his or her opponent is not, the candidate buying time on credit receives a discount or "float" on funds, essentially creating rate discrimination specifically forbidden by the ruling and contrary to long established Commission precedent.

Additionally, if a broadcaster wishes to contribute indirectly and illegally to a political campaign and to circumvent federal election laws, the broadcaster might extend credit to the candidate, then intentionally "fail" to collect the debt. Conversely, scrupulous broadcasters might find themselves unwittingly breaking laws regarding political contributions and "equal opportunities" rules by failing in their sincere efforts to collect the debt and subsequently forgiving, settling, or writing off the debt.

3. Stations could be forced to limit the sale of time to state and local candidates, paying federal candidates, and non-political advertisers. Federal candidates receiving credit might purchase large schedules without the ability to pay, displacing other political and non-political advertisers. This situation could create disputes regarding FCC rules on "equal opportunities."

4. Discrimination between types of media would be exacerbated. History shows that campaign committees frequently have not paid all their bills. The problem is even greater today as the cost of campaigning continues to escalate. (In 1990, the average cost of a U.S. Senate campaign

was \$4 million.) Candidates might pay non-regulated media up front and buy from broadcast media on credit, knowing full well that they can delay (or will never pay) the broadcast bill.

The FCC's Response to Szabo's Concerns. In August 1992, in a Memorandum Opinion and Order ("MO&O"), the Commission expanded and clarified its statement in response to protests from the broadcast industry and its proponents. The MO&O said that a broadcaster was required to extend credit to a political advertiser "only if the station would extend credit to a similarly situated commercial advertiser under the station's customary payment/credit policies." If a station's policy was to require advance payment from a commercial entity that has been established only for a temporary time or purpose, has an uncertain credit history with the station, or has an unstable financial condition, then the station can require advance payment from a political advertiser that falls within one or more of these categories. Additionally, a station can be required to extend credit to an advertising agency on behalf of a candidate only if the agency has accepted legal responsibility for payment of that account and the agency qualifies for credit under the station's credit policies. The Commission addressed the issue of discrimination resulting from extension of credit to one candidate over another by stating that "so long as a station's policies are not designed as subterfuge to favor particular candidates and are applied even-handedly to all, impermissible discrimination does not occur."

What's a Broadcaster to Do? Understand that, at least for the time being, your station can continue to require payment in advance from political candidates, assuming that your policy requires advance payment for

similarly-situated commercial customers. We recommend you do so for all the abovementioned reasons. You may not, however, require payment from federal candidates more than seven days prior to airdate.

If you do consider extending credit, review commercial customers to be sure that all are given the same scrutiny candidates will receive when they demand credit. If you are dealing with an advertising agency, it should establish its credit and responsibility to pay.

NAB Legal suggests using a three-part test to decide whether credit might be given to a candidate's ad agency.

- 1) The agency must be credit-worthy.
- 2) The agency must assume liability for payment.
- 3) Your station would give credit to that agency if it assumed liability for payment for a similar advertiser, such as a store about to go out of business. With candidates or their committees, the test is essentially the same. If the candidate is established in the community, is

creditworthy, and assumes personal liability for direct payment or for payment of the committee's bills, he or she (or the committee) should receive credit if the station would give credit to a commercial advertiser in those circumstances.

Keep abreast of the rules regarding political advertising and, if there is a question, seek help. The FCC, broadcasters' associations, fellow broadcasters, and legal counsel are all available to offer assistance. Seeking help when needed not only will help you avoid pitfalls but also may become a vital part of your defense should a complaint occur later.

What's Next? This event and its outcome illustrate why all of us in the broadcast industry must remain actively involved in issues that could affect the ways we do business. It is our duty to do everything we can to ensure that the rules by which we must operate serve the interest of fairness both to the broadcast industry and to customers (political and commercial). Of concern here are not only the implications of credit

extension to political candidates but also the implications of other government-mandated rules that might be issued "down the road."

For Michael Bader, whose law practice deals exclusively with the broadcast communications industry, governmental regulation of broadcast media will continue to be a "thorn in the side" of broadcasters. "I don't see mandatory credit extension for political candidates in the near future," he says. "I am deeply concerned, however, about the attack that both congressional parties are continuing to wage on the broadcast industry with regard to political advertising. The broadcast media are being singled out for demands for free time, all in the name of 'campaign reform,' and I foresee these demands increasing over the next four years."

And why have broadcast media been targeted exclusively? Says Bader, "Congress has passed laws which state that because broadcast media are only licensed to use frequencies that are federally owned, because these frequencies are scarce, and because First Amendment (freedom of press) rights do not extend to broadcast media, then they must submit to regulation. I feel, however, that the real reason why broadcast media are exclusively targeted is that no one is willing to stand up to the government and fight for their rights."

We can all only hope that, with diligent attention by proponents of the broadcast industry to the issues that affect us, reason and fairness will prevail. ♦

Szabo Associates, Inc. would like to thank Michael Bader, partner with the law offices of Haley, Bader & Potts in Washington, D.C., for his valuable comments regarding "What's Next," and Amy Brown of Haley, Bader & Potts for her assistance with this article.



"THE CAMPAIGN MANAGER FOR SENATOR HASBUCKS IS HERE BOSS... GOT IT... IX-NAY ON THE EDIT-CRAY FOR THE OOK-CRAY 'TIL HE PAYS HIS OLD ILL-BAY."

Why We Work the Way We Do Our Reporting System

We know how much you hate to sit waiting in the dark while someone attempts to collect your past-due accounts. So we've worked out a reporting system that helps you follow our latest collection activities just as closely as you want.

Our standard monthly reports tell you the current status of each account we're collecting for you—beginning and month-end balances, payments, credit meetings and other activities. It lists accounts that are continuing, new, or in litigation.

If you want an up-to-the-minute report on any account any time during the month, just ask. Our representative can quickly check

our computer system to find the latest information, including any calls made and the results.

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For example, you can get a year-to-date consolidated performance report for one or all of your properties. It includes the number of claims, average days past due when placed, total dollar placements, along with dollars and percentages that have been adjusted, collected, written off, and outstanding.

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The size of our system allows us to offer you a unique benefit. We keep all of your historical data constantly on-line and available for instant reference. We don't purge a thing. So anytime you want to know something about anything we've done for you, it's here, and it's yours. That can shed a lot of useful light on your credit records. ♦



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