

June 20, 2007

The Honorable Dianne Feinstein  
Chair, Committee on Rules and Administration  
305 Russell Senate Office Building  
Washington, DC 20510

Dear Senator Feinstein:

I am writing with regard to today's Senate Rules Committee hearing on S.1285, the Fair Elections Now Act. As the Committee hears testimony on the legislation, please know that sections of the bill are of great concern to broadcasters.

First, the bill requires broadcasters to offer participating candidates and political parties fixed advertising rates. These rates would be 20 percent less than the station's lowest unit charge (LUC) during the 45 days before a primary election and 60 days before a general election. Under current law, candidates already receive an average discount of about 30 percent through use of the LUC rates. The bill creates a significant price advantage for federal candidates over small business owners who advertise every day on broadcast television and radio.

Mandating a further reduction in rates also raises significant constitutional questions. The bill unconstitutionally favors certain types of speakers—political candidates and political parties—over other speakers. While current law (47 U.S.C. § 315(b)) entitles political candidates to pay advertising rates that are *equal to* the lowest unit charge offered to a commercial client, the bill would entitle both political candidates and political parties to pay rates that are significantly *more favorable* than those afforded commercial clients. Such favoritism towards specific political speech and certain political speakers contradicts settled First Amendment principles.

Second, the legislation would bar broadcasters from preempting purchased airtime by federal candidates. All advertisers, including federal candidates, have choices when placing their ads. They may choose among various day parts regarding the time slot in which their ad may run, as well as from different classifications surrounding the ad. To mandate that a federal candidate must receive a steep price discount as well as guaranteeing a non-preemption classification gives federal candidates a special benefit unavailable to anyone else.

Third, the Fair Elections Now Act would extend LUC to federal party committees. Extending LUC discounts to political parties greatly expands LUC beyond the original scope of the law and would allow an entity not directly connected to a federal candidate access to discounted airtime. Were these provisions to become law, local businesses would be adversely affected by the limited inventory left for their advertising needs. Local

advertising would need to get in line behind federal candidates and their political party organizations.

Fourth, the legislation would tax commercial broadcasters two percent of their gross advertising revenues to establish a Political Advertising Voucher Account for use by federal candidates and party organizations. The bill requires broadcasters—and broadcasters alone—to subsidize these discounted political advertising rates. It is unfair for government to single out broadcasters to shoulder these burdens.

Local broadcasters are proud of our service to communities. We take our responsibility as lifeline providers very seriously and are among the first to step up in times of emergency and need. We raise billions of dollars annually to the benefit of our local communities and charitable organizations that serve them. Local broadcasters very strongly oppose this tax proposal, as it would take away resources from our continued efforts to serve the public.

On behalf of the 8,300 members of the National Association of Broadcasters (NAB), please know of our concerns with S.1285 as outlined above and our opposition to the legislation should it move forward. NAB will be submitting a more detailed paper for inclusion in the hearing record. We look forward to meeting with you and your staff to provide a greater understanding of our concerns.

Sincerely,

A handwritten signature in black ink that reads "David K. Rehr". The signature is written in a cursive, slightly slanted style.

David K. Rehr

cc: Members, Senate Rules Committee