

## Dear Friends:

As campaign coverage and advertising ramp up in anticipation of the U.S. November elections, our attention turns to media's role and responsibility in this democratic process. This issue's feature focuses on the heated debate that has been raging among media, government agencies, and Congress about what media's public service responsibility in covering campaigns should be and how media should deal with political advertising. Recent legislation and rulings in this regard have major implications for media, and it has become apparent that we can expect continued debate and additional rulings in the future. What is also apparent is how important it is that we, as an industry, in order to protect media interests, stay abreast of new developments and remain involved in the process.

An important event on our August calendar is the Szabo Quality Awards Banquet. The following month, we will attend the Interactive Advertising World Conference and Expo, September 20-21, in New York City.

Best wishes for a wonderful summer,



Pete Szabo, President  
Szabo Associates, Inc.

## Political Coverage and Advertising— Media Face New Challenges

As the Dylan lyrics say, “the times, they are a-changing,” and so it is with media and their dealings with political candidates. In the past few years, media have been issued numerous new challenges with regard to both election issue coverage and political advertising. These challenges can best be understood in the context of what we perceive the role and responsibility of media to be.

### Media and Public Opinion

No one would dispute the power of media, in a world saturated with mass communication, to influence public opinion. It is generally acknowledged that media play a critical role in the proper functioning of a democracy by providing information to the electorate—printing or airing news and views relevant to the election and printing or airing political advertisements. Media's responsibility in this regard addresses the right of voters to make fully informed choices and the right of candidates to communicate their policies.

### How Much Regulation?

Even among democracies, divergent views exist about how much media should be formally regulated with regard to election issue coverage and political advertising. In the U.S., we tra-

ditionally embrace minimal regulation. In Europe, on the other hand, enforceable rules are the tradition. The Administration and Cost of Elections Project (ACE), an information resource compiled by the International Foundation for Election Systems, the International Institute for Democracy and Electoral Assistance, and the United Nations Department of Economic and Social Affairs, offers a possible reason for the difference: Europe has a history of state involvement in domestic broadcasting, which carries with it the idea that media should be used to present the views of different candidates without favoritism to the ruling party. The U.S. view, by contrast, is that the economic marketplace engenders a “marketplace of ideas.” In other words, the existence of so many privately owned media virtually ensures that all political views find a media vehicle.

In the U.S., recent legislation and rulings have had implications for media particularly in the area of sponsorship identification and advertising charges to candidates. Additionally, there have been more “informal” challenges leveled at media regarding political election issue coverage.

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### **Sponsorship Identification— Who's on First?**

In 2002, Congress passed sweeping campaign finance reform legislation, the Bipartisan Campaign Reform Act (BCRA), commonly referred to as “McCain/Feingold.” The BCRA was enacted to address “soft money” abuses and improve campaign spending disclosure. The constitutionality of the new law has not gone unchallenged; however, the U.S. Supreme Court has upheld most of its provisions.

Passage of the BCRA, along with other FCC and court decisions in the past two years, prompted the Campaign Legal Center to publish a new version of “The Campaign Media Guide,” introduced in May. The publication is a comprehensive primer on legal requirements surrounding political broadcasting (although there are some references to print media as well), which can be viewed in its entirety on the organization’s web site. It is a valuable and recommended resource for candidates, media, and citizens who want to be informed about general rights and remedies.

The Federal Election Commission (FEC) and the Federal Communications Commission (FCC) are charged with ensuring that media and candidates comply with their obligations regarding election-related advertising under BCRA, including sponsorship identification requirements for general public political advertising. Each of these agencies has its own requirements.

The FEC requires that pub-

lic communications, regardless of the medium used, carry a “clear and conspicuous” disclaimer identifying who paid for it—either the authorized campaign committee or other persons or groups authorized by the candidate as well as the candidate who authorized it. For print media, this means that the disclaimer must be in a type size that is easily readable with a reasonable degree of contrast from the background, in a printed box set apart from the rest of the piece. Radio spots must include an audio statement by the candidate. Television, cable, or satellite ads also must include a statement delivered by the candidate—either with a full-screen view of the candidate making the statement, or with a voice-over accompanied by a photo or similar image of the candidate which occupies at least 80 percent of the vertical screen height. A statement must also appear in writing at the end of the advertisement for a minimum of four seconds, in letters at least four percent of vertical picture height and with a reasonable degree of contrast from the background. Additional rules apply to advertising not paid for or authorized by a candidate.

The FCC imposes additional rules on broadcast and cable systems when they accept payment, promise of payment, or other consideration for airing of material. The true identity of the sponsor must be disclosed at the time of airing. If an ad is bought on behalf of a candidate or group, the identity of the entity on whose behalf the ad was purchased also must be disclosed. The agency also requires additional identification and public file disclosure for certain broadcasts that involve controversial issues of public importance or political matters.

A station can be asked to investigate if a candidate questions the sponsorship of the ad and presents credible evidence of a discrepancy in sponsorship identification.

**Broadcasters Bear the Brunt**  
Broadcast media face greater challenges with regard to campaign coverage and advertising than do other media. This situation is certainly not a new one. In our June 1996 feature article in *Collective Wisdom* (“Should Broadcasters Extend Credit to Political Candidates?”), we reported that government regulations were causing confusion and concern among broadcast media. At that time, the FCC had just 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 policies.”

Discussions that range from whether political advertising should be free or paid to whether media are doing a fair and responsible job of covering campaigns and elections all tend to focus on broadcast. The reason this is so is that broadcasters, if not publicly owned, at the least receive their shares of the frequency spectrum from a public body.

According to ACE, the question of whether political advertising should be paid or free has been controversial with regard to broadcast but not to print because broadcasters use public airwaves and because the cost of broadcast advertising is usually much higher than print.

Those who favor paid political advertising argue that the First Amendment, which prohibits Congress from passing laws “abridging” free speech, protects paid advertising. The argument, simply stated, is that the right of free speech includes the right to spend your money to spread your message. Many who embrace this point of view believe also that the First Amendment prohibits regulation of campaign contributions and spending. Those in the opposing camp argue that all parties or candidates should have equal or fair access to direct broadcasting regardless of the size of their campaign coffers.

In general, according to ACE, countries with a long tradition of public ownership of broadcasting (such as France and Britain) tend to disapprove of paid political advertising, while those with a stronger commercial broadcasting tradition (such as the

U.S.) hold an opposing view. Finland, the European country where commercial broadcasting is most dominant, permits unrestricted political advertising. Exceptions to this tendency exist, however. For example, Canada, which has a public broadcasting tradition similar to Britain, has an approach to political advertising that is similar to ours. Many countries have a mix of paid and unpaid advertising, allocating parties a basic share of free time plus the opportunity to pay for additional time if they wish.

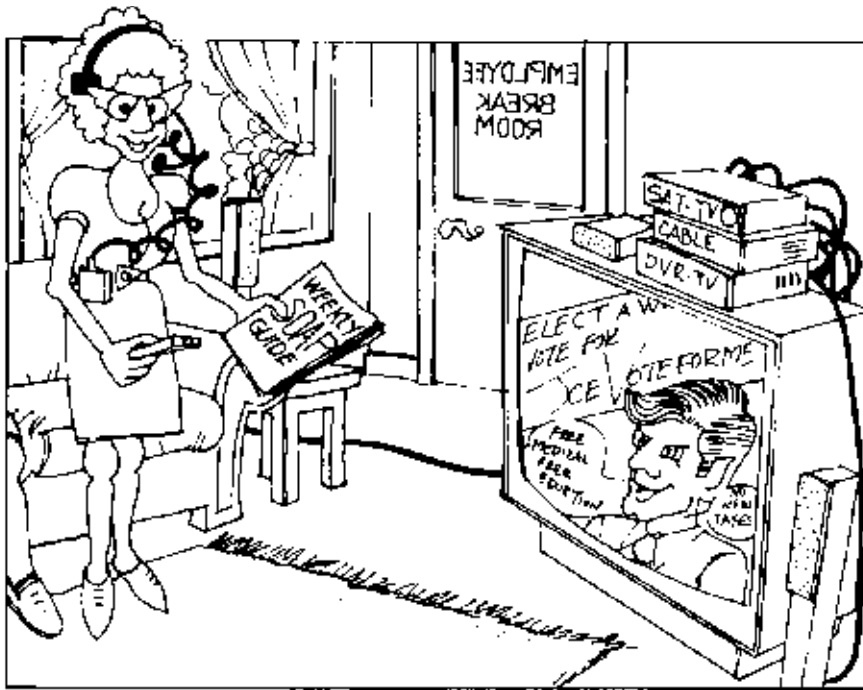
Current U.S. laws and regulations entitle candidates to the lowest unit charge for the same class, time, and period offered to a station or system’s most-favored advertisers 45 days before a primary election and 60 days before a general election. This “reasonable access” regulation for federal candidates applies to commercial radio and television broadcast stations and DBS providers (not cable sys-

tems). The provisions are designed to enable candidates to buy advertising time at a discounted rate during peak campaign periods. During these times, candidates must receive the volume discount rate without having to buy in volume. Outside these times, broadcasters do not have to offer volume discounts, but candidates and legally authorized candidate committees may not be charged higher rates than commercial advertisers would have to pay.

In 1999, the FCC ruled that candidates could not be barred from purchasing advertising time in lengths most useful to them solely because broadcasters sell commercial time in 60- and 30-second increments. The Commission’s position, in making the ruling, was that allowing broadcasters to categorically decide in advance not to sell a non-standard time would absolve the broadcaster of even considering the possibility that it could do so. To comply with “reasonable access,” broadcasters cannot automatically refuse to sell a candidate a particular length of time, even if the length is not programmed or offered to other commercial advertisers.

### Campaign and Election Coverage—What’s Enough?

At a press conference in mid-June, Senate Commerce Committee Chairman John McCain and FCC Chairman Michael Powell stated that television and radio stations, while taking in profits from political advertising revenue, did not thoroughly cover candidates or issues. They challenged broadcasters to air comprehensive political coverage five minutes



"IS THIS THE CAMPAIGN OFFICE OF JOE VOTEFORME? WELL I THOUGHT YOU MIGHT WANT TO KNOW THAT YOUR GUY CAME ON TV JUST WHEN LANCE WAS GOING TO ASK GINA TO MARRY HIM, SO HE'S JUST LOST THE VOTE OF THE ENTIRE 'ALL THE LOVES OF OUR LIVES' FAN CLUB!"

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per day in the month leading up to election day. While McCain conceded that from a legal standpoint the government could ask for voluntary action only, Powell noted that the extent to which broadcasters fulfill their public interest obligations is considered when stations face license renewal. McCain also threatened to introduce legislation next year that would require free air time for candidates.

At the same press conference, an NAB spokesperson stated that broadcasters provide an “enormous amount of air time for politicians” and that a constant challenge for broadcasters is getting incumbent politicians to accept offers for free air time. He also said

that many politicians turn down free air time “on the advice of high-priced political consultants” who often advise incumbents to reject opportunities to debate lesser-known challengers.

The idea (or threat) of providing free time for political advertising is not new. Senator McCain’s “Our Democracy, Our Airwaves Act,” introduced in July, 2003, would have required broadcasters to air a minimum of two hours per week of candidate-centered or issue-centered programming prior to a primary or general federal election and to provide candidates and parties with non-preemptible advertising time at the lowest rate offered. Additionally, the bill asked that candidates and national committees of political parties be provided with vouchers that could be used to run political ads on both radio and

television stations. Broadcasters would pay a yearly “spectrum use” fee to fund the voucher system.

### What’s Next?

While media are not the only source of information for voters, they are without a doubt the primary sources of campaign and election information to the American public. The power and responsibility of media is such that they will continue to be the focus of heated controversy and debate. What we must do is stay informed, stay involved, and continue to express our viewpoints in the interest of fairness and protecting our industry’s interests. That is, after all, one of the joys of living in a democracy. ♦



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3355 Lenox Rd., Suite 945, Atlanta, Georgia 30326  
Tel: 404/266-2464, Fax: 404/266-2165  
Web site: www.szabo.com  
e-mail: info@szabo.com

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