

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

LETTER
September 4, 1990

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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Leonard A. Bolton, Vice President 8330-SB
Design Media, Inc. C6-322
Licensee of Radio Station WNSL(FM)
1260 Victory Road
Laurel, Mississippi 39440

Dear Mr. Bolton:

This is in reference to the Commission's investigation regarding WNSL(FM)'s sale of time to political candidates in connection with a primary election which took place on April 4, 1989. On the basis of a complaint received from Mr. John C. Cox, a representative for one of the candidates, this office initiated an inquiry on May 19, 1989, seeking your comments. We received your response on May 30, 1989, and additional statements from you and the complainant thereafter.

The complainant described two instances in which WNSL may have violated the Commission's rules. First, Mr. Cox alleged that WNSL discriminated against Mr. Tucker Buchanan, a candidate for the office of Chancery Judge for Jones and Wayne Counties, Mississippi. Mr. Cox stated that on March 16, 1989, his request to purchase time on election day for Mr. Buchanan was denied because, according to the General Manager of WNSL, it conflicted with the FCC rules. On April 3, 1989, the day before the election, the complainant became aware that the station sold "countdown spots" on election day to Mr. Shannon Clark, Mr. Buchanan's opponent. Upon request, Mr. Buchanan was provided time on election day. However, Mr. Cox argued that the station should have notified him that time on election day was available for purchase, instead of his finding out "purely by chance" on the day before the election. Mr. Cox further stated that WNSL produced Mr. Buchanan's election day spots using a format and engineering different from the spots the station produced for his opponent. As a result, Mr. Cox claimed that Mr. Buchanan's spots were not of the same quality.

The second complaint involves a sponsorship identification announcement on political spots for H. David Clark, a candidate for the office of Chancery Judge for Jasper County. Mr. Cox stated that the station repeatedly ran the spots with announcement "Submitted to and approved by the Committee for Judicial Reform" even after Mr. Cox informed "some young lady in the sales department" that the announcement must state "Paid for BY someone." Mr. Cox noted that the announcement was corrected after he spoke to the station manager.

In response to the first allegation, you stated that "Jay Schneider our new General Manager, had originally told Mr. Cox we would not run advertising on election day, not realizing that a feature entitled Countdown, was in reality [political] advertising rather than programming." You further explained that the Manager made an "honest human error" and after he apologized to Mr. Cox for any inconvenience, the staff attempted to remedy the situation. Your response did not specifically address the second allegation regarding the improper sponsorship identification announcement, but concluded that the problems have been corrected and the station will better coordinate political programming in the future.

Section 315(a) of the Communications Act of 1934, as amended, [47 U.S.C. Section 315(a)], states that when a licensee permits any person who is a legally qualified candidate for public office to "use" (identifiable voice or picture) a station's facilities, it must afford "equal opportunities" to all other candidates for that office. If a legally qualified candidate appears on a news program, such as newscasts, news interviews, news documentaries, or on-the-spot coverage of news events, the appearance will not be deemed a "use" of a broadcasting station for purposes of Section 315 of the Act. Generally, when a licensee sells or gives time to one candidate, it need not notify the opponents of that fact. However, when a station advises one candidate that it will not sell time on a specific day, but later changes that policy and permits the opponent of the first candidate to purchase time, then the station has an obligation to notify the first candidate of the change in policy. See 47 C.F.R. Section 73.1940(c). The cited rule prohibits broadcasters from discriminating between candidates "in practices, regulations, facilities, or services for or in connection with the service rendered." Under Section 73.1940(d), broadcasters are required to maintain a "political file" containing a complete record of all requests for political time, the charges made and a schedule of time used. The political file, which may be separate or contained in the station's public inspection file, provides candidates an opportunity to be informed of their opponents' requests for time and appearances. These rules are designed to prohibit unequal treatment between candidates in the use of station facilities, and are set forth in the enclosed primer, "The Law of Political Broadcasting and Cablecasting."

It appears that the "countdown spots" (1) were aired at the top of the hour or at the half hour, (2) contained a statement that there were only so many hours left for the listener to vote for a particular candidate, and (3) contained a brief promotional statement which was read by a WNSL announcer or a supporter of the candidate, followed by a sponsorship identification announcement. It cannot be determined from the information before us whether the spot or the sponsorship identification contained the candidate's voice, which would entitle opponents to equal opportunities. Even if the candidate's voice did not appear on the "countdown spots," a type of "quasi-equal opportunities" situation arises when a broadcaster sells or gives air time to the supporters of a candidate. *Nicholas Zapple*, 23 FCC 2d 707 (1970).

Under the equal opportunities provision of Section 315 of the Act or under *Zapple*, Mr. Buchanan or his supporters were entitled to equal or "quasi-equal" opportunities on election day because WNSL sold air time on election day for his opponent. Upon the request of Mr. Cox, WNSL provided Mr. Buchanan the opportunity to pur-

chase time on election day. However, Mr. Cox's complaint is that WNSL failed to notify Mr. Cox or his candidate that political time was available for purchase on election day. It appears that the General Manager mistakenly informed Mr. Cox on March 16, 1989, that WNSL would not sell any political time on election day. Once it agreed to sell time to Mr. Buchanan's opponent on election day, WNSL should have notified Mr. Cox or the candidate of the change in policy. By not doing so, WNSL afforded one candidate an unfair advantage over another. This is the type of discrimination which is specifically prohibited by Section 73.1940(c) of the Commission's rules. Although Mr. Buchanan was provided the opportunity to purchase time on election day, WNSL did not proceed in a non-discriminatory basis when offering that time for sale.

Mr. Cox also complained that WNSL did not provide his client with the same format and engineering for the "countdown spots" as that given to the opponent, Mr. Clark. It is not clear from the information before us whether Mr. Cox originally requested the same format and engineering. Nonetheless, the station is required to treat opposing candidates equally in terms of practices, facilities, and services. 47 C.F.R. Section 73.1940(c). Given the special circumstances of this case, and the fact that due to WNSL's mistake Mr. Cox had less than a day to produce the spots to air on election day, it appears that WNSL fell short of its obligations to Mr. Buchanan.

Regarding the second complaint, when a station is paid to broadcast anything and the commercial nature of the message is not clear from its content, the station must make the appropriate sponsorship identification announcement, as required by Section 317(a)(1) of the Communications Act [47 U.S.C. Section 317(a)(1)] and Section 73.1212(a) of the Commission's rules [47 C.F.R. Section 73.1212(a)]. Section 73.1212(a), which implements Section 317(a)(1), states in pertinent part:

When a broadcast station transmits any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such station, the station, at the time of the broadcast, shall announce: (1) That such matter is sponsored, paid for, or furnished, either in whole or in part, and (2) by whom or on whose behalf such consideration was supplied. . . .

The purpose of these requirements is to assure that the audience is accurately informed by whom it is being persuaded. There is no absolute formula for the length or format of a sponsorship identification announcement. However, as a minimum, such an announcement in connection with a paid political commercial must state that the matter was "paid for" or "sponsored" and by whom. In this instance, the announcement, "Submitted to and approved by the Committee for Judicial Reform," did not contain the language required by the statute and our rules.

In view of the foregoing discussion, Design Media, Inc., licensee of Radio Station WNSL(FM), Laurel, Mississippi, IS ADMONISHED for discriminating between opposing legally qualified candidates, in violation 47 C.F.R. Section 73.1940(c), and for failing to broadcast the required sponsorship identification, in violation of 47 U.S.C. Section 317(a)(1) and 47 C.F.R. Section 73.1212(a). Based upon

the information currently available to the Enforcement Division, no further action by the Commission is contemplated in regard to this matter. However, now that you are fully apprised of the application of these provisions, it is expected that care will be exercised to assure that such violations do not recur. This matter is being made a part of WNSL(FM)'s file.

Staff action is taken here under delegated authority. Application for Review by the full Commission may be requested within thirty days of the release date of this letter [47 C.F.R. Section 1.4(b)] by writing to the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration and, if mailed, should be sent by certified mail. Copies must be sent to the parties to the complaint. 47 C.F.R. Section 1.115.

FEDERAL COMMUNICATIONS COMMISSION

Milton O. Gross, Chief
Fairness/Political Programming Branch
Enforcement Division
Mass Media Bureau