



Bipartisan Campaign Reform Act

By Gregg Skall

With the 2004 campaign season upon us, it has become critically important for broadcasters to have a clear understanding of the impact of the "Bipartisan Campaign Reform Act of 2002 (BCRA)." It is already clear that new spending limits imposed on the Presidential candidates following the nominating conventions will divert substantial campaign funds to the political parties

and other special interests for advertising that supports the candidate's positions but is not bought or paid for by the official candidate committee. Further, many states have a variety of issue initiatives on the November ballot and there is some confusion whether the BCRA applies to advertisements addressing these issues. While the new Act applies to campaigns for Federal office and focuses primarily upon political fundraising and expenditures, several provisions do have a direct impact upon broadcasting and cable:

Required Sponsorship Tags – To discourage negative advertising, the Act requires every political broadcast to carry a special statement to assign personal accountability to the candidate or other sponsor. Broadcasts by candidates or their authorized committees must identify the candidate and state that the candidate has approved the broadcast. On radio spots, the statement must be read by the candidate. For television, the last four seconds must consist either of an unobscured, full-screen view of the candidate making the required statement or the candidate's voice accompanied by a clearly identifiable photographic or similar image of the candidate, together with a clearly readable printed text of the statement. (For both radio and TV, the existing requirement that the sponsor be identified also remains.) Any "political advertising" (advertising that advocates the election or defeat of federal candidates, or that solicits campaign contributions) not authorized by a candidate or the candidate's authorized political committee must contain an audio statement, in a clearly spoken manner, using the following exact language: "_____ is responsible for the content of this advertising," the blank to be filled in with the names of the payor and any connected organizations. A television spot must add to the audio statement an unobscured full-screen view of a representative of the political committee or other person making the statement together with the printed text of the statement, all for a period of at least four seconds.

Qualification for Lowest Unit Rates – To qualify for lowest unit rates for a use containing any direct reference to another candidate for the same office, at the time such a use is purchased the candidate must provide a written certification to the broadcast station or cable system that the candidate and any authorized committee of the candidate will comply with prescribed notice requirements.

The radio notice must be read by the candidate, identify the candidate and the office sought, state that the candidate has authorized or approved the broadcast and that the spot was paid for by the candidate or his authorized campaign committee.

The TV notice is somewhat different. It must contain: A full-screen

view of the candidate identifying himself and making the required statement, or a candidate voiceover in which the candidate identifies himself and makes the required statement and an image of the candidate (80% of screen height); *and*, in either case, a clearly readable written statement of the same information (4% of height, 4 seconds, color contrast)

In the event a use turns out not to meet these requirements, the penalty is steep: a candidate's right to lowest unit rates is forfeited for the entire remaining period before the primary or election.

Record Keeping – The new Act codifies and slightly expands current FCC policy by prescribing the information which must be placed in all stations' local political inspection files with respect to all requests to purchase broadcast time, whether or not made on behalf of a legally qualified candidate. Covered are all messages relating to any political matter of national importance, including legally qualified candidates, any election to federal office or a national legislative issue of public importance. The records must contain the following information: Whether the request to purchase broadcast time is accepted or rejected by the licensee; The rate charged for the broadcast time; The date and time on which the broadcast is aired; The class of time purchased; The name of the candidate, office, election or issue to which the communication refers (as applicable).

If a request is made by, or on behalf of, a candidate, then the name of the candidate, the authorized committee of the candidate and the treasurer of such committee.

In the event of any other requests, the name of the person purchasing the time, the name, address and phone number of a contact person for such purchaser, and a list of the chief executive officers or members of the executive committee or board of directors of such purchaser.

"Electioneering" Communications – Corporations, trade associations and labor organizations may no longer sponsor "electioneering communications" within 30 days of a primary or 60 days of a general election using "treasury money." An electioneering communication refers to clearly identified candidates for federal office and, except with respect to presidential or vice-presidential candidates, can be received by 50,000 or more persons in the region the candidate seeks to represent (*ie*: the state for a senator or the Congressional District for a representative). Payments are prohibited only if they come from an organization's treasury, as the new law is not intended to impact expenditures by an organization's Political Action Committee ("PAC").

The primary focus of the new rules is effectively to ban the use of so-called "soft money" in federal elections. Soft money refers to donations made to national political party committees for get-out-the-vote initiatives, administrative expenses and candidate recruitment rather than to specific campaigns. The purpose of the ban is to redirect such contributions to funds which are subject to being tracked and regulated. To mitigate the impact upon campaigns and advertising, the Act effectively doubles the amounts which individuals may donate directly to candidates and their committees as well as the totals which may be given during each election cycle. The existing limits on contributions to PACs and contributions by PACs to candidates and parties remain largely unchanged.