

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-168

In the matter of

Codification of the Commission's
Political Programming Policies

MEMORANDUM OPINION AND ORDER

Adopted: February 12, 1992; Released: February 14, 1992

By the Commission:

1. By this *Order*, we reconsider and revise our rules concerning compliance with the sponsorship identification requirements¹ applicable to political broadcasting advertisements. This action modifies the requirements recently adopted in our *Report and Order* in this docket, released December 23, 1991.² Due to the urgent need for clarity in this area and the immediacy of numerous primary elections in this important campaign year, we have determined that we should act promptly to adopt the modified requirements set forth herein without awaiting completion of the full comment cycle for petitions for reconsideration.³ In taking this action, however, we have fully considered the comments on this issue in the underlying proceeding.⁴

2. In our December *Report and Order* we imposed both an audio and video sponsorship identification requirement for televised political advertisements, but declined to adopt specific objective measurement criteria to use to assess compliance with the video obligation. In response to petitions for reconsideration addressing these particular decisions,⁵ we have decided to delete the audio identification requirement and to impose specific, objective standards for video sponsorship identification.

3. *Audio Identification.* In the *Notice of Proposed Rule Making* in this proceeding, the Commission asked for comment on the possibility of requiring both audio and visual sponsorship identification for television advertisements.⁶ Most commenters did not address this specific issue, and there appeared to be little support for this requirement.⁷ Nevertheless, citing our belief that providing both audio and video information would better inform persons suffering from visual impairments, as well as viewers listening to but not actually watching a program, of the sponsors of political advertisements, we adopted the proposal.⁸

4. Petitions for reconsideration have been filed by both the Democratic and Republican National Committees objecting to the new audio identification requirement. According to petitioners, adoption of this additional obligation has imposed an excessive burden upon political advertising, particularly with respect to shorter advertisements, such as 10 or 15 second spots. In particular, petitioners claim that the audio identification requirement impairs a candidate's ability to deliver a campaign mes-

sage in short spots because a substantial amount of time must be devoted to the voice-over identification. While we note that the *Report and Order* did not specify the duration of the audio portion of sponsorship identification,⁹ upon further reflection we agree that requiring any additional audio component that would be of sufficient duration to ensure adequate identification to the average listener may well be unduly burdensome to candidates, particularly for short spot announcements.

5. We are statutorily obligated to ensure proper identification of any broadcast advertising, and remain committed to assisting the visually impaired. We would therefore encourage political advertisers to consider their special needs when designing their advertisements. The Commission, however, does not intend to restrict or unduly interfere with the content of political messages. Thus, upon reconsideration, we have determined that the additional audio identification requirement should not be imposed,¹⁰ and we hereby eliminate that obligation.¹¹

6. *Visual requirements.* In the *NPRM* we noted that there has been increased Congressional interest in more rigorous sponsorship identification requirements, and that the Commission had received proposals for adoption of specific, objective criteria governing visual identification requirements.¹² Nevertheless, in the *Report and Order* we decided that further objective visual requirements were unnecessary.¹³ In view of our decision to delete the audio identification rule, however, we believe that the record in this proceeding indicates that certain minimal standards should be articulated with respect to video identification.¹⁴ Specific visual identification requirements would satisfy the need for more objective guidelines cited by the majority of commenters, would ensure that the sponsor of political advertisements is readily apparent to viewers, and would not appear to be unduly burdensome from a compliance perspective.¹⁵

7. We have thus reevaluated our previous conclusion and have determined that it is appropriate to adopt specific sponsorship identification requirements along the lines of those originally discussed in the *NPRM*. We conclude that, in order to comply with the sponsorship identification requirements imposed by Section 317 of the Communications Act with respect to televised political advertisements, we will henceforth require a minimum video identification of the sponsor with letters equal to or greater than four percent of the vertical picture height, and airing for not less than four seconds.¹⁶

8. We note that commenters opposing adoption of specific standards for sponsorship identification were concerned primarily that it would be too difficult to implement with precision the time duration and size requirements. In this regard, we emphasize that the reasonableness standard traditionally employed by the Commission in evaluating compliance with our regulations will apply to enforcement of these requirements. Thus, any reasonable basis for determining the size and timing used by broadcasters to comply with the objective criteria outlined above will be treated deferentially by the Commission. We accordingly believe that, rather than imposing undue burdens upon broadcasters, adoption of these standards will significantly assist stations by providing clear standards for compliance with the statutory requirement.¹⁷

9. Several commenters had also suggested that if the Commission imposed definitive sponsorship identification standards, broadcasters should have the right to require

pre-airing submissions to ensure that advertisements met the Commission's standards.¹⁸ In view of our decision to adopt specific standards for visual identifications with which broadcasters must now comply, we agree that, under normal circumstances, stations should have the right to pre-screen the sponsorship identification element of a political advertisement to ensure that it meets the new standards.¹⁹ We recognize, however, that there may be instances in which there is not sufficient time for the broadcaster to review a political advertisement and still schedule the material as requested by the candidate. In these circumstances, fairness dictates that the advertisement air in a timely fashion and not be delayed. Accordingly, where there is not enough time for a broadcaster to pre-screen the sponsorship identification in a political advertisement, we will permit the station to run the ad the first time without risking a Commission finding of a Section 317 violation.²⁰ Once the advertisement has aired, however, the station will be required to add the required identification for future broadcasts if the advertisement is not in compliance with our sponsorship identification requirements.²¹

10. Finally, we wish to emphasize that nothing in this ruling alters our prior policies requiring that political advertisements contain information that is sufficient to allow viewers to identify the real sponsor of the ad.²² Particularly in light of the increasing use of negative advertising, the Commission remains committed to ensuring that the public can reasonably identify who is using broadcast facilities to promote or oppose particular political candidates.

ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, that the Petitions for Reconsideration filed by People for the American Way and Media Access Project; CBS, Inc.; Capital Cities/ABC, Inc.; The Democratic National Committee and The Democratic Senatorial Campaign Committee and The Democratic Congressional Campaign Committee; The Republican National Committee and The National Republican Senatorial Committee and The National Republican Congressional Committee; National Association of Broadcasters; Multi-Media, Inc.; and A.H. Belo Corporation *et. al.* ARE GRANTED to the extent indicated herein.

12. IT IS FURTHER ORDERED that, pursuant to authority contained in Sections 317, 303(r), and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 317, 303(r), 154(i), the Commission's Rules ARE AMENDED as set forth in Appendix B to this *Order*, effective April 1, 1992.²³

13. Further information on this proceeding may be obtained by contacting Milton O. Gross, Robert L. Baker, Marsha J. MacBride or Maureen O'Connell, Mass Media Bureau at (202) 632-7586, or Diane Hofbauer, Office of General Counsel, at (202) 632-6990.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

Petitions for Reconsideration of the *Report and Order* in MM Docket No. 91-168 were filed by the following:

- 1) People for the American Way and Media Access Project;
- 2) Multi-Media, Inc.;
- 3) The Republican National Committee, The National Republican Senatorial Committee and the National Republican Congressional Committee;
- 4) The Democratic National Committee, The Democratic Senatorial Campaign Committee and The Democratic Congressional Campaign Committee;
- 5) The National Association of Broadcasters;
- 6) CBS, Inc.;
- 7) Citizens Communications Center, Institute for Public Representation and Georgetown University Law Center;
- 8) Capital Cities/ABC, Inc.;
- 9) Telecommunications Research and Action Center and the Washington Area Citizens Coalition Interested in Viewers' Constitutional Rights;
- 10) A.H. Belo Corporation, Cordillera Communications, Inc., Cox Enterprises, Inc., Duchossois Communications Company, Guy Gannett Publishing Co., Multimedia, Inc., and River City License Partnership.

APPENDIX B

The last sentence of Section 73.1212(a)(2)(i) is deleted. A new Section 73.1212(a)(2)(ii) is added to read as follows:

- (ii) In the case of any television political advertisement concerning candidates for public office, the sponsor shall be identified with letters equal to or greater than four percent of the vertical picture height that air for not less than four seconds.

The last sentence of Section 76.221(a) is deleted. A new last sentence to Section 76.221(a) is added to read as follows:

- In the case of any political advertisement cablecast under this subsection that concerns candidates for public office, the sponsor shall be identified with letters equal to or greater than four percent of the vertical picture height that air for not less than four seconds.

FOOTNOTES

¹ 47 U.S.C. § 317.

² 7 FCC Rcd 678 (1992).

³ We recognize that in many states the campaign season is underway, and therefore candidates have already produced political advertisements in accordance with the decisions made in our December *Report and Order*. Because we do not wish to impose undue burdens upon candidates or broadcasters and seek to minimize disruption of commercials already prepared, political advertisements need not comply with the specific standards adopted herein until April 1, 1992. In the interim, political advertisements will be deemed to satisfy the Commission's sponsorship identification requirements if they comply with either the standards adopted herein, or the standards applicable following the December *Report and Order*.

⁴ In addition, of course, petitioners may request reconsideration of this order, which would enable us to consider further public comment if necessary.

⁵ On February 3, 1992, the Commission received several Petitions for Reconsideration addressing various issues governed by the *Report and Order*. A complete list of these petitions is set forth as Appendix A. The Commission will consider all of the issues raised in these petitions in due course.

⁶ See *Notice of Proposed Rule Making*, 6 FCC Rcd 5707 (1991) (*NPRM*) at paragraph 31.

⁷ The proposal was generally supported by the Federal Election Commission (FEC) and Gillett. The National Association of Broadcasters (NAB) and North Carolina Association of Broadcasters (NCAB) strongly opposed the proposal.

⁸ *Report and Order* at paragraph 47.

⁹ See *Report and Order* at paras 46-47. In their petitions, both the Democratic and Republican National Committees appear to have assumed that we adopted a specific six second audio identification requirement for television advertisements, to which they strenuously object. In the *Report and Order*, however, we merely meant to suggest that sponsorship identifications would be presumptively reasonable if they met the standards originally suggested in the *NPRM*, including a *video* identification of a six second duration.

¹⁰ In addition, Multi-Media, Inc., a small cable system operator, contends that requiring an audio identification, or voice-over, to be added to information delivered on a character-generated access channel that is not accompanied by audio information or comment would be overly burdensome and possibly cost prohibitive to cable system operators. In view of our decision to delete the audio identification requirement, we need not address the specific concerns raised by Multi-Media, Inc.

¹¹ We note, however, that FECA may require an audio identification for radio broadcasts of the audio portion of television programs. See comments of FEC at 5.

¹² *NPRM* at paras 26-30.

¹³ *Report and Order* at paragraph 44.

¹⁴ We note that the majority of commenters supported adoption of objective criteria, particularly in light of the emergence of negative political advertisements. See *Report and Order* at paragraph 43. Commenters opposing adoption of objective visual identification criteria were NAB, NCAB, CBS and Group W. The concerns raised by these commenters are addressed *infra*.

¹⁵ The video sponsorship identification requirements we impose herein are more easily integrated into the candidate's political message than an audio identification requirement and, hence, are less burdensome and intrusive.

¹⁶ The *NPRM* proposed requiring that the identification air for a minimum of six seconds. See *NPRM* at paragraph 28. The original petition seeking adoption of specific objective criteria for sponsorship identification limited the airing requirement to four seconds. See *People for the American Way and Media Access Project (PAW/MAP) Petition* at 1. Because of our desire to minimize interference with the content and design of political messages, we will limit the airing requirement to the original proposal of four seconds. Similarly, to minimize intrusion into the content and design of political messages, we decline to adopt any requirement that, in order to qualify as a "use," the candidate's image must be equal to or greater than 20% of the picture size.

¹⁷ Of course, if factors other than size or air time prevent the fact of sponsorship and identity of the sponsor from being conveyed to viewers, such as lack of picture contrast or inclusion of significant distractions, a violation of Section 317 conceivably could be found despite "technical" compliance with these requirements.

¹⁸ Moreover, we note that in their petitions for reconsideration of various decisions in the *Report and Order*, Capital Cities/ABC, Inc. and A.H. Belo Corporation *et. al.* seek clarification or reconsideration of the Commission's policy with respect to station's rights to pre-screen political advertisements to ensure compliance with our sponsorship identification rules.

¹⁹ We note that in their petitions for reconsideration, CBS, Inc., NAB and Capital Cities/ABC, Inc. request clarification that a broadcaster may decline to air political announcements which lack adequate sponsorship identification. If a candidate has a statutory right of access or contingent access (i.e. pursuant to section 312(a)(7) or 315(a) for federal candidates, or section 315(a) for state and local candidates), broadcasters may not refuse to air political advertisements with inadequate sponsorship identification. Rather, the station is obligated to add its own identification. In this regard, we note that the sponsorship identification requirement is an established exception to the prohibition in section 315(a) against censorship of candidates' uses of broadcast station facilities. See *Joint Agency Guidelines for Broadcast Licensees*, 69 FCC 2d 1129, n.2 (1978). Accordingly, stations may alter political advertisements in order to add appropriate sponsorship identification in compliance with this rule.

²⁰ We note that subsection (d) of Section 317 allows the Commission to waive the sponsorship identification requirement. See 47 U.S.C. §317(d).

²¹ In the event the station cannot add the required visual identification immediately without taking extraordinary measures, we will allow the station to add only an aural identification, as long as the proper visual information needed is added within one business day of its first airing. We note that licensees need not provide additional time, free of charge, in order to satisfy the sponsorship identification rules, and that they may therefore include the necessary information within the advertisement itself. *Report and Order* at para. 49.

²² See 47 CFR §73.1212(e) (1992); see also *KOOL-TV*, 26 FCC 2d 42 (1970) ("A Lot of People Who Would Like to See Sam Grossman Elected to the U.S. Senate" lacked the specificity required for compliance with Section 317).

²³ See also note 3, *supra*.