

April 27, 2006

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

2006 MAY -3 A 9:37

Office of the General Counsel
Federal Election Commission
999 E Street NW
Washington, DC 20463

RE: MUR #5727

We do not believe the complaint filed by the San Diego County Democratic Party is meritorious. Further, we believe that the television commercials prepared by the Howard Kaloogian for Congress Committee were in compliance with FEC disclaimer requirements. However, to avoid this becoming an issue in the campaign, we did modify the disclaimer in the commercial and provided an amended version of the commercial to the television stations for airing.

In preparing the television commercials we relied on a July 2003 publication of the Federal Election Commission entitled "Special Notices on Political Ads and Solicitations." In addition, we contacted the California Broadcasters Association and they in turn contacted their national association for further guidance.

The candidate, Howard Kaloogian, appears full screen in the commercial and states, "I'm Howard Kaloogian, I've approved this ad" Since the advertisement was both authorized and financed by a Candidate Committee, we used the example provided on page 4 of the above referenced FEC publication ("Paid for by the Sheridan for Congress Committee.") as a model. In copying that format, the video disclaimer was "Paid for by the Kaloogian for Congress Committee" at the end of the commercial in a clearly readable manner with a reasonable degree of color contrast for a period of at least four seconds.

When we received the letter of complaint from the San Diego County Democratic Party, it was not clear what they considered out of compliance since it was a general complaint against the Kaloogian for Congress campaign and the Eric Roach for Congress campaign. When we spoke with one of the television stations, they believed that the complaint was alleging that the written, video disclaimer should include the word "authorized" in addition to the word "paid." While that was inconsistent with the FEC publication, we did not want to create undue controversy and believed that adding the additional word would still keep us in compliance with disclaimer requirements. Thus, we edited the written video disclaimer to read, "Paid for and Authorized by the Kaloogian for Congress Committee."

In consulting with the California Broadcasters Association, they were equally confused and contacted their national association for further guidance. We all agreed that it would

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be prudent to make the change in the disclaimer to remove any question of compliance with the appropriate regulation.

I hope that this will reassure you that we have made every good faith effort to include the proper disclaimer information. Please feel free to contact me if you need any further information.

Sincerely,

A handwritten signature in cursive script that reads "Betty Presley". The signature is written in black ink and is positioned above the typed name.

BETTY PRESLEY
Treasurer
Kaloogian for Congress
30151 Tomas
Rancho Santa Margarita, CA 92688
949 858 7448

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2006 POLITICAL POLICIES AND AVAILABILITIES
KGTV SAN DIEGO
Issued: February 1, 2006

BROADCAST RATES IN "PRE-ELECTION PERIODS:"

During "Pre-Election Periods," which are periods starting 45 days prior to primary elections and 60 days prior to general or special elections, **KGTV** will sell all advertising time for "uses" by legally qualified candidates for public office at its lowest unit charge ("LUC") for the particular class and amount of time purchased to run in a specific program, daypart or rotation in the same week.

The Pre-Election Period start date for the 2006 special election is February 25, 2006. The station will accept candidate advertising through Election Day, April 11, 2006 until 7pm.

Current rate information is attached separately for **KGTV's** most commonly sold programs, dayparts or rotations. During Pre-Election Periods, the following two classes of time are offered for uses by candidates:

- (1) Non-preemptible special candidate discount rate. This is a special rate available only for candidate uses and only during Pre-Election Periods. This class of spots is more expensive than our lowest priced immediately preemptible spots, described below, but less expensive than our general selling level for immediately preemptible spots at the time the discount rate was established. Spots purchased at the candidate discount rate are guaranteed to be broadcast, except in the event of unforeseen program changes or technical difficulties. In such event, a make-good or make-goods of equivalent total value will be provided prior to the election unless the candidate requests a refund instead. **KGTV** cannot guarantee that make-goods will be scheduled in the same time periods as originally ordered.

- (2) Immediately preemptible spots. Spots sold by **KGTV** (other than candidate discount rate non-preemptible spots) are subject to preemption by advertisers paying a higher "bump" rate. The attached rate schedule shows the lowest-priced preemptible spots currently being offered or which have been sold in our most commonly purchased programs, dayparts or rotations. In the event a candidate's spot is preempted, a make-good or make-goods of equivalent total value will be provided prior to the election unless the candidate requests a refund instead. **KGTV** cannot guarantee that make-goods will be scheduled in the same time periods as originally ordered.

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All rates are subject to change on a weekly basis, Monday through Sunday, in accordance with **KGTV** normal business practices. Updated rate schedules will be provided at any time on request.

Spots may also be purchased with different day or daypart rotations from those shown on the attached schedule, at rates that will be provided on request. Rates for political programs will also be supplied on request. 60's are approximately twice the cost of 30's, 15's are 65% of the cost of 30's and 10's are 50% of the 30-second cost.

KGTV will sell spot time to all legally qualified candidates in the general election. With regard to non-federal candidates, KGTV may limit the programs and time periods within which spot time will be sold and may limit the number of spots each candidate may purchase.

RECAPTURE OF SPOTS:

KGTV reserves the right to recapture spot time sold to candidate to meet equal opportunity or reasonable access requirements of the Communications Act of 1934, as amended. If spot time is recaptured by KGTV, the candidate will be advised as soon as practicable and an appropriate refund will be issued.

POLITICAL BROADCAST RATES OUTSIDE OF LOWEST UNIT RATE PERIOD:

The portion of the year outside the 45 day pre-primary and 60 day pre-general election "lowest unit rate" periods is the "comparable rate" period. During the comparable rate period, candidates may purchase spots at negotiated rates comparable to those charged other advertisers. The exact rate charged may vary depending upon factors such as the number of spots ordered, the percentage of an advertiser's budget for the market allocated to our station and the projected demand for spots by all advertisers and our station's spot inventory at the time of the projected demand.

During the comparable rate period, we will present rate quotations to candidate advertisers and negotiate time sales with candidate advertisers in the same manner as with non-candidate advertisers. During the comparable rate period, our policy with respect to makegoods for preempted spots, is to use our best efforts to provide such makegoods at time acceptable to the advertiser involved. To the extent inventory constraints prevent us from offering makegoods acceptable to the advertiser, the advertiser will not be charged for any preempted spots.

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LIKELIHOOD OF PREEMPTION:

A spot purchased at the special candidate discount rate is guaranteed to run at the specific time purchased. The likelihood of preemption of an immediately preemptible spot purchased at the LUC will depend upon the demand for spot time. The likelihood that a preemptible spot purchased at an interim level will be broadcast will increase as the price approaches the current selling level. The likelihood of preemption on any particular spot purchase purchased at the LUC will be supplied upon request.

FEDERAL CANDIDATE ELIGIBILITY FOR LOWEST UNIT CHARGE – CERTIFICATION:

To qualify for the station's non-preemptible special candidate discount rate or the LUC for immediately preemptible spot time, federal candidates, or their authorized committees, must certify in writing, at the time programming is purchased, that the programming does not refer to another candidate for the same office, or if the programming does refer to an opposing candidate, they must certify in writing that the programming meets the following requirements:

The end of the broadcast must include, for a minimum of four seconds, a clearly identifiable photographic or similar image of the sponsoring candidate while simultaneously showing a clearly readable printed statement. The printed statement must identify the candidate, state that the candidate approved the broadcast and that the candidate and/or the candidate's authorized committee paid for the broadcast.

Attached is the federal candidate certification form which must be supplied with regard to each of the spots with different content.

PROPER SPONSOR IDENTIFICATION – FEDERAL CANDIDATE AUTHORIZED ADVERTISEMENTS:

Political programming authorized by a federal candidate which is paid for by a candidate or the candidate's political committee, advocates the election or defeat of a federal candidate, solicits any political contributions, or that is an "electioneering communication" (see "Electioneering Communications" section below) must comply with the following sponsorship identification rules:

SPONSOR IDENTIFICATION REQUIREMENTS FOR ALL CANDIDATES:

Sponsorship identification on all candidate commercials must be visual and must be clear and easily readable. The sponsorship identification must state that the spot is "sponsored by" or "paid for by" the identified sponsor and these words may not be

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abbreviated in the visual identification. The FCC requires that political sponsor ID's take up at least 4% of the picture size and remain on the screen for not less than 4 seconds. In cases where the sponsorship identification is insufficient, the station will add it to the announcement itself.

COPY REQUIREMENTS:

All commercial materials must be received by **KGTV** 48 hours prior to the first scheduled announcement. It is the responsibility of the candidate or its agency to deliver the materials. Any materials requiring additional post production work will be charged at **KGTV's** regular production hourly rate. Any copy changes will be implemented for the next available log.

All materials should be sent to the attention of the Traffic Department at:

Postal Address

Pam Smith
KGTV
PO Box 85347
San Diego, CA 92186
619.237.6218

Courier Service

Pam Smith
KGTV
4600 Air Way
San Diego, CA 92102
619.237.6218

Traffic Instructions:

Cal Mandel 619.237.6225
Fax# 619.266.2296

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PAYMENT:

KGTV must receive payment in full by cash, money order, cashiers or certified check, or wire transfer at least seven (7) days prior to airdate. Please send to:

Postal Address
Siobhan Graham
KGTV
PO Box 85347
San Diego, CA 92186
619.237.6242

Courier Service
Siobhan Graham
KGTV
4600 Air Way
San Diego, CA 92102
619.237.6242

AUTHORIZATION:

All **KGTV** Contracts and Agreement forms for political broadcasts must be signed by an authorized agent of the political committee. Political availabilities must be presented in written form only, and no rates are to be quoted verbally.

PUBLIC FILE

KGTV's Public File is available for inspection during normal business hours, M-F, 9am – 5pm. No information from the file will be given by telephone, fax or mail.

PLEASE ACKNOWLEDGE RECEIPT OF THIS DOCUMENT FOR KGTV'S PUBLIC FILE BY COMPLETING AND SIGNING THE ATTACHED FORM TITLED POLITICAL AUTHORIZATION DOCUMENT.

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POLITICAL AUTHORIZATION DOCUMENT

I am requesting advertising rates and program availabilities for the 2005 special election period. My signature verifies that I have been authorized to act as agent for the following candidate:

Candidate: _____

Office: _____

Party: _____

Committee: _____

Chairman: _____

Treasurer: _____

Authorized Agent: _____

Title: _____

Date: _____

For KGTV use only:

Date Card Was Sent

Initials

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