FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 3657

DATE FILMED 10-17-97 CAMERA NO. 1

CAMERAMAN JMU

9/0430360

OGC 6959

MUR 3657

92 OCT 16 PM 4:11

October 16, 1992

BEFORE THE

FEDERAL ELECTION COMMISSION

IN THE MATTER OF A COMPLAINT BY

CONGRESSMAN DAN GLICKMAN

AGAINST MULTIMEDIA CABLEVISION, INC.

COMPLAINT AND MOTION TO THE COMMISSION TO SEEK INJUNCTIVE RELIEF

The undersigned files this complaint on behalf of Congressman Glickman and the Glickman for Congress Committee against Multimedia Cablevision, Inc. ("Multimedia") for knowingly and willfully making corporate contributions to influence a federal election in violation of Section 441b of the Federal Election Campaign Act of 1971, as amended ("FECA" or "the Act"). The issues presented in this Complaint are of an extraordinary nature, involving an unprecedented public intervention by a corporation to effect the defeat of a candidate for federal office.

THE IMMEDIATE SITUATION

Multimedia has been saturating its cable stations' airtime with advertisements attacking Congressman Dan Glickman

9104353603

and endorsing his opponent State Senator Eric Yost. Since October 12, Multimedia has run these advertisements over 100 times per day on ten cable stations, including CNN, USA and Lifetime. Scripts of these ads and the logs indicating the times at which they have run are enclosed as Exhibit 1.

Multimedia intends to continue airing these and other anti-Glickman ads indefinitely. The Company has informed the Glickman campaign that it will use a variety of ads over different time periods, each devoted explicitly to the Company's position that the voters in Mr. Glickman's congressional district should reject his candidacy for another term in the House of Representatives. In short, Multimedia is orchestrating, for the remaining weeks of the election, a media blitz directed against the Glickman campaign no different from the kind sponsored by candidates or political committees--except that Multimedia is a corporation and its ad campaign is financed with corporate dollars, not funds allowable under the Act for this purpose.

The Company acknowledges, moreover, that it produced these ads in collaboration and consultation with the Yost committee. It specifically confirmed to representatives of the Glickman campaign and others that it had numerous "conversations" with the Yost campaign about the ads. Not surprisingly, therefore, the themes and messages of the ads parrot those of the Yost campaign.

9/0430436/0

It now appears that these advertisements make up only one front in a broad, corporate-funded assault on Congressman Glickman's campaign. As of yesterday, Multimedia began distributing a campaign flier with its customer billings. Multimedia services 95,000 households. The flier, entitled "It's Time for a Change", sharply criticizes Glickman's record as a Member of Congress and his character, and announces: "We Support Eric Yost for Congress. Exhibit 2. It reinforces the themes and messages of Multimedia's campaign ads.

Today, the Glickman campaign files this Complaint[1], along with an accompanying Motion for Injunctive Action by the Commission, to stop these ongoing violations and any additional expenditures currently planned by Multimedia for the additional remaining days before the election in the Fourth District of Kansas.

THE LAW

Multimedia may imagine that its expenditures for airtime fall outside the statute as "editorials" or "news commentary" exempt from regulation under Section 431(9)[2]. This view of

---

[1]The Glickman campaign has filed a formal complaint with the Federal Communications Commission ("FCC") seeking immediate action by the agency to ensure a "reasonable opportunity" to respond to these ads under Section 76.209(d) of the FCC regulations.

[2]The Act provides specifically:

> The term "expenditure" does not include--
> (i) any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical;

the law cannot prevail, if there is to be any meaningful regulation of federal elections.

While Congress provided for editorial comment by broadcasting stations, this exemption referred to, and embraced, only editorials broadcast in the ordinary course of a station's business--in a format and with the frequency consistent with industry practise, not to mention the practise of the station itself. On neither count do these Multimedia editorials qualify under this exemption. A broadcast facility devoting hours of air time day after day to campaign advertisements is not conforming to industry practise: not for <u>any</u> editorials, much less editorials expressly advocating the defeat of a candidate. Complainant states also, upon information and belief, that never has this particular company--Multimedia--broadcast an editorial on any subject with the frequency of these attacking the reelection campaign of Mr. Glickman[3].

> publication, unless such facilities are owned or controlled by any political party, political committee, or candidate.

[3]With the exception of certain election related activities permitted by Part 114, the Act's allowances in Part 100 for defined corporate activity with apparent potential impact on elections are always subject to the condition that the activity be "in the ordinary course of business". For example, corporate banks may lend to candidates, but only if the lending is in the "ordinary course"--i.e. not made on extraordinary terms and conditions not available to private borrowers. 11 C.F.R. § 100.7(b)(11).

This same "ordinary course" requirement is no less critical to proper application of the editorial or news commentary exemption. For in both

9/0430436/2

Once deprived of the fiction of bona fide editorializing, Multimedia will be left to answer for the advertising as a heavy-handed violation of the law prohibiting corporate spending in federal elections. No fiction of any kind can mask the similar violation arising out of the corporate-financed fliers included in the customer billing statements. Only recently, in Advisory Opinion 1992-23, the Commission voted 6-0 to reject the suggestion of a corporation that it could fund an election-related appeal to voters with corporate monies. The Commission stated in its unanimous opinion:

> Because each of these ads constitutes express advocacy of the defeat of a clearly identified candidate, the Commission concludes that similar ads may not be run with respect to other candidates in similar circumstances and funded . . . from any general treasury account. Such funding would constitute a corporate expenditure prohibited by 2 U.S.C. § 441b(a).

In contravention of the Act and the FEC's ruling, Multimedia continues to run ads expressly advocating the defeat of a clearly identified candidate.

---

cases, corporations are given leeway to carry on business as usual, regardless of the potential and in some cases substantial benefit to candidates. Should this requirement be omitted, broadcast stations could pick up the entire advertising budget of a campaign in a way plainly at odds with the intent of section 441b. And the result would be no different than omitting the similar requirements for bank lending, and allowing a bank to douse a candidate liberally with funds for his or her campaign without regard to creditworthiness or other general lending policies of the bank.

NEED FOR EXTRAORDINARY ACTION

We request that the Commission take immediate action to enjoin Multimedia advertising campaign. Petitioner Glickman recognizes that such action would be extraordinary, and also entirely within the discretion of the Commission. But if there is ever a reason for the Agency to act in this fashion, the circumstances set forth in this Complaint surely warrant it. A corporation with twenty-four hour-a-day access to the voting public is financing a political advertising campaign worth hundreds of thousands of dollars for the benefit of a federal candidate. Its efforts have begun and will continue during the weeks immediately before the general election. Its activities have so far included not only media advertisements, but also the billing flier; and there may be more spending to follow of a type not yet seen or anticipated.

The Commission must make clear that the law may not be violated with impunity by a corporation in this way, particularly where there is threatened real and palpable effects on the federal campaign financing system and on voter choice in the congressional district in question.

THE COMMISSION HAS THE AUTHORITY TO SEEK INJUNCTIVE RELIEF

The Commission has approached with caution motions that seek injunctive relief. None, however, present circumstances such as these. This is true in two critical respects: 1) the corporate spending prohibition is central to the statutory

9/0438614

scheme and the Commission has long emphasized it as an enforcement priority, and 2) the Commission has made clear in enforcement proceedings in recent years that it will no long tolerate "ignorance of the law" defenses from corporations or corporate executives violating Section 441b. These policies have been brought to bear, for example, in cases where executives were alleged to have acted as "conduits" for corporate contributions. But these were cases which, in some instances, involved small contributions and posed no immediate threat to the integrity of a pending election.

The case before the Commission here presents an urgent need for the application of the same policies, in a setting where the amounts of corporate monies involved may run into the hundreds of thousands of dollars. Only application for injunctive relief would secure those policies.

Representative Glickman is aware that the Commission is concerned that immediate application for injunctive relief would conflict with the fifteen day period afforded respondents under Section 437g. See FEC Annual Report 1991, at 48-49. The Commission has advised the Congress that it "has felt constrained" in seeking injunctive relief by those deadlines. Id. But the Commission's reluctance is not supported by any fair consideration of the structure of the statute.

First, while there are specific deadlines for response provided under Section 437g, Section 437d delineates broad powers of the Commission including the power:

> to initiate (through civil actions for injunctive, declaratory, or other appropriate relief), defend (in the case of any civil action brought under section 437g(a)(8) of this title) or appeal any civil action in the name of the Commission to enforce the provisions of this Act and chapter 95 and chapter 96 of title 26, through its general counsel; . . .

Thus, Section 437g deadlines apply as a general rule to enforcement cases, but do not inhibit the exercise of the powers set out in Section 437d in appropriate circumstances.

Even if the Commission does not read Section 437d in this way, and concludes that the terms or existence of authority to seek injunctive relief is controlled by section 437g, the general enforcement provisions do not compel a conclusion against the relief sought by Complainant here. The purpose of the enforcement provisions is controlling: to "prevent" as well as to "correct" violations. The deadlines are a means to the end, not an end in themselves. Should they appear in a particular instance, such as this, to impede the "prevention" or "correction" of a violation, then they must yield to the overriding mandate of the Commission to enforce the law.

9704343616

The Commission itself has set out the standards that should govern whether injunctive relief is warranted:

1. Substantial likelihood that the facts set forth a potential violation of the Act;

2. Failure of the Commission to act expeditiously will result in irreparable harm to a party affected by the potential violation;

3. Expeditious action will not result in undue harm or prejudice to the interests of other persons; and

4. The public interest would be served by expeditious handling of the matter.

Annual Report 1991 at page 49.

Each of these standards are clearly met in this case. Multimedia's ongoing and substantial corporate contributions are made unquestionably in violation of the Act. Respondent does not deny the expenditures, does not deny their purpose, does not deny that they were coordinated and does not deny the use of corporate funds. Failure of the Commission to act expeditiously will certainly result in irreparable harm to Congressman Glickman in his campaign for reelection. Hundreds of thousands of dollars of illegal expenditures are being and will be made in an attempt to defeat his reelection. Expeditious action will not result in undue harm to Multimedia; such action only serves to stop immediately willful expenditures of corporate funds in violation of the Act. It has long been the position of the Commission, as well as the courts, that one of the greatest threats to a fair and balanced election system is the influx of corporate funds into

97043036617

the political process. Thus, terminating an activity in direct contravention to this public policy is squarely in the public interest.

INITIATION OF KNOWING AND WILLFUL PROCEEDING

An order of injunctive relief upon application by the Commission would address the immediate, ongoing violations of law by Multimedia. It would not complete enforcement which should proceed under Section 437g of the Act, culminating in the imposition of appropriate penalties. Such penalties should be assessed, given the circumstances of this case, under the "knowing and willful" standard of Section 437g(a)(5)(B)

Multimedia is not a "mom-and-pop" operation, unschooled in the laws which govern its activities. Surely its General Counsel is aware of the prohibition on corporate spending in federal elections. The company cannot claim ignorance of the FECA. And even if it sought to do so, the Commission cannot countenance this excuse. For if corporations such as Multimedia may calculate that violations of this sweeping character will be treated as routine, vulnerable only to the standard civil penalty provisions, the incentives for compliance will decline as the political stakes for the company increase. In effect, the company will simply pay the penalty as another cost of doing business.

A knowing and willful penalty, applied to Multimedia as well as to its officers, will signal in decisive terms the

Commission's commitment to rigorous statutory enforcement. It will have genuine impact on Multimedia--both in the admissions it is required to make in the conciliation agreement, and in the size of the civil penalty paid. Only this level of enforcement will dissuade Multimedia, and others observing these violations from a distance, that this type of lawless conduct will not be tolerated.

Respectfully Submitted,

Robert F. Bauer
B. Holly Schadler

Perkins Coie

607 14th Street, N.W.
Washington, D.C. 20005-2011
(202) 628-6600

Enclosure

Subscribed and sworn before me this 16th day of October, 1992.

Notary Public

NANCY W. BENNING
Notary Public, Washington, D.C.
My Commission Expires May 31, 1995

Congressman Dan Glickman
Glickman Campaign Headquarters
121 E. Douglas
Wichita, KS 67202

EXHIBIT 1

Campaign Ad Watch

EDITOR'S NOTE: Political advertising on television and radio is designed for quick impact and sometimes involves subtle and even not-so-subtle distortions that go by in a hurry. During this campaign season, The Eagle takes a closer, more studied look at political commercials and analyzes their content. The following ad has been running on television this week.

Campaign: Multimedia Cablevision.

Running time: 30 seconds.

THE COMMERCIAL: This is the third in a series of editorials in which Multimedia criticizes U.S. Rep. Dan Glickman, D-Wichita, and endorses his opponent, state Sen. Eric Yost, R-Wichita.

Mike Burns, executive vice president of Multimedia, says: "Congressman Dan Glickman likes to say he's a leader. But let's take a look at his record.

"Dan Glickman led all Kansas congressmen in junkets paid for by lobbyists. Dan Glickman led all Kansas congressmen in bounced checks, special interest PAC money and total office expenses.

"We need a congressman who will fight for his community, not for himself. It's time for a change in Washington. And that's why we are supporting Eric Yost for Congress."

DAN GLICKMAN TRAVELED AT LOBBYISTS' EXPENSE

ORLANDO, NEW YORK CITY
NEW YORK CITY, CHICAGO
TUCSON, FT. LAUDERDALE
HARTFORD, CT, NEW YORK CITY
NEW YORK CITY, DENVER
MIAMI, KANSAS CITY
DETROIT, NEW YORK CITY

(Source: The Wichita Eagle, Sept. 13, 1991)

Multimedia Cablevision has now broadcast three different anti-Glickman messages.

Analysis: What the editorial calls "junkets," said Glickman campaign manager Kay Coles, were speaking engagements in which Glickman talked to groups about legislation and federal issues affecting them. He allowed the groups to pay for his travel expenses, she said, but he did not accept any fees for speaking. During the term of the 102nd Congress, she said, Glickman also returned to the 4th District for appearances 63 times.

On office expenses, she said, Glickman's office handled more than 7,400 inquiries from constituents and sent out 98,000 letters responding to constituent concerns during this congressional term. The work involved helping constituents with questions or problems on subjects ranging from Social Security to immigration.

On the issue of checks, 105 checks that Glickman drew on his account at the House Bank were held for various reasons. No tax money was directly involved in those transactions and all creditors were paid in full. Glickman has said he was not notified of the problem until a federal investigation turned up troubles at the House Bank. He has received a letter from the U.S. Justice Department indicating that an investigation found no grounds for criminal charges.

On contributions from PACs, political action committees, Coles said such groups often are made up of average people, many of whom are taxpayers in the 4th District. "Those vary from farm groups to business groups to labor groups to nearly groups," she said. "They are just groups of people in the 4th District who support him."

Wichita Eagle p. 4B 10/10/92

9704356262

92 OCT 16 PM 4:11

Wichita Eagle
10/13/92 p. 4A

COPY

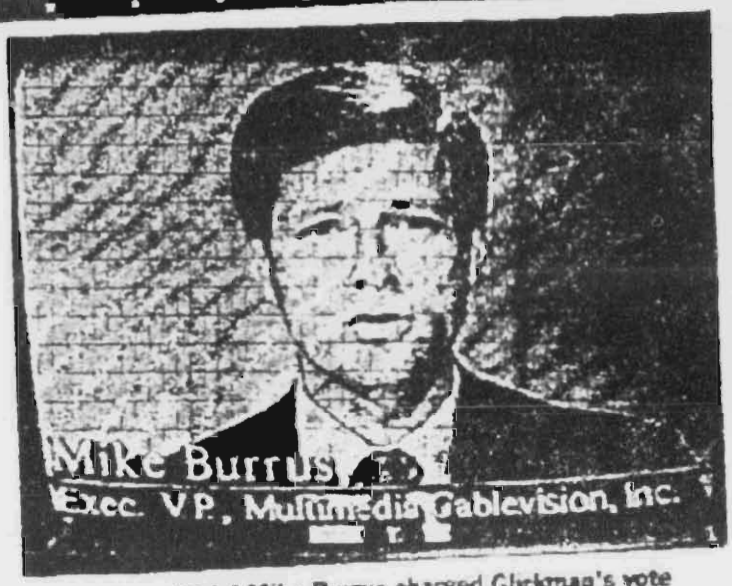
Campaign ad watch

EDITOR'S NOTE: *Political advertising on television and radio is designed for quick impact and sometimes involves subtle and even not-so-subtle distortions that go by in a hurry. During the campaign season, The Eagle is taking a closer, more studied look at political commercials and is analyzing their content. The following ad is now running on television.*

Campaign: Multimedia Cablevision.

Running time: 30 seconds.

THE COMMERCIAL: This endorsement by Multimedia Cablevision of Wichita features company Executive Vice President Mike Burrus. Burrus says: "When Dan Glickman cast his vote in favor of the cable bill, just who was he representing? Government studies estimate the bill could cause your cable rates to increase $2 to $4 per month. Also, it will cost the federal government $100 million during the next five years to regulate cable companies and state and local governments an additional $8 to $14 million per year. Dan Glickman no longer represents the best interests of his constituents in the 4th District. That's why we're supporting Eric Yost for Congress."



Cablevision official Mike Burrus charged Glickman's vote on regulation showed he no longer represented Wichitans.

Analysis: Multimedia officials say this is an editorial by the company under its First Amendment rights. Glickman campaign officials argue that it is a campaign commercial for Yost that is being paid for by the cable company.

Glickman was representing consumers when he voted for the cable regulation bill, said Glickman spokeswoman Kay Coles. Estimates that the legislation would increase cable bills, Coles said, were provided by the cable industry to the U.S. Department of Commerce, which put the figures in its reports. Then the cable industry began quoting the figures, she said, as if the government had created them. The figures, estimating the cost of regulating the cable industry, Coles said, "are another outrageous distortion by the cable TV industry" which is attempting to protect "monopolies" such as Multimedia right in the Wichita cable market.

Other studies, she said, have shown that cable rates are 30 percent lower in areas where more than one cable service is available. The endorsement also does not mention that the cable bill was passed by the U.S. House and U.S. Senate, vetoed by President Bush, and then passed again by a two-thirds majority in both houses, overriding the president's veto.

COPY

PRE-BILLING AUDIT REPORT

Page #:

ID	Net	Chan	Date	Time	Duration	Affid	Type	Desc	Rate Pkg	Rotation	Sched-Time	Leg	Prog	I-R	Inv
A 352439	CNN	10/12	6:56	6-	4	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352420	CNN	10/12	7:52	6-	4	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352423	CNN	10/12	8:50	6-	4	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352421	CNN	10/12	19:52	6-	4	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352422	CNN	10/12	19:56	6-	4	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352423	CNN	10/12	20:52	6-	4	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352424	CNN	10/12	21:52	6-	4	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352425	CNN	10/12	22:56	6-	4	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352427	CNN	10/12	23:57	6-	4	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352428	CNN	10/12	23:52	6-	4	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352397	ESPN	10/12	6:15	6-	1	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352393	ESPN	10/12	7:15	6-	1	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352397	ESPN	10/12	8:15	6-	1	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352399	ESPN	10/12	17:45	6-	1	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352391	ESPN	10/12	18:45	6-	1	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352392	ESPN	10/12	19:15	6-	1	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352392	ESPN	10/12	20:15	6-	1	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352394	ESPN	10/12	21:15	6-	1	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352395	ESPN	10/12	22:15	6-	1	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352396	ESPN	10/12	23:15	6-	1	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352461	NTV	10/12	18:50	6-	3	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352468	NTV	10/12	19:20	6-	3	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352462	NTV	10/12	19:50	6-	3	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352469	NTV	10/12	20:20	6-	3	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352463	NTV	10/12	20:50	6-	3	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352470	NTV	10/12	21:20	6-	3	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352464	NTV	10/12	21:50	6-	3	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352467	NTV	10/12	22:20	6-	3	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352465	NTV	10/12	22:50	6-	3	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352466	NTV	10/12	23:50	6-	3	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352408	USA	10/12	6:15	6-	2	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352409	USA	10/12	7:15	6-	2	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352410	USA	10/12	8:15	6-	2	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352407	USA	10/12	12:15	6-	2	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352451	USA	10/12	18:15	6-	2	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352452	USA	10/12	17:45	6-	2	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352450	USA	10/12	20:45	6-	2	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352449	USA	10/12	21:15	6-	2	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352435	USA	10/12	22:45	6-	2	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352436	USA	10/12	23:45	6-	2	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352417	WASH	10/12	6:27	6-	2	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352418	WASH	10/12	7:27	6-	2	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352417	WASH	10/12	8:27	6-	2	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352411	WASH	10/12	20:20	6-	2	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352412	WASH	10/12	19:20	6-	2	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352413	WASH	10/12	20:50	6-	2	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	
A 352414	WASH	10/12	21:20	6-	2	371	CABLE BILL SL10	.00 PA	1/TIME S	600-2400	30	1	Z-1	2	

Lin	Chan	Date	Time	Order-Ln	Affid	Task	Desc	Rate PSD	Rev Class	Sched-Time	Ln	Prog	I-R	Inv
371	Acct	Call Date	Promotions			Tot	Tot Charge	Desc	Grid	Cost Grid	Acct			
352415	WASH	10/12	22:29	6- 3		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
352420	WASH	10/12	22:57	6- 3		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
352416	WASH	10/12	23:29	6- 3		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
352430	NICK	10/12	6:55	6- 10		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
352432	NICK	10/12	7:55	6- 10		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
352430	NICK	10/12	11:55	6- 10		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
352432	NICK	10/12	12:55	6- 10		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
352431	NICK	10/12	13:55	6- 10		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
352436	NICK	10/12	19:55	6- 10		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
352432	NICK	10/12	21:20	6- 10		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
352432	NICK	10/12	21:55	6- 10		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
352432	NICK	10/12	22:57	6- 10		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
[illegible]	NICK	10/12	23:20	6- 10		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
352440	LIFE	10/12	6:59	6- 6		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
352439	LIFE	10/12	7:59	6- 6		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
352438	LIFE	10/12	9:29	6- 6		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
352441	LIFE	10/12	10:29	6- 6		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
352442	LIFE	10/12	19:59	6- 6		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
[illegible]	LIFE	10/12	20:29	6- 6		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
[illegible]	LIFE	10/12	21:29	6- 6		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
352440	LIFE	10/12	22:29	6- 6		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
352446	LIFE	10/12	23:29	6- 6		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
352447	LIFE	10/12	23:59	6- 6		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
352457	ABC	10/12	7:00	6- 7		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
[illegible]	ABC	10/12	8:29	6- 7		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
[illegible]	ABC	10/12	9:59	6- 7		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
352460	ABC	10/12	16:29	6- 7		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
[illegible]	ABC	10/12	17:59	6- 7		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
352462	ABC	10/12	19:59	6- 7		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
[illegible]	ABC	10/12	20:29	6- 7		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
[illegible]	ABC	10/12	21:29	6- 7		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
[illegible]	ABC	10/12	22:59	6- 7		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
[illegible]	ABC	10/12	23:29	6- 7		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
352471	TWC	10/12	19:18	6- 9		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
352472	TWC	10/12	19:35	6- 9		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
[illegible]	TWC	10/12	19:35	6- 9		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
[illegible]	TWC	10/12	20:18	6- 9		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
[illegible]	TWC	10/12	20:35	6- 9		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
[illegible]	TWC	10/12	21:35	6- 9		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
[illegible]	TWC	10/12	22:15	6- 9		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
[illegible]	TWC	10/12	22:35	6- 9		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
[illegible]	TWC	10/12	23:35	6- 9		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
[illegible]	TWC	10/12	23:35	6- 9		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
[illegible]	CBNC	10/12	10:24	6- 5		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
[illegible]	CBNC	10/12	10:24	6- 5		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
[illegible]	CBNC	10/12	11:24	6- 5		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
[illegible]	CBNC	10/12	20:54	6- 5		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2
[illegible]	CBNC	10/12	23:24	6- 5		371	CABLE BILL SL10	.00 PS	1/TIME S	600-2400	30	1	Z-1	2

I	L.O.	Chan	Date	Time	Order-Lk	Affil	Tape	Dest	Date Rec	Rec/Class	Sch Time	Leg	Prog	I-R	Inv

Acct. No.	Multimedia Prospting	Vol.	Sl. Product	Desc.	Grid	Cost	Spot	Aired				
352439	CNN2 10/12 20:24	6- 5	371 CABLE BILL SL10		.00	72	1/TIME S	600-2400	30	1	Z-1	2
352434	CNN2 10/12 21:24	6- 5	371 CABLE BILL SL10		.00	72	1/TIME S	600-2400	30	1	Z-1	2
352440	CNN2 10/12 21:54	6- 5	371 CABLE BILL SL10		.00	72	1/TIME S	600-2400	30	1	Z-1	2
352435	CNN2 10/12 22:24	6- 5	371 CABLE BILL SL10		.00	72	1/TIME S	600-2400	30	1	Z-1	2
352436	CNN2 10/12 23:24	6- 5	371 CABLE BILL SL10		.00	72	1/TIME S	600-2400	30	1	Z-1	2
	SUB TOTALS Dollars:		.00 Units: 100									

Aud Totals: Total Scheduled .00
Total Exceptions .00
To Invoice .00

Invoice Totals: Gross .00 Agency .00 Sub .00
Other .00 Trade .00 Tax .00 Net Inv. 0.00

9/0430436624

COPY

Campaign ad watch

EDITOR'S NOTE: *Political advertising on television and radio is designed for quick impact and sometimes involves subtle and even not-so-subtle distortions that go by in a hurry. During the campaign season, The Eagle is taking a closer, more studied look at political commercials and is analyzing their content. The following ad is now running on television:*

Campaign: Multimedia Cablevision

Running time: 30 seconds

THE COMMERCIAL: This is the second in a series of editorials in which Multimedia criticizes U.S. Rep. Dan Glickman, D-Wichita, and endorses his opponent, state Sen. Eric Yost, R-Wichita.

Mike Burrus, executive vice president of Multimedia, says: "In 1977, Dan Glickman told his colleagues in Congress that he supported term limits and would not seek re-election after 12 years. Today, 16 years later, Dan Glickman is still in Congress and is one of Washington's biggest opponents of term limits."

"In 1976, he said: 'You've had 16 years of a professional politician. Now is the time for a citizen Congressman.'" We couldn't agree more. That's why we are supporting Eric Yost for Congress."

"You've had 16 years of a professional politician. Now is the time for a citizen congressman."

Dan Glickman

©Copyright 1976 Glickman campaign literature Glickman

On Tuesday, Multimedia Cablevision unveiled its latest editorial criticizing Dan Glickman and endorsing Eric Yost.

Analysis: It is true that Glickman, who has served 16 years in the U.S. House, said when he first ran for office that he would serve only 12 years. It is true that he opposes term limits.

Glickman argues that voters have the power at each election to remove any officeholder they think has served long enough. He also says that term limits would give large states such as California, which will have 54 representatives in the U.S. House, an unfair advantage over states such as Kansas, which will have four members in the House.

Glickman spokesman Kay Coles charges that the editorial is part of "a vendetta" against Glickman by Multimedia because he voted to regulate cable TV rates. Coles accuses the cable company of supporting Yost, who has said he would have voted against the cable bill, because they wanted "a Congressman cut from the same mold." Multimedia officials say they disagreed with Glickman on the cable bill, and that they have many more reasons for opposing him in this year's elections.

Wichita Eagle p. 4D

4/
Page

COPY

MIC	I.D.	Chek	Date	Time	Chkd-In	Artic	Type	Desc	Rate	PCS	Rev/Class	Send-Time	Leg	Prog	I/R	Inv
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
A	353859	CNN	10/13	[illegible]	6-	4	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353860	CNN	10/13	7:20	6-	1	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353861	CNN	10/13	8:50	6-	1	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353862	CNN	10/13	10:55	6-	4	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353863	CNN	10/13	13:20	6-	1	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353873	CNN	10/13	17:54	6-	4	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353874	CNN	10/13	20:52	6-	1	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353875	CNN	10/13	21:52	6-	4	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353876	CNN	10/13	23:50	6-	4	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353877	CNN	10/13	23:56	6-	4	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	[illegible]	[illegible]	10/13	[illegible]	6-	1	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	[illegible]	[illegible]	10/13	7:17	[illegible]	1	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353881	[illegible]	10/13	9:15	6-	1	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353882	[illegible]	10/13	10:12	6-	1	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353883	[illegible]	10/13	18:47	6-	1	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353884	[illegible]	10/13	17:47	6-	1	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353885	[illegible]	10/13	20:12	6-	1	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	[illegible]	[illegible]	10/13	[illegible]	[illegible]	[illegible]	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353886	[illegible]	10/13	20:47	6-	1	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353887	[illegible]	10/13	20:47	6-	1	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353888	[illegible]	10/13	20:12	6-	1	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353889	[illegible]	10/13	20:12	6-	1	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353890	[illegible]	10/13	16:20	6-	3	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30		Z-1	3
A	353890	MTV	10/13	16:20	6-	9	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30		Z-1	3
A	353894	MTV	10/13	19:20	6-	3	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353895	MTV	10/13	20:20	6-	3	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353896	MTV	10/13	[illegible]	6-	1	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353897	MTV	10/13	21:20	6-	3	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353898	MTV	10/13	22:20	6-	1	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353899	MTV	10/13	23:50	6-	3	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353900	MTV	10/13	10:35	6-	3	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	[illegible]	MTV	10/13	23:53	6-	1	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	[illegible]	JGA	10/13	[illegible]	6-	1	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353903	JGA	10/13	7:17	6-	2	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353904	JGA	10/13	8:47	6-	2	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353941	JGA	10/13	10:45	6-	2	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353942	JGA	10/13	18:45	6-	2	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353943	JGA	10/13	17:17	6-	2	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353944	JGA	10/13	20:17	6-	2	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353945	JGA	10/13	21:45	6-	2	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353946	JGA	10/13	22:17	6-	2	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353947	JGA	10/13	23:45	6-	2	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353948	JGA	10/13	7:47	6-	2	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353949	JGA	10/13	8:17	6-	2	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353950	JGA	10/13	10:47	6-	2	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353951	JGA	10/13	19:17	6-	2	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353952	JGA	10/13	20:47	6-	2	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353953	JGA	10/13	21:47	6-	2	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353954	JGA	10/13	23:47	6-	2	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353955	JGA	10/13	7:47	6-	2	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353956	JGA	10/13	8:17	6-	2	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353957	JGA	10/13	10:47	6-	2	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353958	JGA	10/13	19:17	6-	2	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353959	JGA	10/13	20:47	6-	2	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353960	JGA	10/13	21:47	6-	2	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3
A	353961	JGA	10/13	23:47	6-	2	377	TERM LIMITS SL35	.00	PU	1/TIME S	600-2400	30	1	Z-1	3

From: 03/10/13 To: 03/13/13

PRE-BILLING AUDIT REPORT

Print Date: 03/10/13
Time: 07:09:33
Page No: 1

AIC	I.D.	Chek	Date	Time	Origination	Artis	Tape	Dese	Rate	PCS	Re/Chek	Dsns/Flow	Adj	Prog	I-R	Inv
Date:	MSG0	MM/DD/YYYY	HH:MM:SS		PCS	E.	PO.GLAS		Devel.	ERIT	VEST	DRST	A.D.L.			
A	303346	NACH	10/13	23:59	6-	3	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303345	NACH	10/13	23:57	6-	3	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303347	NACH	10/13	23:59	6-	3	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303419	NCCX	10/13	1:55	6-	10	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303420	NCCX	10/13	7:55	6-	10	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303421	NCCX	10/13	7:55	6-	10	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303412	NCCX	10/13	13:55	6-	10	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303413	NCCX	10/13	17:55	6-	10	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303414	NCCX	10/13	20:55	6-	10	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303415	NCCX	10/13	21:57	6-	10	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303416	NCCX	10/13	22:57	6-	10	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303417	NCCX	10/13	23:57	6-	10	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303418	NCCX	10/13	23:57	6-	10	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303339	LPFC	10/13	6:55	6-	6	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303340	LPFC	10/13	7:57	6-	6	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303371	LPFC	10/13	9:57	6-	6	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303372	LPFC	10/13	12:57	6-	6	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303373	LPFC	10/13	13:57	6-	6	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303374	LPFC	10/13	19:57	6-	6	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303375	LPFC	10/13	20:57	6-	6	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303376	LPFC	10/13	21:57	6-	6	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303377	LPFC	10/13	22:57	6-	6	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303378	LPFC	10/13	23:57	6-	6	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303350	NAE	10/13	7:59	6-	7	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303351	NAE	10/13	8:59	6-	7	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303349	NAE	10/13	11:59	6-	7	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303341	NAE	10/13	12:59	6-	7	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303352	NAE	10/13	13:59	6-	7	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303353	NAE	10/13	18:59	6-	7	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303354	NAE	10/13	19:59	6-	7	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303355	NAE	10/13	20:59	6-	7	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303356	NAE	10/13	21:59	6-	7	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303357	NAE	10/13	22:59	6-	7	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303358	NAE	10/13	23:59	6-	7	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303342	TNT	10/13	8:55	6-	9	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303343	TNT	10/13	10:55	6-	9	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303344	TNT	10/13	15:55	6-	9	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303411	TNT	10/13	19:55	6-	9	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303422	TNT	10/13	19:55	6-	9	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303423	TNT	10/13	20:55	6-	9	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303424	TNT	10/13	21:55	6-	9	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303425	TNT	10/13	22:55	6-	9	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303426	TNT	10/13	23:55	6-	9	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303427	TNT	10/13	23:55	6-	9	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303428	TNT	10/13	23:55	6-	9	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303429	TNT	10/13	23:55	6-	9	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303430	TNT	10/13	23:55	6-	9	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303431	TNT	10/13	23:55	6-	9	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303432	TNT	10/13	23:55	6-	9	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303433	TNT	10/13	23:55	6-	9	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303434	TNT	10/13	23:55	6-	9	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303435	TNT	10/13	23:55	6-	9	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303436	TNT	10/13	23:55	6-	9	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303437	TNT	10/13	23:55	6-	9	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303438	TNT	10/13	23:55	6-	9	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303439	TNT	10/13	23:55	6-	9	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303440	TNT	10/13	23:55	6-	9	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303441	TNT	10/13	23:55	6-	9	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303442	TNT	10/13	23:55	6-	9	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303443	TNT	10/13	23:55	6-	9	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303444	TNT	10/13	23:55	6-	9	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303445	TNT	10/13	23:55	6-	9	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303446	TNT	10/13	23:55	6-	9	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303447	TNT	10/13	23:55	6-	9	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303448	TNT	10/13	23:55	6-	9	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303449	TNT	10/13	23:55	6-	9	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2
A	303450	TNT	10/13	23:55	6-	9	377	TERM	LIMITS	SL35	.00	PS	1/TIME	B	600-2400	30	1	Z-1	2

From: 02/10/13 To: 02/10/13 PRE-BILLING AUDIT REPORT Print Date: 02/10/13
Time: 07:10:18
Page #: 9

AIC	I.D.	Chnl	Date	Time	Order-Ln	Artvis	Tape	Desc	Rate	FSP	RevClass	Bcst-Time	Leg	Prog	I-X	Inv
Cable Area: MULTIMEDIA PROMOTIONS 701 E. DOUGLAS									Desc. ZRIO VOGT BMT			Alias:				
A 352874	DWG	10/10	20:54	6-	3	377	TERM LIMITS SL35		.00	PU	1/TIME S	600-2400	30	1	Z-1	2
A 353868	DWG	10/10	21:24	6-	5	377	TERM LIMITS SL35		.00	PU	1/TIME S	600-2400	30	1	Z-1	2
A 352871	DWG	10/10	0:54	6-	5	377	TERM LIMITS SL35		.00	PU	1/TIME S	600-2400	30	1	Z-1	2
A [illegible]	DWG	10/10	20:24	6-	5	377	TERM LIMITS SL35		.00	PU	1/TIME S	600-2400	30	1	Z-1	2
A [illegible]	DWG	10/10	20:24	6-	5	377	TERM LIMITS SL35		.00	PU	1/TIME S	600-2400	30	1	Z-1	2
	Sub-Totals: Dollars:					.00	Units:	100								

Work Totals: Total Scheduled .00
Total Exception .00
To Invoice .00

Invoice Totals: Gross .00 Agency .00 Rep .00
Other .00 Trade .00 Tax .00 Net Inv. 0.00

9/0438462

ID	I.D.	Chan	Date	Time	Order-Ln	Affid	Tape	Spec	Rate Pd	Rate Class	Schd-Time	Lag	Prog	I-D	Ln
[illegible]	[illegible]	HEALTHSOUTH PROMOTIONS							[illegible]	[illegible]	[illegible]				
Contracts (6)															
A 35-4266		CNN	10/14	6:56	6- 4	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4263		CNN	10/14	7:56	6- 4	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4262		CNN	10/14	12:29	6- 4	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4254		CNN	10/14	15:56	6- 4	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4249		CNN	10/14	18:29	6- 4	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4250		CNN	10/14	19:29	6- 4	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4247		CNN	10/14	20:56	6- 4	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4242		CNN	10/14	21:56	6- 4	371	CABLE DELL SL10		.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4231		CNN	10/14	22:56	6- 4	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4232		CNN	10/14	23:56	6- 4	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4222		ESPN	10/14	6:15	6- 1	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4221		ESPN	10/14	7:15	6- 1	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4214		ESPN	10/14	8:15	6- 1	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4215		ESPN	10/14	19:15	6- 1	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4216		ESPN	10/14	19:15	6- 1	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4217		ESPN	10/14	20:45	6- 1	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4218		ESPN	10/14	21:45	6- 1	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4219		ESPN	10/14	22:15	6- 1	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4220		ESPN	10/14	22:45	6- 1	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4221		ESPN	10/14	23:15	6- 1	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4210		MTV	10/14	6:20	6- 3	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4209		MTV	10/14	7:20	6- 3	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4204		MTV	10/14	8:20	6- 3	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4206		MTV	10/14	15:20	6- 3	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4207		MTV	10/14	16:50	6- 3	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4208		MTV	10/14	17:50	6- 3	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4209		MTV	10/14	20:50	6- 3	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4210		MTV	10/14	21:50	6- 3	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4211		MTV	10/14	22:20	6- 3	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4212		MTV	10/14	22:50	6- 3	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4213		USA	10/14	6:15	6- 2	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4202		USA	10/14	12:45	6- 2	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4203		USA	10/14	16:15	6- 2	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4204		USA	10/14	17:15	6- 2	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4207		USA	10/14	18:15	6- 2	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4208		USA	10/14	19:15	6- 2	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4209		USA	10/14	20:15	6- 2	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4210		USA	10/14	21:45	6- 2	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4211		USA	10/14	22:45	6- 2	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4212		USA	10/14	23:15	6- 2	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4219		WACH	10/14	6:07	6- 3	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4220		WACH	10/14	7:07	6- 3	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4225		WACH	10/14	8:07	6- 3	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4227		WACH	10/14	12:37	6- 3	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4230		WACH	10/14	19:37	6- 3	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4237		WACH	10/14	22:37	6- 3	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1
A 35-4240		WACH	10/14	23:37	6- 3	377	TERM	LIMITS SL35	.00	PN	1/TIME S	600-2400	30	1	Z-1

9704936257

MT	Loc	Chec	Date	Time	Order-Lo	Mfld	Tape	Desc	Rate	PrO	RevClass	Echo-Time	Log	Prog	I-R	Inv
Cust. Acct			MILTHETA					701 S. DOUGLAS			Desc. ENID VOST SPOT		A.Exh			
A	354241	NACH	10/14	22:29	6-	3		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354242	NACH	10/14	23:29	6-	3		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354246	NACH	10/14	23:59	6-	3		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354311	NIDX	10/14	6:55	6-	10		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354312	NIDX	10/14	7:55	6-	10		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354313	NIDX	10/14	8:55	6-	10		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354315	NIDX	10/14	10:55	6-	10		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354316	NIDX	10/14	17:55	6-	10		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354314	NIDX	10/14	21:25	6-	10		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354317	NIDX	10/14	21:55	6-	10		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354318	NIDX	10/14	22:55	6-	10		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354319	NIDX	10/14	23:25	6-	10		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354311	NIDX	10/14	23:55	6-	10		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354275	LIFE	10/14	6:57	6-	6		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354276	LIFE	10/14	7:29	6-	6		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354273	LIFE	10/14	8:59	6-	6		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354274	LIFE	10/14	17:29	6-	6		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354277	LIFE	10/14	18:29	6-	6		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354278	LIFE	10/14	19:29	6-	6		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354279	LIFE	10/14	20:29	6-	6		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354271	LIFE	10/14	21:29	6-	6		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354272	LIFE	10/14	22:29	6-	6		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354272	LIFE	10/14	23:29	6-	6		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354285	ASE	10/14	7:30	6-	7		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354286	ASE	10/14	8:29	6-	7		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354287	ASE	10/14	9:59	6-	7		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354278	ASE	10/14	17:59	6-	7		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354279	ASE	10/14	18:29	6-	7		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354281	ASE	10/14	19:29	6-	7		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354281	ASE	10/14	20:29	6-	7		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354282	ASE	10/14	21:29	6-	7		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354283	ASE	10/14	22:59	6-	7		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354284	ASE	10/14	23:29	6-	7		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354291	THT	10/14	6:30	6-	9		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354297	THT	10/14	6:55	6-	9		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354299	THT	10/14	12:25	6-	9		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354300	THT	10/14	17:25	6-	9		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354301	THT	10/14	20:15	6-	9		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354302	THT	10/14	20:55	6-	9		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354303	THT	10/14	21:25	6-	9		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354304	THT	10/14	22:15	6-	9		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354305	THT	10/14	22:55	6-	9		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354306	THT	10/14	23:25	6-	9		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354245	DMC	10/14	6:29	6-	5		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354246	DMC	10/14	17:54	6-	5		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354243	DMC	10/14	18:24	6-	5		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354241	DMC	10/14	18:54	6-	5		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2
A	354244	DMC	10/14	19:24	6-	5		377 TERM LIMITS SL35		.00	PM 1/TIME S	600-2400	30	1	Z-1	2

Act	A.D.	Chan	Date	Time	Dnsr-Lin	Affid	Tape	Desc	Rate	PSD	RevClass	Bcnd-Time	Leg	Prog	I-R	Inv
Cust: 9531			PATTERSON PROMOTIONS					701 E. DOUGLAS	Desc: EXIT VOST SPOT				A.E.:			
A 35-1262		CNN2	10/14	19:54	S- 5		377	TERM LIMITS 8.35	.00	PM	1/TIME S	600-2400	30	1	Z-1	2
A 35-1267		CNN2	10/14	20:24	S- 5		377	TERM LIMITS 8.35	.00	PM	1/TIME S	600-2400	30	1	Z-1	2
A 35-1268		CNN2	10/14	21:24	S- 5		377	TERM LIMITS 8.35	.00	PM	1/TIME S	600-2400	30	1	Z-1	2
A 35-1269		CNN2	10/14	22:24	S- 5		377	TERM LIMITS 8.35	.00	PM	1/TIME S	600-2400	30	1	Z-1	2
A 35-1270		CNN2	10/14	23:24	S- 5		377	TERM LIMITS 8.35	.00	PM	1/TIME S	600-2400	30	1	Z-1	2
SUB-TOTAL: Dollars								.00 Units: 100								

Work Totals: Total Schedules .00
Total Exceptions .00
To Invoice .00

Invoice Totals: Gross .00 Agency .00 Pay .00
Other .00 Trade .00 Tax .00 Net Inv. 0.00

9704356631

EXHIBIT 2

Multimedia Editorial

IT'S TIME FOR A CHANGE

In 1976, Dan Glickman said, "You've had 16 years of a professional politician. Now is the time for a citizen Congressmen." *(1976 Glickman campaign literature, quoted in CQ's Washington Alert, 5/27/92)* We couldn't agree more, because Dan Glickman no longer represents the best interests of the Fourth District.

JUST WHO IS DAN GLICKMAN REPRESENTING?

- Dan Glickman voted FOR the cable bill, which will directly affect you, the cable subscriber. He ignored Department of Commerce estimates that the bill would increase YOUR cable rates $2.00 - $4.00 per month. In addition, according to the Congressional Budget Office, it will cost the Federal Government $100 million during the next 5 years, and state and local governments another $8 - $14 million per year to regulate cable companies.

- Dan Glickman voted for a special tax on aircraft that put over 400 workers at Beech out of a job. *(1990 CQ Vote #528, 10/26/90, Beechcraft memo 12/16/91)*

- Dan Glickman fought to tax unemployment compensation as income. *(1986 CQ Vote #379, 9/25/86)*

- Dan Glickman fought to increase taxes on middle class families. *(1989 CQ Vote #253 9/28/89)*

- Dan Glickman led all Kansas Congressmen in junkets paid for by lobbyists, in special interest PAC money, and in total office expenses. *(Wichita Eagle, 9/13/91, 3/17/92, 5/20/92, USA Today 9/28/92)*

- Dan Glickman lied to us. He said he never bounced any checks at the House Bank, but he did. Records show that he bounced 105 checks totalling more than $20,000. *(letter to Washington Post)*

- In 1977, he told colleagues in Congress that he supported term limits and would not seek re-election after 12 years. Today, after 16 years, he's still in Congress and is one of the biggest opponents of term limits. *(Congressional Record, House of Representatives, 2/9/77)*

OUR COMMUNITY NEEDS SOMEONE WHO WILL FIGHT FOR US, NOT AGAINST US.
WE NEED SOMEONE WE CAN TRUST.

WE SUPPORT ERIC YOST FOR CONGRESS.

Multimedia Cablevision

Michael Burrus, Executive Vice President
P.O. Box 3027
Wichita, KS 67201

92 OCT 16 PM 4:11
RECEIVED FEDERAL ELECTION COMMISSION
9704384632

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 19, 1992

B. Holly Schadler
Perkins Coie
607 14th Street, NW
Washington, DC 20005-2011

RE: MUR 3657

Dear Ms. Schadler:

This letter acknowledges receipt on October 16, 1992, of your complaint on behalf of Congressman Dan Glickman and the Glickman for Congress Committee alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Multimedia Cablevision, Inc., Michael Burrus, Executive Vice President and the Eric R. Yost for Congress Committee and Theron E. Fry, as treasurer. The respondents will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 3657. Please refer to this number in all future correspondence. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Jonathan Bernstein

Jonathan A. Bernstein
Assistant General Counsel

Enclosure
Procedures

9704384633

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 19, 1992

Multimedia Cablevision, Inc.
Michael Burrus, Executive Vice President
P.O. Box 3027
Wichita, KS 67201

RE: MUR 3657

Dear Mr. Burrus:

The Federal Election Commission received a complaint which indicates that Multimedia Cablevision, Inc. may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3657. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against Multimedia Cablevision, Inc. in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

9/04/3/3/4/3/6/3/4

If you have any questions, please contact Richard M. Zanfardino, the staff member assigned to this matter, at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Jonathan Bernstein

Jonathan A. Bernstein
Assistant General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

9704300463630

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 19, 1992

Michael Burrus, Executive Vice President
Multimedia Cablevision, Inc.
P.O. Box 3027
Wichita, KS 67201

RE: MUR 3657

Dear Mr. Burrus:

The Federal Election Commission received a complaint which indicates that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3657. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

9704243636

If you have any questions, please contact Richard M. Zanfardino, the staff member assigned to this matter, at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Jonathan Bernstein

Jonathan A. Bernstein
Assistant General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

9/0435637

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 19, 1992

Theron E. Fry, Treasurer
Eric R. Yost for Congress Committee
919 Parklane
Wichita, KS 67218

RE: MUR 3657

Dear Mr. Fry:

The Federal Election Commission received a complaint which indicates that the Eric R. Yost for Congress Committee ("Committee") and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3657. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the Committee and you, as treasurer, in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

9/0433436530

If you have any questions, please contact Richard M. Zanfardino, the staff member assigned to this matter, at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Jonathan Bernstein

Joanthan A. Bernstein
Assistant General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

9104343632

PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. / WASHINGTON, D.C. 20005-2011 • (202) 62[illegible]

RECEIVED
FEDERAL ELECTION
COMMISSION
ADMINISTRATIVE DIVISION
OCT 21 4 21 PM '92

October 21, 1992 MUR 3657

92 OCT 22 PM 3:36

Jonathan Bernstein, Esq.
Assistant General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Additional Information in the Matter of a Complaint by Congressman Glickman Against Multimedia Cablevision, Inc.

Dear Mr. Bernstein:

Enclosed you will find three tapes of the "editorials" being aired by Multimedia Cablevision, Inc. ("Multimedia"). As the Complaint and Motion for Injunctive Relief discussed, Multimedia is running each "editorial" in the series for approximately two to three days over 100 times per day.

These "editorials" are not consistent in format or frequency with standard industry practice. As the series continues, Multimedia is using more sophisticated graphics causing the "editorials" to look increasingly like campaign commercials. In addition, Multimedia is using consistent themes and campaign slogans throughout the ads --"It's Time for a Change" -- no different than a candidate or political committee. In fact, these ads are so deceptive that polling indicates that a majority of the viewers believe they are seeing Yost advertisements. Multimedia is conducting this political campaign in flagrant violation of the law. Complainant again requests that the Commission act expeditiously to enjoin Multimedia.

Very truly yours,

Robert F. Bauer
B. Holly Schadler

Enclosure

BHS:bhs

[04031-0001/DA922940.045]

RECEIVED
FEDERAL ELECTION
COMMISSION
ADMINISTRATIVE DIVISION

OCT 21 4 21 PM '92

This statement notarizes the letter dated October 21, 1992 to Jonathan Bernstein at the Federal Election Commission regarding additional information in the matter of a complaint by Congressman Glickman against Multimedia Cablevision, Inc.

Subscribed and sworn before me this 21st day of October, 1992.

Notary Public

DINA POWELL
Notary Public, Washington, D.C.

My Commission Expires on October 31st 1992

[04031-0001/DA922940.045]

PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011 • (202) 628-6600

MUR 3657

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIN COPY ROOM

OCT 22 3 15 PM '92

October 22, 1992

Jonathan Bernstein, Esq.
Assistant General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Additional Information to the Complaint by Congressman Glickman Against Multimedia Cablevision, Inc.

Dear Mr. Bernstein:

Enclosed you will find the fourth tape in a series of commercial advertisements being aired by Multimedia Cablevision, Inc. in opposition to the candidacy of Congressman Dan Glickman.

Very truly yours,

Robert F. Bauer
B. Holly Schadler

Enclosure

BHS:bhs

[04031-0001/DA922960.014]

RECEIVED
F.E.C.
SECRETARIAT
92 OCT 21 PM 12:09

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

October 21, 1992

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

SUBJECT: MUR 3657 (Multimedia Cablevision, Inc.)

I. BACKGROUND

On October 16, 1992, counsel filed a complaint on behalf of Congressman Dan Glickman and the Glickman for Congress Committee against Multimedia Cablevision, Inc. ("Multimedia") and other respondents. Letters to the respondents notifying them of the complaint were mailed on October 19, 1992. The complaint's allegations relate to televised editorials run by Multimedia at the rate of more than 100 times per day on ten cable stations attacking Rep. Glickman and expressly promoting his opponent. The complaint alleges that the "editorials" amount to advertisements which are outside the press exemption at section 2 U.S.C. § 431(9) and so constitute illegal corporate spending in federal elections. Furthermore, the complaint includes a campaign flier on Multimedia stationery and alleges that the corporation is distributing this flier with its customer billings. In addition to alleging violations of the Act, the complaint formally requests that the Commission "take immediate action to enjoin Multimedia advertising campaign."

II. LEGAL AND FACTUAL ANALYSIS

The Commission is empowered to initiate a civil suit for injunctive relief if it is unable to correct or prevent a violation of the Act. 2 U.S.C. §§ 437d(a)(6) and 437g(a)(6). The procedure for pursuing that immediate remedy is problematic since the Commission must normally wait 15 days before it takes action on a complaint. 2 U.S.C. § 437g(a)(1).

9/0430364 3

In considering whether injunctive relief should be sought, the Commission has used the criteria for obtaining a preliminary injunction as the appropriate standard. This standard examines the requested relief in these terms:

(1) whether there is a substantial likelihood that a violation of the Act has or is about to occur;

(2) whether the failure by the Commission to obtain an injunction will result in irreparable harm to the complainant or some other party;

(3) whether the injunctive relief will not result in undue harm or prejudice to the interests of other persons; and

(4) whether the public interest would be served by such injunctive relief.

III. DISCUSSION

The respondents have not yet had an opportunity to respond to the complaint in this matter. The first allegation in the complaint, relating to the televised "editorials," raises two points which this Office believes require response from Multimedia. The first is a threshold one: whether the press exemption is even applicable to an entity like Multimedia Cablevision, Inc. This issue requires further analysis as well as inquiry as to exactly what Multimedia's position is.[1/] The next point, raised in the complaint, is whether the frequency or format of televised editorials can take such spending outside the press exemption for "editorials" or "news commentary", and if so, whether the facts in this matter would do so. Because further analysis and a response from Multimedia is desirable before moving forward, it is not clear that the first standard for injunctive relief has been met. The second allegation in the complaint, of Multimedia including its campaign flier in its consumer bills, appears to be more clear, as this Office can see no readily applicable exemption from the corporation prohibition. Nonetheless, this Office concludes that it is still more

---

1/ According to the International Directory of Corporate Affiliations, Multimedia, Inc. is a parent corporation whose business is described as "newspapers, Broadcasting, Cablevision & Programming." Multimedia Cablevision is a wholly owned corporate subsidiary of Multimedia, Inc. which does not appear to own or directly run any broadcast stations or outlets.

9/04/3364 4

appropriate to await the statutory time period for a response.[2/] For these reasons, this Office recommends the Commission deny complainant's request for injunctive relief and permit Multimedia to respond to the complaint.

This Office does note, however, that the letters informing respondents of the complaint should serve to put them on notice of the potentially serious violations, should Multimedia continue its campaign against Rep. Glickman.

IV. RECOMMENDATIONS

1. Decline at this time to seek injunctive relief.

2. Approve the appropriate letters.

Staff assigned: Jonathan Bernstein

2/ This Office has initiated a research project to examine the question of the Commission's authority to seek injunctive relief, especially before the statutory period for response has run. Recommendations to the Commission on this subject will be forthcoming when the project is complete.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS /DONNA ROACH DR
COMMISSION SECRETARY

DATE: OCTOBER 26, 1992

SUBJECT: MUR 3657 - GENERAL COUNSEL'S MEMORANDUM DATED OCTOBER 21, 1992

The above-captioned document was circulated to the Commission on WEDNESDAY, OCTOBER 21, 1992 at 4:00 P.M. .

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	_____
Commissioner Elliott	_____
Commissioner McDonald	_____
Commissioner McGarry	_____
Commissioner Potter	XXXX
Commissioner Thomas	_____

This matter will be placed on the meeting agenda for TUESDAY, NOVEMBER 3, 1992.

Please notify us who will represent your Division before the Commission on this matter.

9104304346

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Multimedia Cablevision, Inc.	)	MUR 3657

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on October 27, 1992, the Commission decided by a vote of 6-0 to take the following actions in MUR 3657:

1. Decline at this time to seek injunctive relief.

(continued)

9/0430446647

2. Approve the appropriate letters, as recommended in the General Counsel's Memorandum dated October 21, 1992.

Commissioners Aikens, Elliott, McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision.

Attest:

10-27-92
Date

Delores R. Hardy
Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat:	Wed.,	Oct. 21, 1992	12:09 p.m.
Circulated to the Commission:	Wed.,	Oct. 21, 1992	4:00 p.m.
Deadline for vote:	Mon.,	Oct. 26, 1992	4:00 p.m.
Received Objection:	Mon.,	Oct. 26, 1992	3:53 p.m.
Placed on Agenda for:	Tues.,	Nov. 03, 1992	
Objection Withdrawn:	Tues.,	Oct. 27, 1992	3:37 p.m.
Withdrawn from Agenda			

bjr

9/0430436445

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 2, 1992

B. Holly Schadler
Perkins Coie
607 14th Street, N.W.
Washington, D.C. 20005-2011

RE: MUR 3657

Dear Ms. Schadler:

On October 16, 1992, the Federal Election Commission received your complaint alleging that Multimedia Cablevision, Inc., Michael Burrus, Executive Vice President and the Eric R. Yost for Congress Committee and Theron E. Fry, as treasurer violated the Federal Election Campaign Act of 1971, as amended.

Your complaint seeks injunctive relief to prevent Multimedia Cablevision Inc., Michael Burrus, Executive Vice President and the Eric R. Yost for Congress Committee and Theron E. Fry, as treasurer from continuing to engage in the allegedly improper activity. At this time there is insufficient evidence to warrant the Commission's seeking such relief. Accordingly, the Commission has decided to deny your request at this juncture. The Commission will notify you at such time when the entire file is closed in this matter.

If you have any questions, please contact Jonathan Bernstein, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 2, 1992

Michael Burrus, Executive Vice President
Multimedia Cablevision, Inc.
P.O. Box 3027
Wichita, KS 67201

RE: MUR 3657
Multimedia Cablevision, Inc.,
and Michael Burrus

Dear Mr. Burrus:

On October 19, 1992, the Federal Election Commission notified you of a complaint alleging that Multimedia Cablevision, Inc. and you violated certain sections of the Federal Campaign Act of 1971, as amended. A copy of the complaint was forwarded to you at that time.

The complainant seeks injunctive relief to prevent Multimedia Cablevision, Inc. from continuing to engage in allegedly improper activity. At this time there is insufficient evidence to warrant the Commission's seeking such relief. Accordingly, the Commission has decided to deny the complainant's request for injunctive relief at this juncture. The Commission will nonetheless proceed with the processing of the complaint pursuant to 2 U.S.C. § 437g(a).

If you have any further questions, please contact Jonathan Bernstein, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

92043036560

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 2, 1992

Theron E. Fry, Treasurer
Eric R. Yost for Congress Committee
919 Parklane
Wichita, KS 67218

RE: MUR 3657
Yost for Congress Committee,
and Theron E. Fry as treasurer

Dear Mr. Fry:

On October 19, 1992, the Federal Election Commission notified you of a complaint alleging that the Eric R. Yost for Congress Committee ("Committee") and you, as treasurer violated certain sections of the Federal Campaign Act of 1971, as amended. A copy of the complaint was forwarded to you at that time.

The complainant seeks injunctive relief to prevent Multimedia Cablevision, Inc. from continuing to engage in allegedly improper activity. At this time there is insufficient evidence to warrant the Commission's seeking such relief. Accordingly, the Commission has decided to deny the complainant's request for injunctive relief at this juncture. The Commission will nonetheless proceed with the processing of the complaint pursuant to 2 U.S.C. § 437g(a).

If you have any further questions, please contact Jonathan Bernstein, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

OGC 7290

WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 429-7000

JAN WITOLD BARAN
(202) 429-7330

FACSIMILE
(202) 429-7049
TELEX 248349 WYRN UR

November 2, 1992

92 NOV -3 AM 10:56

Lawrence M. Noble, Esq.
General Counsel
999 E Street, N.W.
Washington, D.C. 20463

ATTN: Jonathan Bernstein, Esq.

Re: MUR 3657 (Multimedia Cablevision, Inc.)

Dear Mr. Noble:

This office represents Multimedia Cablevision, Inc. ("Multimedia") in the above-captioned matter. Enclosed please find an executed Statement of Designation of Counsel form.

On October 23, 1992, Multimedia received a copy of a complaint dated October 16, 1992, and filed by Congressman Dan Glickman. Pursuant to 11 C.F.R. § 111.6, a response to this complaint would be due on Monday, November 9, 1992. For the following reasons, I respectfully request an additional 14 days up to and including November 23, 1992, within which to respond.

As noted in the complaint, the allegations raise significant issues under the so-called "news story, commentary or editorial" provision of the Federal Election Campaign Act, as amended, 2 U.S.C. § 431(9). This proceeding is also affected by issues of law pertaining to Congressman Glickman's contemporaneous complaint filed with the Federal Communications Commission which has been

resolved recently through informal mediation. These developments, which include the granting of unpaid time to Congressman Glickman, require additional time in order to assemble needed documentation and sworn testimony which are necessary to any response and cannot be assembled within the original response time. Accordingly, 14 additional days are requested.

Your favorable consideration of this request is appreciated.

Sincerely,

Jan Witold Baran

cc: David P. Fleming, Esq.

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3657

NAME OF COUNSEL: Jan Witold Baran, Esq.

ADDRESS: Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

TELEPHONE: (202) 429-7330

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

10/23/92
Date

Signature

RESPONDENT'S NAME: Multimedia Cablevision, Inc.

ADDRESS:

TELEPHONE: HOME( )

BUSINESS( )

9/0435436654

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 5, 1992

Jan Witold Baran, Esq.
Wiley, Rein & Fielding
1776 K St., NW
Washington, DC 20006

RE: MUR 3657
Multimedia Cablevision, Inc.

Dear Mr. Baran:

This is in response to your letter dated November 2, 1992, which we received on November 3, 1992, requesting an extension until November 23, 1992 to respond to the complaint in this matter. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on November 23, 1992.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Richard M. Zanfardino
Staff Member

LAW OFFICES OF
TRIPLETT, WOOLF & GARRETSON
SUITE 800
CENTRE CITY PLAZA
151 N. MAIN
WICHITA, KANSAS 67202-1409

TELEPHONE (316) 265-5700
TELECOPY (316) 265-6165

THOMAS C. TRIPLETT
JOHN P. WOOLF
THOMAS P. GARRETSON
JAMES A. WALKER
TIMOTHY E. McKEE
THERON E. FRY
ERIC B. METZ
RON H. HARNDEN
ERIC S. STRICKLER

CALVIN L. WIEBE
TAD PATTON
BRADLEY A. STOUT
RACHAEL K. PIRNER
ROBERT J. KNAPP
JEFFREY D. LEONARD
NANCY J. STROUSE

OF COUNSEL:
ERIC R. YOST

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIN COPY ROOM
Nov 13 9 21 AM '92

November 10, 1992

92 NOV 13 AM 10: 53

Ms. Lois G. Lerner
Associate General Counsel
Federal Election Commission
Washington, D.C. 20463

RE: MUR 3657
Yost for Congress Committee

Dear Ms. Lerner:

I am in receipt of your letter of November 2, 1992 and the letter of Mr. Jonathan A. Bernstein, dated October 19, 1992.

The October 19, 1992 letter was received on October 26, 1992. The envelope containing that letter did not bear a postmark. The letter dated November 2, 1992, was contained in an envelope postmarked November 4, 1992.

In both letters, it is stated that the Glickman complaint alleges that the Committee, and me as treasurer, violated certain sections of the Federal Campaign Act of 1971. However, I wish to note that the complaint only alleges violations against Multimedia Cablevision, Inc.

It is my position that the acts, constituting the basis of the complaint against Multimedia, were editorial in nature and an exercise of the first amendment rights of Multimedia. I am neither legal counsel for, or in control of, Multimedia. Furthermore, I was neither asked to consent to, or notified of, the actions of Multimedia in advance.

I will, of course, cooperate with you in your investigation to the full extent required by law.

Very truly yours,

Theron E. Fry

By Theron E. Fry

TEF:ck

9 / 0 4 3 5 4 3 5 5 6

OGC 7672

WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 429-7000

JAN WITOLD BARAN
(202) 429-7330

FACSIMILE
(202) 429-7049
TELEX 248349 WYRN UR

November 23, 1992

92 NOV 23 PM 4:22

Lawrence M. Noble, Esq.
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Attn: Richard M. Zanfardino

Re: MUR 3657 (Multimedia Cablevision, Inc.)

Dear Mr. Noble:

This Response, including the attached affidavit, is submitted on behalf of Multimedia Cablevision, Inc. ("Respondent" or "Multimedia") in reply to a complaint filed by Robert F. Bauer on behalf of Congressman Dan Glickman and designated Matter Under Review ("MUR") 3657. For the reasons set forth herein, the Federal Election Commission ("FEC" or "Commission") should find no reason to believe that Multimedia violated any provisions of the Federal Election Campaign Act of 1971, as amended ("the Act").

THE COMPLAINT

The Complaint is full of hyperbole. Many of the facts presented by the complainant are misleading and/or irrelevant given the statutory exemption provided the press in the Federal Election Campaign Act of 1971, as amended. 2 U.S.C. §§ 431-455.

The Complaint states that "Multimedia has been saturating its cable stations' airtime with advertisements attacking Congressman Dan Glickman and endorsing his opponent State Senator Eric Yost." Complaint at 1-2. In the Congressman's view, these editorials constituted a media blitz against the Congressman which were financed with corporate dollars. The Complaint further alleges that Multimedia produced the editorials "in collaboration and consultation with the Yost committee" in that the company had "conversations" with the Yost campaign concerning the editorials. Complaint at 2. Finally, the Complaint alleges that Multimedia distributed a "campaign flier with its customer billings" as part of a "corporate-funded assault on Congressman Glickman's campaign." Complaint at 3.

FACTS

Multimedia Cablevision, Inc. is a cable company that operates a cable television system in Wichita, Kansas, among many other service areas. Affidavit of Michael C. Burrus Before the Federal Election Commission (hereinafter "Burrus Aff.") at ¶ 2 (Exhibit 1). Multimedia's cable systems have approximately 40 channels that are used to carry the programming of 20 or more national cable networks delivered by satellite (i.e., CNN, ESPN, etc.). The remaining channels are used to carry broadcast stations (i.e., local

affiliates of NBC, ABC, and CBS), and locally originated programming. Id. ¶ 3. As part of the affiliation agreements between Multimedia and the cable networks, Multimedia is given several minutes of time each hour for its own purposes. Id. Multimedia can use this time to carry public service announcements, editorials, commercial advertising, or for promotional purposes. Id. Moreover, Multimedia is subject to regulatory oversight, including oversight by the Federal Communications Commission. Id. ¶ 2. Multimedia is not owned or controlled by any political party, political committee, or candidate. Id. ¶ 13.

Individual cable networks are numerous and, like magazines, many cable channels cater to narrow, targeted audiences with specialized interests. For example, Cable News Network ("CNN") carries only news 24 hours a day. Similarly, ESPN is a network dedicated entirely to sports; Black Entertainment Television carries programming oriented toward the black community; Nickelodeon is a network for children; and the Nashville Network is for country music lovers. The viewership of individual cable networks does not equal the viewership of local television broadcasting stations affiliated with major television networks such as ABC, NBC, and CBS. Id. ¶ 7. For example, in the Wichita market, one would need to broadcast a 30 second spot more than 171 times on ten cable channels in order to reach the same number of

viewers that the same 30 second spot would reach had it been broadcast over a single local network affiliated channel during the 10:00 o'clock news. Id. ¶ 8.

Being active in the community, Multimedia does in fact use its time to cablecast public service announcements and editorials on a regular basis. Id. ¶¶ 4-5. For instance, in September, 1992, Multimedia aired an editorial regarding the pending cable reregulation legislation (the "Cable Bill") approximately 2250 times. Id. ¶ 5. Furthermore, Multimedia regularly incorporates public service and editorial inserts into its billing statements. Id. ¶ 4. In the case of the Cable Bill, therefore, Multimedia also produced and distributed an editorial billing insert. Id. ¶ 5. These activities are part of Multimedia's day-to-day operations as a cable television system.[1]

Consistent with past practices, Multimedia produced and aired several editorials regarding Congressman Dan Glickman. Id. ¶ 6. In total, Multimedia aired the editorials regarding Congressman Glickman on a combination of ten individual channels a total of

---

[1] In fact, Multimedia has cablecast numerous editorials over the past several years. The editorials have addressed topics including Kansas highways, exercising the right-to-vote, and the ability of Wichita voters to elect their own mayor and city council. Id. ¶ 5. In addition, Multimedia has distributed numerous billing inserts, which it uses regularly as a forum for communicating editorial views, public service messages and other information to its subscribers. Id. ¶ 4.

1155 times over a period of twelve days from October 12 to 23. Id. This is the equivalent of broadcasting the editorials 6.7 times over a twelve-day period on one network-affiliated television station in Wichita during its 10 o'clock evening newscast. Id. ¶ 8. In producing these editorials, Multimedia did not consult or cooperate with any individuals associated with Eric Yost, Congressman Glickman's opponent, or with Mr. Yost himself. Id. ¶ 10. Rather, these editorials constituted the views of Multimedia with regard to the local race for U.S. Congress. Id.

In addition to airing these editorials, Multimedia provided Congressman Glickman an opportunity to respond. In fact, as early as October 12, the very first day the editorials aired, Multimedia sent Congressman Glickman a letter stating that

> "[p]ursuant to Section 76.209(d) of the Rules of the FCC relating to political editorials" Multimedia had broadcast an editorial in opposition to the Congressman's candidacy. These very same letters notified the Congressman "that a campaign spokesperson may exercise his/her right to respond to the editorial over Multimedia's facilities."

Id. ¶ 9. Thus, contrary to the parade of horribles alleged in his complaint, Congressman Glickman was given the opportunity to respond to the editorials pursuant to the requirements imposed upon Multimedia by the Federal Communications Commission ("FCC"). Furthermore, between October 27 and November 2, 1992, Multimedia cablecast, at no charge, approximately 700 responses submitted by

Congressman Glickman over the Multimedia cable system.[2] Id. ¶ 11. "This number would have been greater had the Congressman chosen to respond at an earlier date." Id. Having received these responsive opportunities, Congressman Glickman acknowledged that he had been given a reasonable opportunity to respond to the editorials consistent with FCC requirements. Id.

Finally, as in the case of the Cable Bill, Multimedia included an editorial regarding the local race for U.S. Congress in its billing statement. Id. ¶ 12.

DISCUSSION

The editorials produced and cablecast by Multimedia, as well as the editorial inserts produced and distributed by Multimedia, fall squarely within the exemption provided at 2 U.S.C. § 431(9)(B)(i) of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-455.

While a corporation may not make any contribution or expenditure in connection with a federal election, under the Act, the term "expenditure" does not include:

> any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or

---

[2] Multimedia also cablecast, again at no charge, 119 responses from Mr. Seth Warren, the Libertarian Party nominee for U.S. Congress. Id. ¶ 11.

> other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate.

2 U.S.C. § 431(9)(B)(i). See also 11 C.F.R. §§ 100.7(b)(2), 100.8(b)(2).

The Commission has long recognized that:

> [t]he press exemption was an 1974 amendment to the Act designed to "make it plain that it is not the intent of Congress...to limit or burden in any way the first amendment freedoms of the press and of association." H.R. Rep. No. 98-943, 93 Cong., 2d Sess. 4 . . . Courts have interpreted the exemption broadly in order to protect "the unfettered right of the media to cover and comment on political campaigns." FEC v. Phillips Publishing Inc., 517 F. Supp. 1308, 1312 (D.D.C. 1981); see also, FEC v. Readers Digest Association.

First General Counsel's Report, MUR 2567, p. 5 (1988).[3]

Further, in interpreting this provision, the Commission has determined that two requirements must be met. First, pursuant to Reader's Digest Association v. FEC, 509 F. Supp. 1210 (S.D.N.Y. 1981), the distribution must fall within the press entity's

---

[3] The Supreme Court has recognized in several cases that cable television systems perform the functions of a first amendment speaker. See Leathers v. Medlock, 111 S. Ct. 1438, 1442 (1991) ("[c]able television provides to its subscribers news, information, and entertainment. It is engaged in 'speech' under the First Amendment, and is, in much of its operation, part of the 'press'"). See also City of Los Angeles v. Preferred Communications, Inc., 476 U.S. 488, 494 (1986) and FCC v. Midwest Video Corp., 440 U.S. 689, 707 (1979). Moreover, FCC rules inherently contemplate editorials by cablecasters. See 47 C.F.R. § 76.209(d).

legitimate press function. Second, the facilities can not be owned or controlled by any political party, political committee, or candidate. Both requirements are met in this matter.

Consistent with the prevailing judicial recognition of cable television's first amendment rights, the Commission established in 1982 that the press exemption applied to cable operators. Advisory Opinion 1982-44, Fed Election Camp. Fin. Guide (CCH) ¶ 5691 (1982). In that opinion, the Commission determined that the donation of free cablecast time by Turner, Inc., operator of cable satellite networks, for the purpose of political "commentary" on cable satellite channels carried on cable systems did not constitute a prohibited corporate contribution, but was "within the broadcaster's legitimate broadcast function, and therefore, within the purview of the media exemption." Id. In reaching that conclusion the Commission also affirmed the applicability of the editorials exemption to cable operations.

In the matter now before the Commission, the editorials produced and cablecast by Multimedia in fact constituted Multimedia's point of view as attested to by Multimedia's Executive Vice President, Burrus Aff. ¶ 10, and the distribution of the editorials fell within Multimedia's legitimate press function.[4]

---

[4] That Multimedia was acting in its capacity as a press entity in distributing the editorials is underscored by the fact (continued...)

Further, the Commission has uniformly applied the press exemption in a manner which squarely encompasses the Multimedia editorials. For instance, the Commission determined that an article published in the Frontier Airlines Magazine about Ben Nighthorse Campbell shortly before an election was covered by the press exemption, even though the publisher of the magazine, Frontier Airlines, was not primarily engaged in media or publishing activities. A Statement of Reasons issued by four of six Commissioners stated that "in-flight magazines are routinely distributed by airlines to provide passengers entertainment and diversion during airline flights, and would generally qualify as an exempted publication." Statement of Reasons in MUR 2277, pp. 1-2. The Commissioners also found that there was no evidence that the magazine was owned by a political party or that the issue in question was a "special" issue thus establishing that the

---

[9](...continued)
that the Federal Communications Commission rules required Multimedia to offer Congressman Glickman a reasonable opportunity to respond to the editorials. Congressman Glickman accepted this opportunity and did respond to the editorials (presumably without fear that the free 700 opportunities to cablecast his commercials would constitute an illegal corporate donation to his campaign). The reasonable opportunity requirement was developed by the FCC because it presumed that cable systems will editorialize.

As is occasionally the case, more than one agency regulate the activity of a single entity. In this case, each agency's rules may be applied without contradicting the application of the other agency's rules. Thus, there is no public policy conflict in this matter.

publication of the article by Frontier Airlines qualified for the press exemption.

Likewise, in MUR 2289 the Commission determined that an endorsement of Pat Robertson in The Evangelist, a publication of the Jimmy Swaggert Ministries, qualified for the press exemption. The Commission found that "the article at issue constituted commentary or editorial material in a periodical publication falling within the statutory press exemption." Statement of Reasons in MUR 2289, p. 2.[2]

Application of the press exemption is even clearer in the case of Multimedia, which is a member of the media primarily engaged in distributing news, information, and entertainment to the public. Having established that the distribution of the Multimedia editorials are within Multimedia's legitimate press function and that the distribution was entirely consistent with previous distributions of Multimedia editorials, see Burrus Aff. ¶¶ 4, 11, the only remaining issue is whether Multimedia is "owned or controlled by any political party, political committee, or

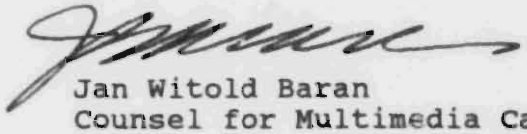
---

[2] The Commission also recently determined that both requirements for the press exemption were met by the "Doonesbury" comic strip "authored by Garry B. Trudeau, distributed by Universal Press Syndicate, and published in the Raleigh News and Observer (and other newspapers)," and which published the "800" line number for the Jerry Brown Committee. First General Counsel's Report in MUR 3500 at p. 2.

candidate."[9] 2 U.S.C. § 431(9)(B)(i). As discussed above, Multimedia Cablevision, Inc. is not owned or controlled by any political party, political committee, or candidate. Burrus Aff. ¶ 13.

Accordingly, the Commission should find no reason to believe that Multimedia violated any provision of the Act.

Sincerely,



Jan Witold Baran
Counsel for Multimedia Cablevision, Inc.

---

[9] The Complaint asserts that the press exemption encompasses "only editorials broadcast in the ordinary course of a station's business--in a format and with the frequency consistent with industry practise [sic], not to mention the practise[sic] of the station itself." Complaint at 4. As demonstrated above, cablecasting is not identical to broadcasting. Moreover, the facts of this matter establish that Multimedia distributed its editorials, both by cablecast and in billing inserts, entirely consistently with both industry practice and Multimedia practice. The complainant was misinformed in alleging that the distribution by a cable system is akin to a distribution by a local network affiliate. As seen above, it is not. Burrus Aff. ¶ 8. Further, complainant erroneously believed that Multimedia had never cablecast editorials with the frequency of the Glickman editorials. In fact, other editorials, such as the Cable Bill editorials, were cablecast more frequently. Id. ¶ 5.

Furthermore, complainant's reference to Advisory Opinion 1992-23, Fed. Election Camp. Fin. Guide (CCH) ¶ 6064 (1992), is inapt. That opinion involved a membership organization not qualified for the media exemption. Thus, the Commission examined that organization's activity pursuant to section 441b of the Act and its accompanying regulations. However, as discussed above, Multimedia's activity is exempt from the definition of expenditure and not subject to section 441b of the Act.

BEFORE THE FEDERAL ELECTION COMMISSION

State of Kansas)
) MUR 3657
Sedgwick County)

AFFIDAVIT OF MICHAEL C. BURRUS

Michael C. Burrus, first being duly sworn, deposes and says:

1. I am Michael C. Burrus. I am the Executive Vice President of Multimedia Cablevision, Inc. ("Multimedia"). I have served in this position since February, 1992, and in various other executive capacities with Multimedia since April, 1981.

2. Multimedia is a cable television system which serves several markets, including Wichita, Kansas. Multimedia is subject to regulatory oversight, including oversight by the Federal Communications Commission.

3. As a cable company, Multimedia operates a 40 channel cable system in Wichita and vicinity on which it carries the programming of 20 national cable networks such as CNN and ESPN, as well as the programming of broadcast stations such as NBC and ABC and Multimedia's own locally-originated programming. Each nationally delivered cable network has access to the Multimedia cable system through an affiliation agreement. These affiliation agreements provide cable system affiliates several minutes of time each hour to use for their own purposes. It is a standard cable industry practice for cable system affiliates of the national cable networks to use this time to broadcast public service announcements, editorials, local advertising, or for promotional purposes. Multimedia, like its industry

counterparts, uses time allotted to its system in the cable networks for these same purposes.

4. Like a television broadcasting station, Multimedia's cable system regularly airs public service announcements regarding matters of interest to the community. In addition, Multimedia regularly incorporates public service and editorial inserts into its billing statements, another common cable industry practice. Samples of Multimedia's inserts have been attached.

5. Like a television broadcasting station, Multimedia also regularly produces and airs editorials regarding matters of importance to the community. For instance, Multimedia aired three editorials regarding the cable television legislation then pending in Congress. These editorials in time slots allotted to the system by various cable networks aired approximately 2250 times in September, 1992. Furthermore, Multimedia included an editorial insert in its billing statements regarding the cable legislation. A copy of this Editorial Insert has been attached.

Further, over the course of the past several years, Multimedia has broadcast numerous editorials. These editorials discussed topics such as the ability of Wichita voters to elect their own mayor and city council, Kansas highways, and exercising the right to vote.

6. I am familiar with the complaint filed with the Federal Election Commission on behalf of Congressman Dan

Glickman. That complaint states that Multimedia has been saturating its cable "stations" with editorials opposing Congressman Glickman, stating that Multimedia ran these editorials 100 times per day on ten cable "stations." This contention is misleading. Multimedia did start running editorials about Congressman Glickman on October 12, 1992. These editorials ran through October 23, 1992. Five separate editorials were broadcast over the course of the twelve day period. The editorials were broadcast a total of 1155 times during that time frame.

7. The fact that the editorials were aired approximately ten times per day on ten different cable channels for a total of approximately 100 broadcasts per day must be put in context. Airing an editorial on a cable channel is not the same as airing an editorial on a local television broadcasting station. What is relevant is the viewership of the cable channels versus the viewership of one local network affiliate. Individual cable networks are numerous and, like magazines, many cable channels cater to narrow, targeted audiences with specialized interest. For example, Cable News Network ("CNN") carries only news 24 hours a day. Similarly, ESPN is a network dedicated entirely to sports; Black Entertainment Television carries programming oriented toward the black community; Nickelodeon is a network for children; and The Nashville Network is for country music lovers. The viewership of individual cable

networks does not equal the viewership of local television broadcasting stations affiliated with major television networks such as ABC, NBC, and CBS. In fact, had Multimedia aired the editorial on all ten cable channels at one time, it would have been viewed in many fewer homes than had it been aired on one local network-affiliated broadcasting station during the ten o'clock news.

8. Specifically, based upon available Nielsen audience rating figures, it would take 171.4 broadcasts on our cable system to equal one airing on local network television during the 10:00 p.m. news. Thus, cablecasting these editorials 1155 times on ten of our cable channels is equivalent to broadcasting the editorials a total of only 6.7 times over a 12 day period (or approximately 1 spot every other day for 12 days) during the 10:00 p.m. newscast on just one local network affiliate.

9. Further, the Complaint in this matter contained a copy of Multimedia's logs indicating the times at which the editorials were run. These logs were provided to Congressman Glickman by Multimedia in a series of eleven letters to the Congressman which informed him that "[p]ursuant to Section 76.209(d) of the Rules of the FCC relating to political editorials" Multimedia had broadcast an editorial in opposition to the Congressman's candidacy. These very same letters notified the Congressman "that a campaign spokesperson may exercise

his/her right to respond to the editorial over Multimedia's facilities." (Ronald L. Marnell letters of October 12, 13, 15, 16, 16, 19, 20, 20, 21, 22 and 23, 1992, sample attached.)

10. With regard to the preparation and content of these editorials, they constitute the view of Multimedia Cablevision, Inc. Neither Mr. Yost, Congressman Glickman's opponent, nor the Yost Committee participated in the preparation of these editorials as alleged in the Complaint. Thus, Multimedia did not produce the editorials "in collaboration and consultation with the Yost committee."

11. In response to these letters, Congressman Glickman did in fact avail himself of the opportunity to respond to Multimedia's editorials. In total, Congressman Glickman submitted response editorials which ran, at no charge to the Congressman, approximately 700 times on 13 cable channels on Multimedia's Wichita cable system between October 27 and November 2, 1992. This number would have been greater had the Congressman chosen to respond at an earlier date. In providing response time to Congressman Glickman, Multimedia was complying with obligations imposed upon it by the Federal Communications Commission. Further, Congressman Glickman acknowledged that he had been given a reasonable opportunity to respond pursuant to FCC requirements. (See attached.) Multimedia also cablecast, again without charge, 119 responses for Mr. Seth Warren, the Libertarian party nominee for U. S. Congress.

12. Consistent with industry practice and its own past practice of including inserts in its billings, Multimedia also included an editorial insert expressing Multimedia's views regarding the local race for U. S. Congress.

13. Finally, Multimedia Cablevision, Inc. is not owned or controlled by any political party, political committee, or candidate.

The above is true and correct to the best of my knowledge.

Michael C. Burrus

Michael C. Burrus

State of Kansas)
)
Sedgwick County)

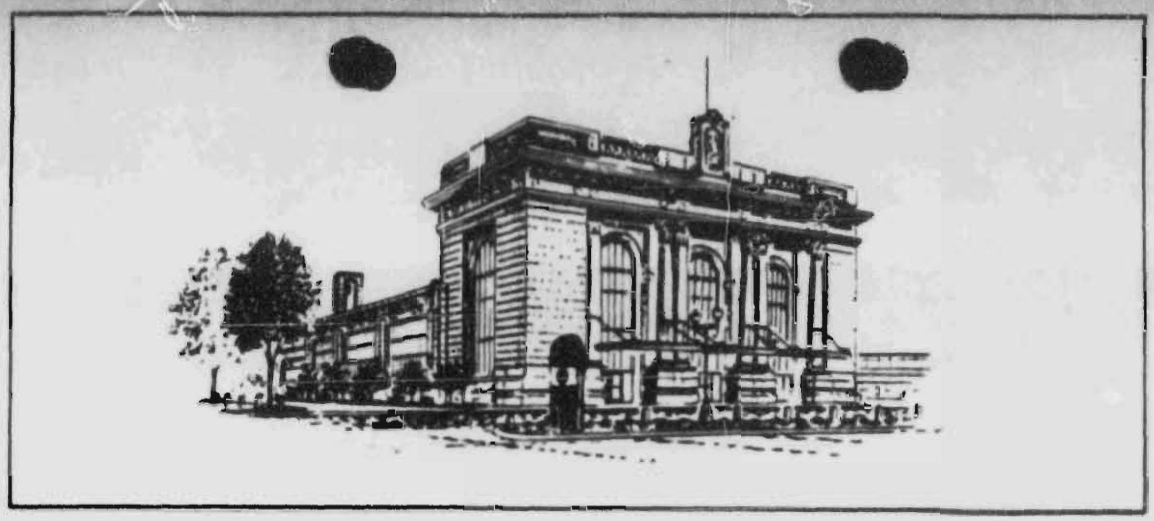
Sworn to and subscribed before me, a notary public in and for the above named county and state, on this 20th day of November, 1992.

PEGGY J. HENRY
Notary Public - State of Kansas
My Appt. Expires 10-10-95

Peggy J. Henry

Notary Public

My commission expires: 10-10-95



WE'RE COMMITTED TO WICHITA AND ITS FUTURE

Multimedia Cablevision is proud to call Wichita home. In purchasing historic Union Station from the City in 1982, we made a commitment to Wichita, and an investment in this community's future. As a cable subscriber, you know that Multimedia Cablevision provides Wichita's cable television service. What you may not know is that our commitment to this community goes much deeper than that. Through our support of local activities and events, we work hard to give back to Wichita the same support we have received.

During the past few years, Multimedia Cablevision has helped support over 60 local groups and non-profit organizations, including the Wichita Public Schools, Institute of Logopedics, Community Theatre, Wichita Children's Museum, United Way, March of Dimes, Make-a-Wish, Wichita Area Chamber of Commerce, Sedgwick County Zoo, and many more. Nearly a half million dollars' worth of video production and air time was donated to local organizations, and a quarter million dollars more was given back to the community through activity and event sponsorships including Cablevision Community Nights with the Wranglers, the Multimedia Cablevision Pro-Am Diabetes Association Benefit, and others.

We believe we have a responsibility to support our community. We also believe that as individuals, we must all make our own commitment to Wichita. We're proud to say that Multimedia Cablevision management and employees are demonstrating their commitment daily. You'll find us actively involved as participants, leaders and Board Members of organizations throughout the city, from the American Red Cross, to the Boy Scouts, to the Institute of Logopedics.

As a cable subscriber, you give us the opportunity to serve you, and we consider that a privilege. In return, we work to support the activities and organizations that benefit you, and the community, in the hope that our commitment will help make Wichita the best it can be . . . for all of us.

all this and more at your library!

Let us serve you.

The Wichita Public Library wishes to thank Multimedia Cablevision for the donation of publicity services, and the donation of a TV, VCR, and special tape library (in conjunction with the Art & Entertainment Network).

Central Library
223 S. Main
262-0611

Hours of Operation:
Mon.-Thurs. 8:30am - 9:00 pm
Fri.-Sat. 8:30am-5:30pm
Sun. 1:00pm-5:00pm

WICHITA PUBLIC LIBRARY BRANCHES

Aley Park 264-3766
1749 S. Martinson

Comotara 687-9550
2244 N. Rock Road Ct.

Linwood Park 264-3225
1901 S. Kansas

Minisa 264-1454
725 W. 13th

Northeast 264-4115
2225 E. 21st

Orchard 943-2434
4808 W. 9th

Planeview 685-6141
2820 S. Roosevelt

Rockwell 684-1461
5939 E. 9th

Seneca 522-2424
3249 S. Seneca

Sweetbriar 838-7961
2273 Amidon

Westlink 722-4762
8515 Bekemeyer

BOOKS*FRAMED PRINTS*COMPUTERS*ADDRESSES
AUTO MANUALS*MAGAZINES*OPAQUE PROJECTOR
CASSETTE TAPES*SOFTWARE*NEWSPAPERS*MAPS
SEED CATALOGS*MORE BOOKS*VIDEOS*FICTION
MICROFILM READERS*SCHEMATICS*BOOK TALKS
PHONOGRAPH RECORDS*STILL MORE BOOKS*TTY
SUMMER READING CLUB*TURNTABLES*EXHIBITS
DIRECTORY SERVICE*STORYTIMES*QUOTATIONS
INTERLIBRARY LOAN*MUSIC SCORES*SPELLING
READER'S GUIDE*BI-FOLKAL KITS*TAX FORMS
POLK DIRECTORY*BRANCHES*SCIENCE FICTION
OVERHEAD PROJECTOR*QUILTS*TALKING BOOKS
LARGE PRINT BOOKS*TELEPHONE DIRECTORIES
LOCAL HISTORY*COMPACT DISCS*BIOGRAPHIES
CARD CATALOG*SACK & ACT PLAYERS*GLOBES*
READER'S AID*PUPPET SHOWS*WESTERN BOOKS
IDEAS*BUSINESS AND TECHNOLOGY REFERENCE
MEMORIALS*COPIERS*FOUNDATION COLLECTION
HI-LO READERS*MYSTERIES*STATE AV CENTER
ENERGY COLLECTION*BUSINESS INDEX*SLIDES
PARENTING COLLECTION*BOOK SALE*DISPLAYS
WORD FOUNDRY*TYPEWRITERS*TREASURE CHEST
NEW YORK TIMES INDEX*GENEALOGY CLASSES*
PAPERBACK BOOKS*ART AND MUSIC REFERENCE
S&P STOCK SHEETS*FOREIGN LANGUAGE BOOKS
MUSIC LIVE*MAGAZINE INDEX*MEETING ROOMS
NON-FICTION*MASTER PLOTS*BUSINESS INDEX
MAGNIFIER*KANSAS REFERENCE*DICTIONARIES
VU-TEXT*FRIENDS OF THE LIBRARY*CLIP ART
ART REFERRAL AND TALENT SOURCE*ATLASES*
DRISCOLL PIRACY COLLECTION*POETRY BOOKS
STOCK QUOTES*CHILDREN'S BOOKS*BOOK DROP
EAGLE-BEACON INDEX*SCHOLASTIC ART SHOW*
CLOSED CAPTION READER*GENERAL REFERENCE
ENCYCLOPEDIAS*CECILY GIRAFFE*PAMPHLETS*
ROMANCE BOOKS*GENEALOGY*BREAD 'N' BOOKS
REFERENCE BOOKS*FILMS*LIRN*FRISBY MOUSE

$$$

The TV Networks will continue to transmit television for free.

But they want to tax you 20% when you watch it on cable.

Their powerful lobbyists in Washington are asking Congress to pass legislation that could result in a 20% surcharge on your monthly basic cable bill.

That estimated $3 billion in surcharges will then be handed over to the Networks in payment for what they call "retransmission" of broadcast programming by cable.

Should the TV broadcasters succeed, cable subscribers will end up paying for free television for the first time in history. What you'll receive in return is the same programming. The same number of commercials. The same broadcast stations you're getting now for free.

You can help stop the broadcasters from charging cable subscribers for free TV. Write to your Senators and Representative in care of the U.S. Congress, Washington, D.C. 20515, and state your opposition to the Free TV Surcharge. Or call them through the U.S. Capitol Operator at 1-202-224-3121. Your voice can make a difference.

National Cable Television Association

Multimedia Cablevision, Inc.
Union Station, 701 E. Douglas, P.O. Box 6799 Wichita, Kansas 67201 - (316) 262-4270

Ronald L. Marnell
Vice President
General Manager

COPY

October 12, 1992

Representative Dan Glickman
410 North Market
Wichita, KS 67202

Dear Congressman Glickman:

Pursuant to Section 76.209(d) of the Rules of the FCC relating to political editorials, you are hereby notified that on October 12, 1992, an editorial in opposition to your candidacy for the 4th Congressional District seat will be cablecast. The editorial will run on cable channels 5, 7, 9, 11, 16, 18, 20, 22, 25, and 27. Attached is a copy of the log indicating the times at which the editorial will run each day. Also enclosed is a tape of the editorial.

You are notified further that a campaign spokesperson may exercise his/her right to respond to the editorial over Multimedia's facilities.

Sincerely,

Ronald L. Marnell

GDC:sc
Enclosures

PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011 • (202) 628-6600

November 3, 1992

Ms. Maureen O'Connell
Federal Communications Commission
Political Programming Branch
2025 M Street, NW
Room 8202
Washington, DC 20554

Re: Glickman complaint Against Multimedia Cablevision, Inc.

Dear Ms. O'Connell:

On behalf of Congressman Glickman, this letter is written to withdraw his complaint dated October 15, 1992 against Multimedia Cablevision, Inc. ("Multimedia"). In light of the exigent circumstances presented by the election, the parties resolved the immediate issue of "reasonable opportunity" through negotiation.

Very truly yours,

Robert F. Bauer
B. Holly Schadler

cc: Ms. Suzanne M. Perry
Dow, Lohnes & Albertson
1255 Twenty Third Street
Washington, DC 20037

BHS:bhs

[04031-0001/DA923040.032]

TELEX: 44-0277 PCSO UI • FACSIMILE: (202) 434-1690

U. S. Department of Justice

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIN COPY ROOM

Nov 25 1 14 PM '92

Washington, D.C. 20530

NOV 23 1992

92 NOV 25 PM 3:39

Mr. Lawrence M. Noble
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

MUR 3657

Dear Mr. Noble:

Re: Multimedia Cablevision, Inc.; 2 U.S.C. § 441b(a)

Enclosed herewith is a copy of materials that were made available to this office by United States Attorney Lee Thompson of the District of Kansas. This matter concerns an alleged violation of 2 U.S.C. § 441b(a) by an incorporated cable television provider that services the Wichita, Kansas market.

We have concluded that whatever violation of Section 441b(a) may have technically taken place here was not committed with the level of specific intent required for prosecution under 2 U.S.C. § 437g(d). The fact that this corporation is arguably a "broadcasting station" within the meaning of 2 U.S.C. § 431(9,(b)(i), and that it acted openly support this conclusion. See AFL-CIO v. FEC 628 F.2d 97 (D.C. Cir. 1980).

This matter is therefore being referred to the Commission for such further attention under 2 U.S.C. § 437g(a) you consider appropriate.

Sincerely,

Craig C. Donsanto
Director, Election Crimes Branch
Public Integrity Section
Criminal Division

Enclosure

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 8, 1992

Craig C. Donsanto
Director, Election Crimes Branch
Public Integrity Section
Criminal Division
P.O. Box 27321
Washington, D.C. 20530

RE: MUR 3657

Dear Mr. Donsanto:

This is to acknowledge receipt of your letter dated November 23, 1992, advising us of the possibility of a violation of the Federal Election Campaign Act of 1971, as amended ("the Act") by Multimedia Cablevision Inc. We will review the matter and will advise you of the Commission's determination.

If you have any questions or additional information, please call Jonathan A. Bernstein, the attorney assigned to this matter, at (202) 219-3690. Our file number for this matter is MUR 3657.

Pursuant to 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A), the Commission's review of this matter shall remain confidential until the file has been closed.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 3, 1992

B. Holly Schadler
Perkins Coie
607 14th Street, NW
Washington, DC 20005-2011

RE: MUR 3657

Dear Ms. Schadler:

This letter acknowledges receipt on October 21 and 22, 1992, of the supplement to the complaint you filed on October 16, 1992, against Multimedia Cablevision, Inc., Michael Burrus, Executive Vice President, and the Eric R. Yost for Congress Committee and Theron E. Fry, as treasurer. The respondents will be sent copies of the supplement including copies of the videotapes, which have been duplicated for the respondents. You will be notified as soon as the Federal Election Commission takes final action on your complaint.

Sincerely,

Richard M. Zanfardino
Staff Member

9104300306

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 3, 1992

Jan Witold Baran, Esq.
Wiley, Rein & Fielding
1776 K St., NW
Washington, DC 20006

RE: MUR 3657
Multimedia Cablevision, Inc.

Dear Mr. Baran:

On October 19, 1992, your client was notified that the Federal Election Commission received a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time your client was given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On October 21 and 22, 1992, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information. We apologize for the delay in the duplication of the enclosed videotapes.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Richard M. Zanfardino
Staff Member

Enclosure

9104356083

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 3, 1992

Theron E. Fry, Treasurer
Eric R. Yost for Congress Committee
919 Parklane
Wichita, KS 67218

RE: MUR 3657

Dear Mr. Fry:

On October 19, 1992, you were notified that the Federal Election Commission received a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time you were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On October 21 and 22, 1992, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information. We apologize for the delay in the duplication of the enclosed videotapes.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Richard M. Zanfardino
Staff Member

Enclosure

9104356604

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 8, 1992

Theron E. Fry, Treasurer
Eric R. Yost for Congress Committee
919 Parklane
Wichita, KS 67218

RE: MUR 3657

Dear Mr. Fry:

On December 3, 1992 this Office provided you with copies of videotapes supplied by the Complainant in this matter. However, the cover letters accompanying the videotapes were inadvertently omitted. We apologize for the error.

If you have any further questions, please contact Richard M. Zanfardino, the staff member assigned to this matter at (202) 219-3690.

Sincerely,

Jonathan A. Bernstein
Assistant General Counsel

9/0 4 3 3 6 8 0

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 8, 1992

BY FACSIMILE
AND FIRST CLASS MAIL

Jan Witold Baran, Esq.
Wiley, Rein & Fielding
1776 K St., NW
Washington, DC 20006

RE: MUR 3657
Multimedia Cablevision, Inc.
Michael Burrus, V.P.

Dear Mr. Baran:

On December 3, 1992 this Office provided you with copies of videotapes supplied by the Complainant in this matter. However, the cover letters accompanying the videotapes were inadvertently omitted. We apologize for the error.

If you have any further questions, please contact Richard M. Zanfardino, the staff member assigned to this matter at (202) 219-3690.

Sincerely,

Jonathan Bernstein

Jonathan A. Bernstein
Assistant General Counsel

9104304360

OGC 7933

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIN COPY ROOM

DEC 9 11 20 AM '92

WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 429-7000

December 7, 1992

JAN WITOLD BARAN
(202) 429-7330

FACSIMILE
(202) 429-7049
TELEX 248349 WYRN UR

92 DEC -9 PM 3:20

Mr. Richard M. Zanfardino
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 3657 (Multimedia Cablevision, Inc.)

Dear Mr. Zanfardino:

In response to your telephonic request of December 4, 1992, I hereby transmit the enclosed executed Statement of Designation of Counsel on behalf of Mr. Michael C. Burrus regarding the above-captioned matter. As I stated during our conversation, we do not understand the need for this. The complaint does not allege any violation by Mr. Burrus. In fact the complaint does not even mention his name.

Furthermore, I am in receipt of your letter of December 3 which accompanied "additional information" in the nature of video tape copies of the editorials filed by complainant with the FEC on October 21 and 22, 1992. Your letter does not reflect the fact that a response to the complaint (which included an affidavit from Mr. Burrus) already was filed by this office with the Federal Election Commission on November 23. We don't believe that the "additional information" of video tapes warrants a further response. I note that the video tapes originally were provided to Mr. Glickman by Multimedia. See Affidavit of Michael C. Burrus, ¶ 9 (November 10, 1992) and letter of October 12, 1992, from Ronald Marnell to Congressman Glickman, attached thereto.

I request that this letter be incorporated into our response of November 23, 1992, and be distributed to all commissioners along with our original response when such distribution routinely occurs.

Sincerely,

Jan Witold Baran

rpb
Encl.

STATEMENT OF DESIGNATION OF COUNSEL

92 DEC -9 PM 3:20

MUR 3657

NAME OF COUNSEL: Jan Witold Baran, Esq.

ADDRESS: Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

TELEPHONE: (202) 429-7330

The above-mentioned individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

12/4/92
Date

Michael C. Burrus
Signature

RESPONDENT'S NAME: Michael C. Burrus

ADDRESS: Multimedia Cablevision, Inc.
P.O. Box 3027
Wichita, KS 67201

HOME PHONE: (316) 733-2744

BUSINESS PHONE: (316) 262-4270

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIN COPY ROOM

DEC 9 11 57 AM '92

WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 429-7000

December 8, 1992

JAN WITOLD BARAN
(202) 429-7330

FACSIMILE
(202) 429-7049
TELEX 248349 WYRN UR

BY FACSIMILE AND
FIRST CLASS MAIL

92 DEC -9 PM 3:27

Jonathan A. Bernstein, Esq.
Assistant General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 3657 (Multimedia Cablevision, Inc. et al.)

Dear Mr. Bernstein:

This responds to your undated correspondence which I received by facsimile today regarding the above-captioned Matter. Your letter was accompanied by copies of two letters to you from complainant, one dated October 21, 1992, (which is notarized) and the other dated October 22 (which is not notarized). For the record, I note that these supplements to the complaint should have been transmitted to Multimedia within five days after receipt by the FEC pursuant to 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.5(a). We expressly do not waive any Commission failure to follow statutorily mandated procedures.

On November 23 this office filed a response ("Response") to the original complaint. Obviously, the arguments made by complainant in the October 21 supplement were not, and could not be, addressed. Accordingly, I would like to briefly address the point that complainant makes in his October 21 supplement.

Complainant accuses Multimedia of editorials that "are not consistent in format or frequency with standard industry practice." With regards to "frequency," I noted in the Response at 3-4, that the broadcast of one 30-second spot by a Wichita network affiliated television station is equivalent to the same spot airing 171 times on ten Wichita cable channels in terms of viewership. I also noted that Multimedia previously aired editorials at frequency rates similar to that of the Glickman editorial.

With regards to the "format" of the editorial, complainant complains that "sophisticated graphics" were used and that the

editorials "look increasingly like commercials." First, I would like to point out that the statutory exemption for commentary and editorials is not limited to "unsophisticated" formats. The news media exemption is broad. To interpret it otherwise places the FEC in the undesirable role of censor. This is not mandated by the Act, and if it were would raise profound doubts about its constitutionality.

Second, I note that each Multimedia editorial begins with the printed statement "Editorial Comment" followed by the conventional "talking head" of the Multimedia representative, Mr. Burrus, who delivers the editorial. This by any measure is a typical format for an editorial.

And third, even more "sophisticated" editorials which arguably resemble "commercials" appear to be the industry practice. As mentioned in the Response, at 4, prior editorials included editorials on the so-called Cable Bill. Those editorials were very "sophisticated" in appearance.

For these and all the additional reasons set forth in the Response of November 23, the Commission should find no reason to believe that Multimedia violated any provision of the Act. As with my correspondence of yesterday, December 7 (which responded to other revelations of complainant's previously filed material), I respectfully request that this letter be incorporated into our Response and be distributed to all commissioners along with the Response when such distribution routinely occurs.

Sincerely,

Jan Witold Baran

9/0434869C

RECEIVED
F.E.C.
SECRETARIAT
93 SEP 24 PM 3:03

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT **SENSITIVE**

MUR #3657
DATE COMPLAINT RECEIVED
BY OGC October 16, 1992
DATE OF NOTIFICATION TO
RESPONDENTS October 19, 1992
STAFF MEMBER Helen J. Kim

COMPLAINANT:	B. Holly Schadler on behalf of Congressman Dan Glickman and the Glickman for Congress Committee
RESPONDENTS:	Multimedia Cablevision, Inc. Michael C. Burrus Eric R. Yost for Congress Committee and Theron E. Fry, as treasurer
RELEVANT STATUTES:	2 U.S.C. § 431(9)(B)(i) 2 U.S.C. § 441b(a) 11 C.F.R. § 100.7(b)(2) 11 C.F.R. § 100.8(b)(2) 11 C.F.R. § 114.3(a)(1)
INTERNAL REPORTS CHECKED:	Advisory Opinion 1982-44 MUR 2889
FEDERAL AGENCIES CHECKED:	None

I. GENERATION OF MATTER

This matter was generated by a complaint submitted on October 16, 1992 by B. Holly Schadler on behalf of Congressman Dan Glickman and the Glickman for Congress Committee.[1] The complaint alleges that Multimedia Cablevision, Inc. ("Multimedia"), Michael C. Burrus, and the Eric R. Yost for Congress Committee and Theron E. Fry, as treasurer, violated

1. After the receipt of this complaint, on November 25, 1993, the Commission received a referral from the Department of Justice involving the same transactions. (Attachment 1).

9/04/3836/1

provisions of the Federal Election Campaign Act of 1971, as amended ("the Act").

The respondents were notified of the complaint on October 19, 1992. The Eric R. Yost for Congress Committee and Theron E. Fry ("Yost Committee"), as treasurer, submitted their response on November 13, 1992. After an extension of time, Multimedia and Michael Burrus submitted their response on November 23, 1992.

On October 21 and 22, 1992, the complainant submitted additional information regarding the allegations in the complaint. The respondents were notified of this supplement to the complaint on December 3, 1992.[2]

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

The subject of the complaint concerns televised editorials regarding the 1992 election for U.S. Representative for the Fourth Congressional District in Kansas. These editorials expressly advocating the election of Eric R. Yost and attacking Congressman Dan Glickman, were aired by Multimedia at the rate of more than 100 times per day on ten different cable stations. The complaint includes documents pertaining to the substance of these editorials and logs indicating the times the editorials were televised. The complaint also includes a flier printed on Multimedia stationery similar in substance to the aired editorials. The complaint

---

2. The supplement to the complaint included videotapes pertaining to the allegations in the complaint. The respondents were not sent the additional information immediately because there was a delay in reproducing the videotapes.

claims that Multimedia distributed this flier to 95,000 households along with its customer billings.

The complaint alleges that these editorials fall outside the press exemption provided by 2 U.S.C. § 431(9)(B) and thus, the costs associated with the editorials are corporate contributions to the Yost Committee. The complaint also claims that Multimedia has never broadcast an editorial on any subject with the frequency of the Glickman editorials and that Multimedia acknowledged that it consulted with the Yost Committee in producing these editorials. The complaint finally alleges that because Multimedia is a sophisticated entity with the means for complying with the Act, the violations are knowing and willful.[3]

The response from Multimedia and Michael Burrus, Executive Vice President of Multimedia, denies that the editorials were contributions. Michael Burrus appears in the aired editorials and his name also appears on the bottom of the printed inserts distributed with Multimedia's customer billings. The respondents claim that the editorials aired by Multimedia, as well as the editorial inserts distributed along with its customer billings, fall within the press exemption. According to its response, Multimedia operates a 40 channel cable system serving Wichita, Kansas, and its outlying areas. Multimedia carries 20 national

---

3. In addition to these allegations, the complaint requested that the Commission seek to enjoin Multimedia's "advertising campaign." In the Memorandum to the Commission dated October 21, 1992, this Office recommended that the Commission decline to seek injunctive relief. On October 27, 1992, the Commission declined to seek injunctive relief.

9/U4343693

cable networks, major broadcast stations, and Multimedia's own locally originated programming.

Through an agreement with the cable networks it carries, Multimedia reserves several minutes of each hour on the national cable networks for Multimedia's own purposes. In his affidavit, Mr. Burrus states that it is standard industry practice to use this time to air public service announcements, editorials, local advertising, or for promotional purposes. Mr. Burrus also states that Multimedia regularly produces and airs editorials regarding matters of importance to the community and cites a prior instance where Multimedia aired an editorial concerning the cable legislation then pending in Congress 2250 times in September 1992. Mr. Burrus adds that, over the past several years, Multimedia has aired numerous editorials on various other topics relating to public issues.

According to Mr. Burrus, five separate Glickman editorials aired from October 12, 1992 through October 23, 1992 for a total of 1155 times. Mr. Burrus claims that because cable network channel viewership is limited, the editorials were aired with this frequency to equal the viewership of broadcast network affiliate stations. Mr. Burrus claims that cablecasting an editorial 1155 times on 10 cable network channels is equal to airing the same editorial only 6.7 times over a twelve day period during a 10:00 p.m. newscast on a broadcast network station.

Mr. Burrus states that pursuant to FCC regulations, Multimedia first notified Congressman Glickman of the airing of the editorials on October 12, 1992. According to Mr. Burrus,

9/04343694

Congressman Glickman's response aired 700 times on 13 cable channels between October 27, 1992 and November 2, 1992. Mr. Burrus claims that the response editorials would have been aired more frequently had Congressman Glickman contacted Multimedia earlier. Mr. Burrus adds that Multimedia also aired the response of Seth Warren, the Libertarian Party candidate, 119 times.

According to Mr. Burrus, Multimedia regularly incorporates public service and editorial inserts into its billing statements as part of its normal business operations. Mr. Burrus notes that Multimedia produced and distributed an editorial billing insert regarding the then pending cable legislation. Multimedia's response includes samples of other inserts that Multimedia has distributed through its customer billings.[4]

B. Discussion

1. Legal Principles

The Act generally prohibits corporations from making contributions or expenditures in connection with a federal election. 2 U.S.C. § 441b(a). Candidates and their authorized committees are prohibited from knowingly accepting corporate contributions. Id. Although a corporation may make partisan communications to its stockholders and executive or administrative personnel and their families, corporations may not pay for

---

4. Four inserts were included. The first promoted Multimedia's public service activities in the community and the second advertised the operating hours of the local public library along with an announcement of Multimedia's donation to the library. The third and fourth inserts involved the then pending cable legislation.

97043036695

communications to the general public that expressly advocate the election or defeat of a federal candidate. 11 C.F.R. § 114.3(a)(1).

Some incorporated media entities may be exempt from the general corporate prohibition under certain circumstances. The Act and Commission regulations exclude costs associated with the production or dissemination of news stories, commentaries or editorials from the definitions of "contribution" and "expenditure." 2 U.S.C. § 431(9)(B)(i); 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2). Section 431(9)(B)(i) identifies only "broadcasting station[s], newspaper[s], magazine[s], or other periodical publication[s]" as press entities entitled to the exemption.

The Commission has applied the definitions of "broadcaster," "newspaper," and "magazine or other periodical publication" in its Explanation and Justification of 11 C.F.R. § 114.4(e). Although that regulation deals with the sponsorship of candidate debates by news organizations, the definitions in the Explanation and Justification contemplate the media exemption. See Explanation and Justification of 11 C.F.R. § 114.4(e), 44 Fed. Reg. 76,734 (1979). According to the Explanation and Justification, "the term 'broadcaster' is meant to include broadcasting facilities licensed by the Federal Communications Commission ("FCC"), as well as networks." 44 Fed. Reg. at 76,735.

Regarding whether the activity falls within the press exemption, the Commission has interpreted the media exemption broadly, consistent with Congress's admonition that the Act was

9/04/3696

not intended "to limit or burden in any way the first amendment freedom of the press." H.R. Rep. No. 93-1239, 93rd Cong., 2d Sess., at 4. For instance, although Section 431(9)(B)(i) speaks only of "news stor[ies], commentar[ies], or editorial[s]," the Commission's regulations have extended the protection to "costs incurred in covering or carrying" exempt material. 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2). See also, e.g., Advisory Opinion 1982-44 (cable television network's donation of time to national party committees for broadcasts in which candidates and other party leaders discussed issues and solicited contributions was protected by media exemption).

To determine whether the press exemption protects certain activity, the court, in Reader's Digest Ass'n v. FEC, 509 F. Supp. 1210 (S.D.N.Y. 1981), applied a two-prong test. The court stated that the exemption applies when the distribution of news or commentary falls within the media entity's "legitimate press function," and when the entity is not owned or controlled by any political party, political committee, or candidate. Id. at 1214.

2. Analysis

This matter presents the issue of whether the activity alleged by the complainant falls within the press exemption. As a threshold issue, the facts raise the question of whether Multimedia as a cable systems operator is the type of entity protected by the press exemption. Furthermore, assuming Multimedia is such an entity, the complaint and the responses

9/04343697

raise the issue of whether the alleged activity is outside Multimedia's legitimate press function.

a. Whether Multimedia falls within the types of entities contemplated by the press exemption.

Whether Multimedia falls within the types of entities contemplated by the press exemption is a novel issue. The respondents claim that in Advisory Opinion 1982-44, the Commission affirmed that cable operators fall within the media exemption. In that opinion, the Commission considered the donation of program time by WTBS, a "super satellite" television station which was licensed to broadcast by the FCC in the Atlanta, Georgia area. The Commission, however, did not consider whether the cable systems operators that retransmitted the signals of WTBS fall within the realm of the press exemption. Although they are subject to regulation by the FCC, see 47 C.F.R. §§ 76.12-17, cable system operators are not licensed to broadcast. Because the Commission has defined "broadcaster" narrowly to include those facilities licensed by the FCC to broadcast, it appears that Advisory Opinion 1982-44 does not address the issue of whether the press exemption applies to cable systems operators.

Although there appears to be little Commission precedent on this specific issue, there is some legislative history on the general purpose of the press exemption that may shed light on this matter. According to the legislative history, Congress included the provision to indicate that it did not intend the Act "to limit or burden in any way the first amendment freedom of the press" and to assure "the unfettered right of the newspapers, TV networks,

9/0435693

and other media to cover and comment on political campaigns." H.R. Rep. No. 93-1239, 93rd Cong., 2d Sess., at 4. Thus, the rationale undergirding the press exemption is to prevent government interference with those press entities that cover and comment on political campaigns.

An issue then is whether Multimedia functions as a press entity that regularly covers and comments on political campaigns. As a cable systems operator, Multimedia delivers the programming of various cable programming networks as well as regular broadcast networks to its subscriber households via coaxial cable. According to its response, Multimedia also engages in origination programming and normally reserves several minutes of each hour for its own purposes such as editorials regarding public issues.[5] Although Multimedia has offered some evidence that it has aired editorials relating to public issues in the past, there is no indication that Multimedia's origination programming includes any news programming of its own. Thus, cable systems operators resemble traditional broadcast television stations in some respects but differ from them in other respects. This raises an inference that Multimedia may not be an entity that covers and comments on political campaigns as do traditional broadcast stations.

---

5. The FCC regulations define origination cablecasting as programming (exclusive of broadcast signals) carried on a cable television system over one or more channels and subject to the exclusive control of the cable operator. 47 C.F.R. § 76.5(p).

On the other hand, the United States Supreme Court and the FCC have acknowledged that cable operators can serve a press function. In the context of deciding other issues, the Court has acknowledged that cable systems operators, in providing their subscribers news, information, and entertainment, function much like other press entities. See Leathers v. Medlock, 111 S. Ct. 1438, 1442 (1991) (reviewing First Amendment challenge to an Arkansas statute taxing cable systems differently from print media); see also Los Angeles v. Preferred Communications, Inc., 476 U.S. 488, 494 (1986) (reviewing First Amendment challenge to city ordinance providing franchises to cable operators through an auction process). Moreover, the FCC recognizes that cable operators engaging in origination cablecasting will endorse or oppose candidates for federal office and requires them to provide an opposing candidate a reasonable opportunity to respond. See 47 C.F.R § 76.209(d). This provision governing political editorials by cable systems operators is similar to the one governing broadcast stations. See 47 C.F.R. § 73.1930.

Although these acknowledgments may indicate that Multimedia, as a cable systems operator, falls within at least the spirit of the press exemption, these acknowledgments were made outside the context of the purposes and requirements of the Act or Commission regulations. Thus, the resolution of this issue may require further inquiry to determine whether Multimedia is an entity contemplated by the Act's press exemption.

b. **Assuming Multimedia is an entity contemplated by the press exemption, whether the activity falls within the press exemption**

Assuming arguendo that Multimedia is such an entity, the issue of whether the alleged activity falls within the press exemption must be addressed. Multimedia argues that airing the Glickman editorials and distributing the printed editorial inserts through its customer billings are protected by the press exemption. For the press exemption to apply, Multimedia's activity must pass the Reader's Digest two-prong test: (1) does the distribution of the Glickman editorials fall broadly within Multimedia's legitimate press function and (2) are Multimedia's facilities owned or controlled by any political party, political committee or candidate.

Multimedia does not appear to be owned or controlled by a candidate or political party, but assuming Multimedia is a press entity, a question is raised as to whether the activity in question was outside Multimedia's legitimate press function. Applying the first prong to the distribution of the printed editorials with its customer billings, it appears that Multimedia was acting in a manner unrelated to its press function. Multimedia's medium of communication is cable television, not printed materials. Multimedia's press function, assuming it has one, would involve delivering news programming via cable television, not through printed mailings. Thus, the press exemption may not apply to mailing printed inserts expressly advocating the defeat of Congressman Glickman. See Reader's Digest Ass'n v. FEC, 509 F. Supp. 1210, 1214-15 (S.D.N.Y. 1981).

9/0435370/1

Absent the safe harbor of the press exemption, the general corporate prohibition against making communications to the general public expressly advocating the election or defeat of a federal candidate applies. The editorial inserts were mailed to 95,000 households along with Multimedia's billing for its services. The communications were made to Multimedia's subscribers, not to the class of persons permitted by Commission regulations, i.e., stockholders and executive or administrative personnel and their families. See MUR 2889 (Wyoming Rural Electric Association) (costs associated with a rural electric cooperative trade association's newsletter containing express advocacy that was sent to the cooperatives' customers, constituted a corporate contribution). Thus, Multimedia may have violated 2 U.S.C. § 441b(a) by making communications to the general public expressly advocating the election or defeat of a federal candidate.

In addition to the distribution of the printed editorial inserts, the airing of the Glickman editorials also raises press exemption issues. Applying the first prong of the Reader's Digest test to the airing of the Glickman editorials, the frequency at which the editorials were aired suggests that Multimedia may have been acting in a manner unrelated to its press function. Multimedia aired the Glickman editorials 100 times per day over a twelve day period. Multimedia claims that the frequency was due to the disparity in airing the editorials over cable networks as opposed to the broadcast network affiliate stations. In support of this claim, Multimedia notes that it aired the responses by Congressman Glickman 700 times over a seven day period and the

editorials regarding the cable legislation 2250 times during the month of September.

These instances of similar frequency, however, do not fully support the argument that airing the editorials 100 times a day was within Multimedia's legitimate press function. Although the Glickman responses and the cable legislation editorials may have been aired as frequently as the Glickman editorials, there is no indication that Multimedia has aired other editorials with the same frequency. Multimedia does note that it has aired numerous editorials discussing community issues, but omits the frequency at which it aired these other editorials.

Furthermore, the frequency of the Glickman responses may have been affected by factors other than Multimedia's normal practices. Attached to Mr. Burrus's affidavit is a letter from Congressman Glickman's counsel to the FCC. This letter withdraws a complaint filed with the agency against Multimedia stating that "[in] light of the exigent circumstances presented by the election, the parties resolved the immediate issue of 'reasonable opportunity' through negotiation." This raises the inference that the frequency of the Glickman responses may have been the result of an agreement in settlement of a complaint that the Glickman campaign filed with the FCC, rather than Multimedia's normal practice of airing editorials.

In addition to the frequency of the airing of the editorials, the mailing of the printed Glickman editorial inserts with Multimedia's customer billings, which appear to be a prohibited corporate expenditure in itself, suggests that the

airing of the editorials may be unrelated to Multimedia's press function. As discussed above, Multimedia argues that it normally distributes printed editorials with its customer billings and cites the instance in which it distributed editorials discussing the cable legislation. There is no indication, however, that Multimedia normally distributes printed editorials in conjunction with the editorials it airs regarding the same subject matter. Indeed the only instances where Multimedia followed this practice, the cable legislation and the Glickman editorials, involved issues concerning Multimedia's own economic interests.

In sum, the frequency at which Multimedia aired the Glickman editorials and the distribution of similar printed editorials with Multimedia's customer billings suggests that Multimedia in producing and airing the Glickman editorials was acting in a manner unrelated to its legitimate press function.[6] If the activity fails the first part of the Reader's Digest test, the press exemption would not apply to this activity. Thus, the costs associated with producing and airing the Glickman editorials may be a corporate contribution from Multimedia to the Yost Committee.

Michael C. Burrus, Executive Vice President of Multimedia, personally appeared in the aired editorials and his name appears on the printed inserts sent to Multimedia's customers. Thus,

---

6. The presence of the press exemption issue may require consideration of Advisory Opinion 1982-44 (Turner Broadcasting) discussed supra at pp. 7-8. Currently, there are insufficient facts to fully apply that opinion to the present matter. Once we obtain more facts though the investigation, this matter will be analyzed under Advisory Opinion 1982-44.

9 7 0 4 3 0 4 3 7 0 4

Mr. Burrus, a corporate officer, may have consented to such corporate contributions.

Regarding the Yost Committee's liability for this activity, the complaint alleges that Multimedia specifically confirmed to the Glickman campaign that it collaborated and consulted with the Yost Committee in producing the editorials. Multimedia and Michael Burrus, however, deny this allegation. In the Yost Committee response, Theron E. Fry, treasurer of the Yost Committee, states that he was not aware of Multimedia's activities in advance, but does not comment on whether other representatives of the campaign consulted with Multimedia as the complaint alleges. Because the Yost Committee response leaves open the question of whether other representatives of the Yost Committee were involved, further inquiry into this issue is required.

Therefore, based on the foregoing, this Office recommends that the Commission find reason to believe Multimedia Cablevision, Inc. and Michael C. Burrus, as an officer of Multimedia, violated 2 U.S.C. § 441b(a). Although the complaint specifically alleges knowing and willful violations, there is insufficient evidence at this time to recommend knowing and willful findings. Furthermore, this Office recommends that the Commission find reason to believe that the Eric R. Yost for Congress Committee and Theron E. Fry, as treasurer, violated 2 U.S.C. § 441b(a).

The investigation will address issues regarding whether the press exemption applies, including whether Multimedia is the type

9704504706

of entity contemplated by the press exemption.[7] The investigation will also inquire into Multimedia's normal practice in airing editorials, including the frequency at which it airs other editorials. Furthermore, this Office will question the Yost Committee to inquire into the extent of the Yost Committee's involvement in the activities in question. This Office also intends to contact the complainants, Congressman Dan Glickman and the Glickman for Congress Committee, regarding their knowledge of the airing of the Glickman editorials and the Glickman responses.

To expedite the investigation, this Office recommends that the Commission approve the attached subpoenas for the production of documents and orders to answer interrogatories to Multimedia, Inc. and the Eric R. Yost for Congress Committee. This Office also recommends that the Commission authorize in advance deposition subpoenas to Multimedia, Inc. to produce for deposition Michael C. Burrus and any other employees of Multimedia who may have knowledge of the relevant transactions. Furthermore, this Office recommends that the Commission authorize in advance deposition subpoenas to the Eric R. Yost for Congress Committee to produce Theron E. Fry and any other Yost Committee representatives who may have knowledge of the Glickman editorials.

III. RECOMMENDATIONS

1. Find reason to believe that Multimedia Cablevision, Inc. violated 2 U.S.C. § 441b(a).

2. Find reason to believe that Michael C. Burrus violated 2 U.S.C. § 441b(a).

---

7. The outcome of the investigation may raise an issue of whether the airing of the Glickman campaign's response should be viewed as a corporate contribution to the Glickman campaign.

3. Find reason to believe that the Eric R. Yost for Congress Committee and Theron E. Fry, as treasurer, violated 2 U.S.C. § 441b(a).

4. Approve the appropriate letters and attached Factual and Legal Analyses.

5. Approve the attached subpoenas for the production of documents and answers to interrogatories to Multimedia, Inc. and the Eric R. Yost for Congress Committee.

6. Authorize deposition subpoenas to Multimedia, Inc. and the Eric R. Yost for Congress Committee.

9/24/93
Date

Lawrence M. Noble
General Counsel

Attachments
1. Referral Materials
2. Multimedia Response
3. Yost Committee Response
4. Factual and Legal Analyses (2)
5. Subpoenas

9104343701

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. ROSS
COMMISSION SECRETARY

DATE: SEPTEMBER 30, 1993

SUBJECT: MUR 3657 - FIRST GENERAL COUNSEL'S REPORT DATED SEPTEMBER 24, 1993.

The above-captioned document was circulated to the Commission on Monday, September 27, 1993 at 11:00 a.m.

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	XXX
Commissioner Elliott	
Commissioner McDonald	
Commissioner McGarry	
Commissioner Potter	
Commissioner Thomas	

This matter will be placed on the meeting agenda for Tuesday, October 5, 1993.

Please notify us who will represent your Division before the Commission on this matter.

9/0430/03

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 3657
Multimedia Cablevision, Inc.;	)	
Michael C. Burrus;	)	
Eric R. Yost for Congress Committee	)	
and Theron E. Fry, as treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on October 5, 1993, do hereby certify that the Commission decided by a vote of 4-2 to take the following actions in MUR 3657:

1. Find reason to believe that Multimedia Cablevision, Inc. violated 2 U.S.C. § 441b(a).

2. Find reason to believe that Michael C. Burrus violated 2 U.S.C. § 441b(a).

3. Find reason to believe that the Eric R. Yost for Congress Committee and Theron E. Fry, as treasurer, violated 2 U.S.C. § 441b(a).

4. Find reason to believe that the Glickman for Congress Committee and its treasurer violated 2 U.S.C. § 441b(a).

5. Find reason to believe that Seth Warren, the Libertarian Party candidate, violated 2 U.S.C. § 441b(a).

(continued)

6. Approve the appropriate letters and Factual and Legal Analyses as recommended in the General Counsel's report dated September 24, 1993,

7. Direct the Office of General Counsel to send appropriate letters and Factual and Legal Analyses to the Glickman for Congress Committee and to Seth Warren, the Libertarian Party candidate.

8. Approve the subpoenas for the production of documents and answers to interrogatories to Multimedia, Inc. and the Eric R. Yost for Congress Committee, as recommended in the General Counsel's report dated September 24, 1993, and direct the Office of General Counsel to send appropriate subpoenas to the Glickman for Congress Committee and to Seth Warren, the Libertarian Party candidate.

9. Authorize deposition subpoenas to Multimedia, Inc. and the Eric R. Yost for Congress Committee as recommended in the General Counsel's report dated September 24, 1993.

Commissioners Elliott, McGarry, Potter, and Thomas voted affirmatively for the decision; Commissioners Aikens and McDonald dissented.

Attest:

10-8-93
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

9704383716

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OCTOBER 22, 1993

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jan W. Baran
Wiley Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

RE: MUR 3657
Multimedia Cablevision, Inc.
Michael C. Burrus

Dear Mr. Baran:

On October 19, 1992, the Federal Election Commission notified Multimedia Cablevision, Inc. and Michael C. Burrus of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was enclosed with that notification.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on October 5, 1993, found that there is reason to believe Multimedia Cablevision, Inc. and Michael C. Burrus violated 2 U.S.C. § 441b(a), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information. The Commission has also approved the enclosed Order to Submit Written Answers and Subpoena to Produce Documents.

Under the Act, your clients have an opportunity to demonstrate that no action should be taken against them. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Submit Written Answers and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 30 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If your clients are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Richard M. Denholm II, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Scott E. Thomas
Chairman

Enclosures
Order and Subpoena
Factual and Legal Analysis

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MUR 3657
)

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Multimedia Cablevision, Inc.
c/o Jan W. Baran, Esquire
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within 30 days of receipt of this Order and Subpoena.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 22nd day of October, 1993.

Scott E. Thomas
Chairman
Federal Election Commission

ATTEST:

Marjorie W. Emmons
Secretary to the Commission

Attachment
Questions and Document Requests

9104343714

INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Except for questions 3, 4, and 5, the discovery request shall refer to the time period from August 1, 1993 to the present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

9/0450457/15

DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and request for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

9704364371 6

BEFORE THE FEDERAL ELECTION COMMISSION

INTERROGATORIES AND DOCUMENT REQUESTS

MUR 3657
Multimedia Cablevision, Inc.

1. Regarding the October billing insert mailed by Multimedia, Cablevision, Inc. ("Multimedia") which referred to Congressman Dan Glickman ("Glickman insert"), provide the following information:

a. State the total number of Glickman inserts mailed. State all costs associated with producing and mailing the Glickman inserts, including costs for writing, preparing, and printing the inserts as well as costs for stationery and postage.

b. Identify and produce all documents relating to producing and mailing the Glickman inserts, including all receipts, invoices, checks, and check register entries.

c. Identify all persons involved in producing and mailing the Glickman inserts, including those persons involved in creating and preparing the inserts, and those persons involved in supervising the activity.

2. Regarding the editorials advocating the defeat of Congressman Glickman ("Glickman editorials") that Multimedia aired, provide the following information:

a. State the costs associated with producing and airing the Glickman editorials.

b. Identify all persons involved in producing and airing the Glickman editorials.

c. State the total number of versions of the Glickman editorials.

3. Describe the types of origination programming produced by Multimedia. Identify and produce programming logs for the last five airings of such origination programming.

4. State whether Multimedia produces any news programming. If so, identify and produce copies of videotapes of the last five airings of the news programming and relevant programming logs.

5. State the frequency at which Multimedia has aired its last ten editorials and describe the subjects of these editorials. Identify and produce programming logs for these editorials.

6. State the usual and normal price that Multimedia charges for 30 second media spots.

9704353717

7. State whether any representative of Multimedia communicated with any official, employee, or agent of the Eric R. Yost for Congress Committee regarding the Glickman editorials and/or Glickman insert. For each communication, provide the following information:

a. Identify all persons involved in the communication.

b. State the subject of the communication.

c. Identify and produce all documents relating to such communication, including notes, memoranda, correspondence, and phone logs.

9/0435371 3

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Multimedia Cablevision, Inc. MUR 3657
Michael C. Burrus, Executive
Vice President

I. GENERATION OF MATTER

This matter was generated by a complaint submitted on October 16, 1992 by B. Holly Schadler on behalf of Congressman Dan Glickman and the Glickman for Congress Committee and information ascertained by the Federal Election Commission ("Commission") in the normal course of carrying out its supervisory responsibilities pursuant to 2 U.S.C. § 437g(a)(2). The complaint alleged certain violations of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with an editorial aired by Multimedia Cablevision, Inc. ("Multimedia").

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

The subject of the complaint concerns televised editorials regarding the 1992 election for U.S. Representative for the Fourth Congressional District in Kansas. These editorials expressly advocating the election of Eric R. Yost and attacking Congressman Dan Glickman ("Glickman editorials"), were aired by Multimedia at the rate of more than 100 times per day on ten different cable stations. The complaint includes documents pertaining to the substance of these editorials and logs indicating the times the editorials were televised. The complaint also includes a flier printed on Multimedia stationery similar in substance to the aired

9/0435467/1

editorials. The complaint claims that Multimedia distributed this flier to 95,000 households along with its customer billings.

The complaint alleges that these editorials fall outside the press exemption provided by 2 U.S.C. § 431(9)(B) and thus, the costs associated with the editorials are corporate contributions to the Eric R. Yost for Congress Committee ("Yost Committee"). The complaint also claims that Multimedia has never broadcast an editorial on any subject with the frequency of the Glickman editorials and that Multimedia acknowledged that it consulted with the Yost Committee in producing these editorials. The complaint finally alleges that because Multimedia is a sophisticated entity with the means for complying with the Act, the violations are knowing and willful.

The response from Multimedia and Michael Burrus, Executive Vice President of Multimedia, denies that the editorials were contributions. Michael Burrus appears in the aired editorials and his name also appears on the bottom of the printed inserts distributed with Multimedia's customer billings. The respondents claim that the editorials aired by Multimedia, as well as the editorial inserts distributed along with its customer billings, fall within the press exemption. According to its response, Multimedia operates a 40 channel cable system serving Wichita, Kansas, and its outlying areas. Multimedia carries 20 national cable networks, major broadcast stations, and Multimedia's own locally originated programming.

Through an agreement with the cable networks it carries, Multimedia reserves several minutes of each hour on the national

9704353572C

cable networks for Multimedia's own purposes. In his affidavit, Mr. Burrus states that it is standard industry practice to use this time to air public service announcements, editorials, local advertising, or for promotional purposes. Mr. Burrus also states that Multimedia regularly produces and airs editorials regarding matters of importance to the community and cites a prior instance where Multimedia aired an editorial concerning the cable legislation then pending in Congress 2250 times in September 1992. Mr. Burrus adds that, over the past several years, Multimedia has aired numerous editorials on various other topics relating to public issues.

According to Mr. Burrus, five separate Glickman editorials aired from October 12, 1992 through October 23, 1992 for a total of 1155 times. Mr. Burrus claims that because cable network channel viewership is limited, the editorials were aired with this frequency to equal the viewership of broadcast network affiliate stations. Mr. Burrus claims that cablecasting an editorial 1155 times on 10 cable network channels is equal to airing the same editorial only 6.7 times over a twelve day period during a 10:00 p.m. newscast on a broadcast network station.

Mr. Burrus states that pursuant to FCC regulations, Multimedia first notified Congressman Glickman of the airing of the editorials on October 12, 1992. According to Mr. Burrus, Congressman Glickman's response aired 700 times on 13 cable channels between October 27, 1992 and November 2, 1992. Mr. Burrus claims that the response editorials would have been aired more frequently had Congressman Glickman contacted

97U4S0437721

Multimedia earlier. Mr. Burrus adds that Multimedia also aired at no charge the response of Seth Warren, the Libertarian Party candidate, 119 times.

According to Mr. Burrus, Multimedia regularly incorporates public service and editorial inserts into its billing statements as part of its normal business operations. Mr. Burrus notes that Multimedia produced and distributed an editorial billing insert regarding the then pending cable legislation. Multimedia's response includes samples of other inserts that Multimedia has distributed through its customer billings.[1]

B. Discussion

1. Legal Principles

The Act generally prohibits corporations from making contributions or expenditures in connection with a federal election. 2 U.S.C. § 441b(a). Although a corporation may make partisan communications to its stockholders and executive or administrative personnel and their families, corporations may not pay for communications to the general public that expressly advocate the election or defeat of a federal candidate. 11 C.F.R. § 114.3(a)(1).

Some incorporated media entities may be exempt from the general corporate prohibition under certain circumstances. The Act and Commission regulations exclude costs associated with the

---

1. Four inserts were included. The first promoted Multimedia's public service activities in the community and the second advertised the operating hours of the local public library along with an announcement of Multimedia's donation to the library. The third and fourth inserts involved the then pending cable legislation.

9704304372 2

production or dissemination of news stories, commentaries or editorials from the definitions of "contribution" and "expenditure." 2 U.S.C. § 431(9)(B)(i); 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2). Section 431(9)(B)(i) identifies only "broadcasting station[s], newspaper[s], magazine[s], or other periodical publication[s]" as press entities entitled to the exemption.

The Commission has applied the definitions of "broadcaster," "newspaper," and "magazine or other periodical publication" in its Explanation and Justification of 11 C.F.R. § 114.4(e). Although that regulation deals with the sponsorship of candidate debates by news organizations, the definitions in the Explanation and Justification contemplate the media exemption. See Explanation and Justification of 11 C.F.R. § 114.4(e), 44 Fed. Reg. 76,734 (1979). According to the Explanation and Justification, "the term 'broadcaster' is meant to include broadcasting facilities licensed by the Federal Communications Commission ("FCC"), as well as networks." 44 Fed. Reg. at 76,735.

Regarding whether the activity falls within the press exemption, the Commission has interpreted the media exemption broadly, consistent with Congress's admonition that the Act was not intended "to limit or burden in any way the first amendment freedom of the press." H.R. Rep. No. 93-1239, 93rd Cong., 2d Sess., at 4. For instance, although Section 431(9)(B)(i) speaks only of "news stor[ies], commentar[ies], or editorial[s]," the Commission's regulations have extended the protection to "costs incurred in covering or carrying" exempt material. 11 C.F.R.

§§ 100.7(b)(2) and 100.8(b)(2). See also, e.g., Advisory Opinion 1982-44 (cable television network's donation of time to national party committees for broadcasts in which candidates and other party leaders discussed issues and solicited contributions was protected by media exemption).

To determine whether the press exemption protects certain activity, the court, in Reader's Digest Ass'n v. FEC, 509 F. Supp. 1210 (S.D.N.Y. 1981), applied a two-prong test. The court stated that the exemption applies when the distribution of news or commentary falls within the media entity's "legitimate press function," and when the entity is not owned or controlled by any political party, political committee, or candidate. Id. at 1219.

2. Analysis

This matter presents the issue of whether the activity alleged by the complainant falls within the press exemption. As a threshold issue, the facts raise the question of whether Multimedia as a cable systems operator is the type of entity protected by the press exemption. Furthermore, assuming Multimedia is such an entity, the complaint and the responses raise the issue of whether the alleged activity is outside Multimedia's legitimate press function.

a. Whether Multimedia falls within the types of entities contemplated by the press exemption.

Whether Multimedia falls within the types of entities contemplated by the press exemption is a novel issue. The respondents claim that in Advisory Opinion 1982-44, the Commission affirmed that cable operators fall within the media exemption. In

that opinion, the Commission considered the donation of program time by WTBS, a "super satellite" television station which was licensed to broadcast by the FCC in the Atlanta, Georgia area. The Commission, however, did not consider whether the cable systems operators that retransmitted the signals of WTBS fall within the realm of the press exemption. Although they are subject to regulation by the FCC, see 47 C.F.R. §§ 76.12-17, cable system operators are not licensed to broadcast. Because the Commission has defined "broadcaster" narrowly to include those facilities licensed by the FCC to broadcast, it appears that Advisory Opinion 1982-44 does not address the issue of whether the press exemption applies to cable systems operators.

Although there appears to be little Commission precedent on this specific issue, there is some legislative history on the general purpose of the press exemption that may shed light on this matter. According to the legislative history, Congress included the provision to indicate that it did not intend the Act "to limit or burden in any way the first amendment freedom of the press" and to assure "the unfettered right of the newspapers, TV networks, and other media to cover and comment on political campaigns." H.R. Rep. No. 93-1239, 93rd Cong., 2d Sess., at 4. Thus, the rationale undergirding the press exemption is to prevent government interference with those press entities that cover and comment on political campaigns.

An issue then is whether Multimedia functions as a press entity that regularly covers and comments on political campaigns. As a cable systems operator, Multimedia delivers the programming

of various cable programming networks as well as regular broadcast networks to its subscriber households via coaxial cable. According to its response, Multimedia also engages in origination programming and normally reserves several minutes of each hour for its own purposes such as editorials regarding public issues.[2] Although Multimedia has offered some evidence that it has aired editorials relating to public issues in the past, there is no indication that Multimedia's origination programming includes any news programming of its own. Thus, cable systems operators resemble traditional broadcast television stations in some respects but differ from them in other respects. This raises an inference that Multimedia may not be an entity that covers and comments on political campaigns as do traditional broadcast stations.

On the other hand, the United States Supreme Court and the FCC have acknowledged that cable operators can serve a press function. In the context of deciding other issues, the Court has acknowledged that cable systems operators in providing its subscribers news, information, and entertainment, function much like other press entities. See Leathers v. Medlock, 111 S. Ct. 1438, 1442 (1991) (reviewing First Amendment challenge to an Arkansas statute taxing cable systems differently from print media); see also Los Angeles v. Preferred Communications, Inc., 476 U.S. 488, 494 (1986) (reviewing First Amendment challenge to

---

2. The FCC regulations define origination cablecasting as programming (exclusive of broadcast signals) carried on a cable television system over one or more channels and subject to the exclusive control of the cable operator. 47 C.F.R. § 76.5(p).

97043437726

city ordinance providing franchises to cable operators through an auction process). Moreover, the FCC recognizes that cable operators engaging in origination cablecasting will endorse or oppose candidates for federal office and requires them to provide an opposing candidate a reasonable opportunity to respond. See 47 C.F.R § 76.209(d). This provision governing political editorials by cable systems operators is similar to the one governing broadcast stations. See 47 C.F.R. § 73.1930.

Although these acknowledgments may indicate that Multimedia, as a cable systems operator, falls within at least the spirit of the press exemption, they were made outside the context of the purposes and requirements of the Act or Commission regulations. Thus, the resolution of this issue may require further inquiry to determine whether Multimedia is an entity contemplated by the Act's press exemption. If Multimedia is not an entity within the press exemption, the costs associated with the Glickman editorials may be a corporate contribution to the Yost Committee. In addition, the donation of time to the Glickman campaign and Seth Warren to respond to the Glickman editorials may be corporate contributions to the Glickman for Congress Committee and Seth Warren.

b. Assuming Multimedia is an entity contemplated by the press exemption, whether the activity falls within the press exemption.

Assuming arguendo that Multimedia is such an entity, the issue of whether the alleged activity falls within the press exemption must be addressed. Multimedia argues that airing the Glickman editorials and distributing the printed editorial inserts

through its customer billings are protected by the press exemption. For the press exemption to apply, Multimedia's activity must pass the Reader's Digest two-prong test: (1) does the distribution of the Glickman editorials fall broadly within Multimedia's legitimate press function and (2) are Multimedia's facilities owned or controlled by any political party, political committee or candidate.

Multimedia does not appear to be owned or controlled by a candidate or political party, but assuming Multimedia is a press entity, a question is raised as to whether the activity in question was outside Multimedia's legitimate press function. Applying the first prong to the distribution of the printed editorials with its customer billings, it appears that Multimedia was acting in a manner unrelated to its press function. Multimedia's medium of communication is cable television, not printed materials. Multimedia's press function, assuming it has one, would involve delivering news programming via cable television, not through printed mailings. Thus, the press exemption may not apply to mailing printed inserts expressly advocating the defeat of Congressman Glickman. See Reader's Digest Ass'n v. FEC, 509 F. Supp. 1210, 1214-15 (S.D.N.Y. 1981).

Absent the safe harbor of the press exemption, the general corporate prohibition against making communications to the general public expressly advocating the election or defeat of a federal candidate applies. The editorial inserts were mailed to 95,000 households along with Multimedia's billing for its services. The communications were made to Multimedia's subscribers, not to the

9704354372

class of persons permitted by Commission regulations, i.e., stockholders and executive or administrative personnel and their families. Thus, Multimedia may have violated 2 U.S.C. § 441b(a) by making communications to the general public expressly advocating the election or defeat of a federal candidate.

In addition to the distribution of the printed editorial inserts, the airing of the Glickman editorials also raises press exemption issues. Applying the first prong of the Reader's Digest test to the airing of the Glickman editorials, the frequency at which the editorials were aired suggests that Multimedia may have been acting in a manner unrelated to its press function. Multimedia aired the Glickman editorials 100 times per day over a twelve day period. Multimedia claims that the frequency was due to the disparity in airing the editorials over cable networks as opposed to the broadcast network affiliate stations. In support of this claim, Multimedia notes that it aired the responses by Congressman Glickman 700 times over a seven day period and the editorials regarding the cable legislation 2250 times during the month of September.

These instances of similar frequency, however, do not fully support the argument that airing the editorials 100 times a day was within Multimedia's normal practice. Although the Glickman responses and the cable legislation editorials may have been aired as frequently as the Glickman editorials, there is no indication that Multimedia has aired other editorials with the same frequency. Multimedia does note that it has aired numerous

9/0430372/

editorials discussing community issues, but omits the frequency at which it aired these other editorials.

Furthermore, the frequency of the Glickman responses may have been affected by factors other than Multimedia's normal practices. Attached to Mr. Burrus's affidavit is a letter from Congressman Glickman's counsel to the FCC. This letter withdraws a complaint filed with the agency against Multimedia stating that "[in] light of the exigent circumstances presented by the election, the parties resolved the immediate issue of 'reasonable opportunity' through negotiation." This raises the inference that the frequency of the Glickman responses may have been the result of an agreement in settlement of a complaint that the Glickman campaign filed with the FCC, rather than Multimedia's normal practice of airing editorials.

In addition to the frequency of the airing of the editorials, the mailing of the printed Glickman editorial inserts with Multimedia's customer billings, which appear to be a prohibited corporate expenditure in itself, suggests that the airing of the editorials may be unrelated to Multimedia's press function. As discussed above, Multimedia argues that it normally distributes printed editorials with its customer billings and cites the instance in which it distributed editorials discussing the cable legislation. There is no indication, however, that Multimedia normally distributes printed editorials in conjunction with the editorials it airs regarding the same subject matter. Indeed the only instances where Multimedia followed this practice,

the cable legislation and the Glickman editorials, involved issues concerning Multimedia's own economic interests.

In sum, the frequency at which Multimedia aired the Glickman editorials and the distribution of similar printed editorials with Multimedia's customer billings suggests that Multimedia in producing and airing the Glickman editorials was acting in a manner unrelated to its legitimate press function. If the activity fails the first part of the Reader's Digest test, the press exemption would not apply to this activity. Thus, the costs associated with producing and airing the Glickman editorials may be a corporate contribution from Multimedia to the Yost Committee.

Michael Burrus, Executive Vice President of Multimedia, personally appeared in the aired editorials and his name appears on the printed inserts sent to Multimedia's customers. Thus, Mr. Burrus, a corporate officer, may have consented to such corporate contributions.

Therefore, based on the foregoing, there is reason to believe Multimedia Cablevision, Inc. and Michael C. Burrus, as an officer of Multimedia, violated 2 U.S.C. § 441b(a).

9/04/3/3/1

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OCTOBER 22, 1993

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

L. D. Klenda, Treasurer
Glickman for Congress Committee
1600 Epic Center
301 N. Main
Wichita, Kansas 67202

RE: MUR 3657
Glickman for Congress Committee and L. D. Klenda, as treasurer

Dear Mr. Klenda:

On October 5, 1993, the Federal Election Commission found that there is reason to believe the Glickman for Congress Committee ("Committee") and you, as treasurer, violated 2 U.S.C. § 441b(a), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information. The Commission has also approved the enclosed Order to Submit Written Answers and Subpoena to Produce Documents.

Under the Act, you have an opportunity to demonstrate that no action should be taken against the Committee and you. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Submit Written Answers and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 30 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this order and subpoena. If you intend to be represented by counsel, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notification or other communications from the Commission.

9/0430437/32

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Richard M. Denholm II, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Scott E. Thomas
Chairman

Enclosures
Order and Subpoena
Designation of Counsel Form
Factual and Legal Analysis

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MUR 3657
)

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: L. D. Klenda, Treasurer
Glickman for Congress Committee
1600 Epic Center
301 N. Main Street
Wichita, Kansas 67202

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within 30 days of receipt of this Order and Subpoena.

9/04 3 0 4 3 7 3 4

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 21st day of October, 1993.

Scott E. Thomas
Chairman
Federal Election Commission

ATTEST:

Marjorie W. Emmons
Secretary to the Commission

Attachment
Questions and Document Requests

9704044573

INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from August 1, 1992 to the present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

9/0435437 3

DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and request for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

BEFORE THE FEDERAL ELECTION COMMISSION

INTERROGATORIES AND DOCUMENT REQUESTS

MUR 3657
Glickman for Congress Committee
and L. D. Klenda, as treasurer

1. Regarding the Glickman campaign's editorials aired by Multimedia Cablevision, Inc. ("Multimedia") in response to Multimedia's editorials advocating the defeat of Congressman Glickman, provide the following information:

   a. Identify and produce all documents relating to all communications or contacts with Multimedia, including notes, memoranda, correspondence, and phone logs.

   b. Identify all persons involved in each communication or contact.

   b. State the subject of each communication or contact.

9704304357 9

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Glickman for Congress Committee and L.D. Klenda, as treasurer MUR 3657

I. GENERATION OF MATTER

This matter was generated by information ascertained by the Federal Election Commission ("Commission") in the normal course of reviewing a complaint filed on October 16, 1992, and in the normal course of carrying out its supervisory responsibilities. 2 U.S.C. § 437g(a)(1) and (2). The information concerns editorials aired in connection with the 1992 election for U.S. Representative for the Fourth Congressional District in Kansas.

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

In October 1992, Multimedia Cablevision, Inc. ("Multimedia"), aired several editorials regarding the 1992 election for U.S. Representative for the Fourth Congressional District in Kansas. Five separate editorials expressly advocating the defeat of Congressman Dan Glickman were aired from October 12, 1992 through October 23, 1992, at a rate of more than 100 times per day on ten cable channels, for a total of 1155 times.

According to information provided by Multimedia, Multimedia first notified Congressman Glickman of the airing of the editorials on October 12, 1992, pursuant to FCC regulations. Consequently, Multimedia aired at no charge, the Glickman

campaign's response to the editorials attacking Congressman Glickman. The Glickman campaign's response was aired 700 times over 13 cable channels between October 27, 1992 and November 2, 1992.

According to Multimedia, it operates a 40 channel cable system serving Wichita, Kansas, and its outlying areas. Multimedia carries 20 national cable networks, major broadcast stations, and Multimedia's own locally originated programming. Through an agreement with the cable networks it carries, Multimedia reserves several minutes of each hour on the national cable networks for Multimedia's own purposes. According to Michael Burrus, Executive Vice President of Multimedia, it is standard industry practice to use this time to air public service announcements, editorials, local advertising, or for promotional purposes. Furthermore, Mr. Burris notes that Multimedia regularly produces and airs editorials regarding matters of importance to the community and cites a prior instance where Multimedia aired an editorial concerning the cable legislation then pending in Congress 2250 times in September 1992. Mr. Burrus adds that, over the past several years, Multimedia has aired numerous editorials on various other topics relating to public issues.

B. Discussion

1. Legal Principles

The Act generally prohibits corporations from making contributions or expenditures in connection with a federal election. 2 U.S.C. § 441b(a). Candidates and their authorized

committees are prohibited from knowingly accepting a corporate contribution. Id.

Some incorporated media entities may be exempt from the general corporate prohibition under certain circumstances. The Act and Commission regulations exclude costs associated with the production or dissemination of news stories, commentaries or editorials from the definitions of "contribution" and "expenditure." 2 U.S.C. § 431(9)(B)(i); 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2). Section 431(9)(B)(i) identifies only "broadcasting station[s], newspaper[s], magazine[s], or other periodical publication[s]" as press entities entitled to the exemption.

The Commission has applied the definitions of "broadcaster," "newspaper," and "magazine or other periodical publication" in its Explanation and Justification of 11 C.F.R. § 114.4(e). Although that regulation deals with the sponsorship of candidate debates by news organizations, the definitions in the Explanation and Justification contemplate the media exemption. See Explanation and Justification of 11 C.F.R. § 114.4(e), 44 Fed. Reg. 76,734 (1979). According to the Explanation and Justification, "the term 'broadcaster' is meant to include broadcasting facilities licensed by the Federal Communications Commission ("FCC"), as well as networks." 44 Fed. Reg. at 76,735.

2. Analysis

As a threshold issue, the facts raise the question of whether Multimedia as a cable systems operator is the type of entity protected by the press exemption. Whether Multimedia falls

within the types of entities contemplated by the press exemption is a novel issue. In Advisory Opinion 1982-44, the Commission considered the donation of program time by WTBS, a "super satellite" television station which was licensed to broadcast by the FCC in the Atlanta, Georgia area. The Commission, however, did not consider whether the cable systems operators that retransmitted the signals of WTBS fall within the realm of the press exemption. Although they are subject to regulation by the FCC, see 47 C.F.R. §§ 76.12-17, cable system operators are not licensed to broadcast. Because the Commission has defined "broadcaster" narrowly to include those facilities licensed by the FCC to broadcast, it appears that Advisory Opinion 1982-44 does not address the issue of whether the press exemption applies to cable systems operators.

Although there appears to be little Commission precedent on this specific issue, there is some legislative history on the general purpose of the press exemption that may shed light on this matter. According to the legislative history, Congress included the provision to indicate that it did not intend the Act "to limit or burden in any way the first amendment freedom of the press" and to assure "the unfettered right of the newspapers, TV networks, and other media to cover and comment on political campaigns." H. R. Rep. No. 93-1239, 93rd Cong., 2d Sess., at 4. Thus, the rationale undergirding the press exemption is to prevent government interference with those press entities that cover and comment on political campaigns.

An issue then is whether Multimedia functions as a press entity that regularly covers and comments on political campaigns. As a cable systems operator, Multimedia delivers the programming of various cable programming networks as well as regular broadcast networks to its subscriber households via coaxial cable. According to its response, Multimedia also engages in origination programming and normally reserves several minutes of each hour for its own purposes such as editorials regarding public issues.[1] Although Multimedia has offered some evidence that it has aired editorials relating to public issues in the past, there is no indication that Multimedia's origination programming includes any news programming of its own. Thus, cable systems operators resemble traditional broadcast television stations in some respects but differ from them in other respects. This raises an inference that Multimedia may not be an entity that covers and comments on political campaigns as do traditional broadcast stations.

On the other hand, the United States Supreme Court and the FCC have acknowledged that cable operators can serve a press function. In the context of deciding other issues, the Court has acknowledged that cable systems operators in providing its subscribers news, information, and entertainment, function much like other press entities. See Leathers v. Medlock, 111 S. Ct. 1438, 1442 (1991) (reviewing First Amendment challenge to an

---

1. The FCC regulations define origination cablecasting as programming (exclusive of broadcast signals) carried on a cable television system over one or more channels and subject to the exclusive control of the cable operator. 47 C.F.R. § 76.5(p).

Arkansas statute taxing cable systems differently from print media); see also Los Angeles v. Preferred Communications, Inc., 476 U.S. 488, 494 (1986) (reviewing First Amendment challenge to city ordinance providing franchises to cable operators through an auction process). Moreover, the FCC recognizes that cable operators engaging in origination cablecasting will endorse or oppose candidates for federal office and requires them to provide an opposing candidate a reasonable opportunity to respond. See 47 C.F.R § 76.209(d). This provision governing political editorials by cable systems operators is similar to the one governing broadcast stations. See 47 C.F.R. § 73.1930.

Although these acknowledgments may indicate that Multimedia, as a cable systems operator, falls within at least the spirit of the press exemption, they were made outside the context of the purposes and requirements of the Act or Commission regulations. Thus, the resolution of this issue may require further inquiry to determine whether Multimedia is an entity contemplated by the Act's press exemption.

If Multimedia is not an entity within the press exemption, the donation of air time to the Glickman for Congress Committee for the Glickman campaign's response may be a corporate contribution by Multimedia. Thus, the Glickman for Congress Committee and L.D. Klenda, as treasurer, may have accepted a corporate contribution.

9/0436437444

Therefore, based on the foregoing analysis, there is reason to believe the Glickman for Congress Committee and L.D. Klenda, as treasurer, violated 2 U.S.C. § 441b(a) by accepting a corporate contribution.

9704384374 5

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OCTOBER 22, 1993

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Seth L. Warren
13601 East 31st South, #48
Wichita, Kansas 67202

RE: MUR 3657
Seth L. Warren

Dear Seth L. Warren:

On October 5, 1993, the Federal Election Commission found that there is reason to believe you violated 2 U.S.C. § 441b(a), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information. The Commission has also approved the enclosed Order to Submit Written Answers and Subpoena to Produce Documents.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Submit Written Answers and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 30 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this order and subpoena. If you intend to be represented by counsel, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notification or other communications from the Commission.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending

9704383746

declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Richard M. Denholm II, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Scott E. Thomas
Chairman

Enclosures
Order and Subpoena
Designation of Counsel Form
Factual and Legal Analysis

9/5/4/3/6/4/5/7/4/7

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MUR 3657
)

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Seth L. Warren
13601 East 31st South, #48
Wichita, Kansas 67232

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within 30 days of receipt of this Order and Subpoena.

9/04/0437/40

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 21st day of October, 1993.

Scott E. Thomas
Chairman
Federal Election Commission

ATTEST:

Marjorie W. Emmons
Secretary to the Commission

Attachment
Questions and Document Requests

9104300437/49

INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from August 1, 1992 to the present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

9 / 0 4 3 5 4 3 7 5 C

DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and request for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

9704383751

BEFORE THE FEDERAL ELECTION COMMISSION

INTERROGATORIES AND DOCUMENT REQUESTS

MUR 3657
Seth L. Warren

1. Regarding the Seth L. Warren editorials aired by Multimedia Cablevision, Inc. ("Multimedia") in response to Multimedia's editorials advocating the defeat of Congressman Glickman, provide the following information:

a. Identify and produce all documents relating to all communications or contacts with Multimedia, including notes, memoranda, correspondence, and phone logs.

b. Identify all persons involved in each communication or contact.

b. State the subject of each communication or contact.

9704356437552

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Seth L. Warren MUR: 3657

I. GENERATION OF MATTER

This matter was generated by information ascertained by the Federal Election Commission ("Commission") in the normal course of carrying out its supervisory responsibilities pursuant to 2 U.S.C. § 437g(a)(2). The information concerns editorials aired in connection with the 1992 election for U.S. Representative for the Fourth Congressional District in Kansas.

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

In October 1992, Multimedia Cablevision, Inc. ("Multimedia"), aired several editorials regarding the 1992 election for U.S. Representative for the Fourth Congressional District in Kansas. Five separate editorials expressly advocating the defeat of Congressman Dan Glickman were aired from October 12, 1992 through October 23, 1992, at a rate of more than 100 times per day on ten cable channels, for a total of 1155 times. In addition, Multimedia aired 119 times at no charge 119 responses to the Glickman editorials from the Libertarian candidate, Seth Warren.

According to Multimedia, it operates a 40 channel cable system serving Wichita, Kansas, and its outlying areas. Multimedia carries 20 national cable networks, major broadcast

9/0436753

stations, and Multimedia's own locally originated programming. Through an agreement with the cable networks it carries, Multimedia reserves several minutes of each hour on the national cable networks for Multimedia's own purposes. According to Michael Burrus, Executive Vice President of Multimedia, it is standard industry practice to use this time to air public service announcements, editorials, local advertising, or for promotional purposes. Furthermore, Mr. Burris notes that Multimedia regularly produces and airs editorials regarding matters of importance to the community and cites a prior instance where Multimedia aired an editorial concerning the cable legislation then pending in Congress 2250 times in September 1992. Mr. Burrus adds that, over the past several years, Multimedia has aired numerous editorials on various other topics relating to public issues.

B. Discussion

1. Legal Principles

The Act generally prohibits corporations from making contributions or expenditures in connection with a federal election. 2 U.S.C. § 441b(a). Candidates, political committees, or any other persons are prohibited from knowingly accepting a corporate contribution. Id. "Contribution" includes any direct or indirect payment, any services, or anything of value to any candidate, campaign committee,, or political party, in connection with a federal election. 2 U.S.C. § 441b(b)(2).

Some incorporated media entities may be exempt from the general corporate prohibition under certain circumstances. The Act and Commission regulations exclude costs associated with the

9/04/03 4 3 7 5 4

production or dissemination of news stories, commentaries or editorials from the definitions of "contribution" and "expenditure." 2 U.S.C. § 431(9)(B)(i); 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2). Section 431(9)(B)(i) identifies only "broadcasting station[s], newspaper[s], magazine[s], or other periodical publication[s]" as press entities entitled to the exemption.

The Commission has applied the definitions of "broadcaster," "newspaper," and "magazine or other periodical publication" in its Explanation and Justification of 11 C.F.R. § 114.4(e). Although that regulation deals with the sponsorship of candidate debates by news organizations, the definitions in the Explanation and Justification contemplate the media exemption. See Explanation and Justification of 11 C.F.R. § 114.4(e), 44 Fed. Reg. 76,734 (1979). According to the Explanation and Justification, "the term 'broadcaster' is meant to include broadcasting facilities licensed by the Federal Communications Commission ("FCC"), as well as networks." 44 Fed. Reg. at 76,735.

2. Analysis

As a threshold issue, the facts raise the question of whether Multimedia as a cable systems operator is the type of entity protected by the press exemption. Whether Multimedia falls within the types of entities contemplated by the press exemption is a novel issue. In Advisory Opinion 1982-44, the Commission considered the donation of program time by WTBS, a "super satellite" television station which was licensed to broadcast by the FCC in the Atlanta, Georgia area. The Commission, however,

did not consider whether the cable systems operators that retransmitted the signals of WTBS fall within the realm of the press exemption. Although they are subject to regulation by the FCC, see 47 C.F.R. §§ 76.12-17, cable system operators are not licensed to broadcast. Because the Commission has defined "broadcaster" narrowly to include those facilities licensed by the FCC to broadcast, it appears that Advisory Opinion 1982-44 does not address the issue of whether the press exemption applies to cable systems operators.

Although there appears to be little Commission precedent on this specific issue, there is some legislative history on the general purpose of the press exemption that may shed light on this matter. According to the legislative history, Congress included the provision to indicate that it did not intend the Act "to limit or burden in any way the first amendment freedom of the press" and to assure "the unfettered right of the newspapers, TV networks, and other media to cover and comment on political campaigns." H.R. Rep. No. 93-1239, 93rd Cong., 2d Sess., at 4. Thus, the rationale undergirding the press exemption is to prevent government interference with those press entities that cover and comment on political campaigns.

An issue then is whether Multimedia functions as a press entity that regularly covers and comments on political campaigns. As a cable systems operator, Multimedia delivers the programming of various cable programming networks as well as regular broadcast networks to its subscriber households via coaxial cable. According to its response, Multimedia also engages in origination

9/0430750

programming and normally reserves several minutes of each hour for its own purposes such as editorials regarding public issues.[1] Although Multimedia has offered some evidence that it has aired editorials relating to public issues in the past, there is no indication that Multimedia's origination programming includes any news programming of its own. Thus, cable systems operators resemble traditional broadcast television stations in some respects but differ from them in other respects. This raises an inference that Multimedia may not be an entity that covers and comments on political campaigns as do traditional broadcast stations.

On the other hand, the United States Supreme Court and the FCC have acknowledged that cable operators can serve a press function. In the context of deciding other issues, the Court has acknowledged that cable systems operators in providing its subscribers news, information, and entertainment, function much like other press entities. See Leathers v. Medlock, 111 S. Ct. 1438, 1442 (1991) (reviewing First Amendment challenge to an Arkansas statute taxing cable systems differently from print media); see also Los Angeles v. Preferred Communications, Inc., 476 U.S. 488, 494 (1986) (reviewing First Amendment challenge to city ordinance providing franchises to cable operators through an auction process). Moreover, the FCC recognizes that cable operators engaging in origination cablecasting will endorse or

---

1. The FCC regulations define origination cablecasting as programming (exclusive of broadcast signals) carried on a cable television system over one or more channels and subject to the exclusive control of the cable operator. 47 C.F.R. § 76.5(p).

9/04384757

oppose candidates for federal office and requires them to provide an opposing candidate a reasonable opportunity to respond. See 47 C.F.R § 76.209(d). This provision governing political editorials by cable systems operators is similar to the one governing broadcast stations. See 47 C.F.R. § 73.1930.

Although these acknowledgments may indicate that Multimedia, as a cable systems operator, falls within at least the spirit of the press exemption, they were made outside the context of the purposes and requirements of the Act or Commission regulations. Thus, the resolution of this issue may require further inquiry to determine whether Multimedia is an entity contemplated by the Act's press exemption.

If Multimedia is not an entity within the press exemption, the donation of air time to Seth Warren for his responses may be a corporate contribution by Multimedia. Thus, Seth Warren may have accepted a corporate contribution.

Therefore, based on the foregoing analysis, there is reason to believe Seth Warren violated 2 U.S.C. § 441b(a) by accepting a corporate contribution.

9704043750

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OCTOBER 22, 1993

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Theron E. Fry, Treasurer
Eric R. Yost for Congress Committee
c/o Triplett, Woolf & Garretson
Suite 800, Centre City Plaza
151 N. Main
Wichita, Kansas 67202-1409

RE: MUR 3657
Eric R. Yost for Congress
Committee and Theron E. Fry,
as treasurer

Dear Mr. Fry:

On October 19, 1992, the Federal Election Commission notified the Eric R. Yost for Congress Committee ("Committee") and you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was enclosed with that notification.

Upon further review of the allegations contained in the complaint, and information provided by you, on October 5, 1993, the Commission found that there is reason to believe the Committee and you, as treasurer, violated 2 U.S.C. § 441b(a), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information. The Commission has also approved the enclosed Order to Submit Written Answers and Subpoena to Produce Documents.

Under the Act, you have an opportunity to demonstrate that no action should be taken against the Committee and you. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Submit Written Answers and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 30 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this order and subpoena. If you intend to be represented by counsel, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notification or other communications from the Commission.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Richard M. Denholm II, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Scott E. Thomas
Chairman

Enclosures
Order and Subpoena
Designation of Counsel Form
Factual and Legal Analysis

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MUR 3657
)

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Eric R. Yost for Congress Committee
and Theron E. Fry, as treasurer
c/o Triplett, Woolf & Garretson
Suite 800
Center City Plaza
151 N. Main
Wichita, Kansas 67202-1409

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within 30 days of receipt of this Order and Subpoena.

9/0430437761

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 22nd day of October, 1993.

Scott E. Thomas
Chairman
Federal Election Commission

ATTEST:

Marjorie W. Emmons
Secretary to the Commission

Attachment
Questions and Document Requests

9104343762

INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from August 1, 1992 to the present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

9/0456/63

DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and request for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

9 / 0 4 5 0 4 2 7 / 6 4

BEFORE THE FEDERAL ELECTION COMMISSION

INTERROGATORIES AND DOCUMENT REQUESTS

MUR 3657
Eric R. Yost for Congress Committee
and Theron E. Fry, as treasurer

1. State whether any representative of the Eric R. Yost for Congress Committee communicated with any officer, employee, or agent of Multimedia Cablevision, Inc. regarding the October editorials and/or billing insert advocating the defeat of Congressman Glickman. For each communication, provide the following information:

   a. Identify all persons involved in the communication.

   b. State the subject of the communication.

   c. Identify and produce all documents relating to such communication, including notes, memoranda, correspondence, and phone logs.

2. Identify all persons involved or who had input in the development and creation of campaign advertisements, the coordination of media buys, and the hiring of media consultants for the Yost campaign.

9/0450437/05

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Eric R. Yost for Congress Committee and Theron E. Fry, as treasurer MUR 3657

I. GENERATION OF MATTER

This matter was generated by a complaint submitted on October 16, 1992 by B. Holly Schadler on behalf of Congressman Dan Glickman and the Glickman for Congress Committee and information ascertained by the Federal Election Commission ("Commission") in the normal course of carrying out its supervisory responsibilities pursuant to 2 U.S.C. § 437g(a)(2). The complaint alleged certain violations of the Federal Election Campaign Act of 1971, as amended ("the Act") concerning editorials aired in connection with the 1992 election for U.S. Representative for the Fourth Congressional District in Kansas.

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

The subject of the complaint concerns televised editorials regarding the 1992 election for U.S. Representative for the Fourth Congressional District in Kansas. These editorials expressly advocating the election of Eric R. Yost and attacking Congressman Dan Glickman, were aired by Multimedia Cablevision, Inc. ("Multimedia") at the rate of more than 100 times per day on ten different cable stations. The complaint includes documents pertaining to the substance of these editorials and logs

9 7 0 4 3 0 4 3 7 6 0

indicating the times the editorials were televised. The complaint also includes a flier printed on Multimedia stationery similar in substance to the aired editorials. The complaint claims that this flier was distributed to 95,000 households along with Multimedia's customer billings.

The complaint alleges that these editorials fall outside the press exemption provided by 2 U.S.C. § 431(9)(B) and thus, the costs associated with the editorials are corporate contributions to the Eric R. Yost for Congress Committee ("Yost Committee"). The complaint also claims that the Yost Committee was involved in producing these editorials.

According to information provided by Multimedia, Multimedia operates a 40 channel cable system serving Wichita, Kansas, and its outlying areas. Multimedia carries 20 national cable networks, major broadcast stations, and Multimedia's own locally originated programming. Through an agreement with the cable networks it carries, Multimedia reserves several minutes of each hour on the national cable networks for Multimedia's own purposes. According to Michael Burrus, Executive Vice President of Multimedia, it is standard industry practice to use this time to air public service announcements, editorials, local advertising, or for promotional purposes. Mr. Burrus notes that Multimedia regularly produces and airs editorials regarding matters of importance to the community and cites a prior instance where Multimedia aired an editorial concerning the cable legislation then pending in Congress 2250 times in September 1992. Mr. Burrus adds that, over the past several years, Multimedia has aired

numerous editorials on various other topics relating to public issues.

Five separate Glickman editorials were aired from October 12, 1992 through October 23, 1992 for a total of 1155 times. According to Mr. Burrus, because cable network channel viewership is limited, the editorials were aired with this frequency to equal the viewership of broadcast network affiliate stations. Thus, cablecasting an editorial 1155 times on 10 cable network channels is equal to airing the same editorial only 6.7 times over a twelve day period during a 10:00 p.m. newscast on a broadcast network station.

Mr. Burrus states that pursuant to FCC regulations, Multimedia first notified Congressman Glickman of the airing of the editorials on October 12, 1992. According to Mr. Burrus, Congressman Glickman's response aired 700 times on 13 cable channels between October 27, 1992 and November 2, 1992. Mr. Burrus adds that the response editorials would have been aired more frequently had Congressman Glickman contacted Multimedia earlier.

According to Mr. Burrus, Multimedia regularly incorporates public service and editorial inserts into its billing statements as part of its normal business operations. Mr. Burrus notes that Multimedia produced and distributed an editorial billing insert regarding the then pending cable legislation. Multimedia also

9704303760

provided samples of other inserts that Multimedia has distributed through its customer billings.[1]

B. Discussion

1. Legal Principles

The Act generally prohibits corporations from making contributions or expenditures in connection with a federal election. 2 U.S.C. § 441b(a). Candidates and their authorized committees are prohibited from knowingly accepting a corporate contribution. Id. Although a corporation may make partisan communications to its stockholders and executive or administrative personnel and their families, corporations may not pay for communications to the general public that expressly advocate the election or defeat of a federal candidate. 11 C.F.R. § 114.3(a)(1).

Some incorporated media entities may be exempt from the general corporate prohibition under certain circumstances. The Act and Commission regulations exclude costs associated with the production or dissemination of news stories, commentaries or editorials from the definitions of "contribution" and "expenditure." 2 U.S.C. § 431(9)(B)(i); 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2). Section 431(9)(B)(i) identifies only "broadcasting station[s], newspaper[s], magazine[s], or other

1. Four inserts were included. The first promoted Multimedia's public service activities in the community and the second advertised the operating hours of the local public library along with an announcement of Multimedia's donation to the library. The third and fourth inserts involved the then pending cable legislation.

9/0430387

periodical publication[s]" as press entities entitled to the exemption.

The Commission has applied the definitions of "broadcaster," "newspaper," and "magazine or other periodical publication" in its Explanation and Justification of 11 C.F.R. § 114.4(e). Although that regulation deals with the sponsorship of candidate debates by news organizations, the definitions in the Explanation and Justification contemplate the media exemption. See Explanation and Justification of 11 C.F.R. § 114.4(e), 44 Fed. Reg. 76,734 (1979). According to the Explanation and Justification, "the term 'broadcaster' is meant to include broadcasting facilities licensed by the Federal Communications Commission ("FCC"), as well as networks." 44 Fed. Reg. at 76,735.

Regarding whether the activity falls within the press exemption, the Commission has interpreted the media exemption broadly, consistent with Congress's admonition that the Act was not intended "to limit or burden in any way the first amendment freedom of the press." H.R. Rep. No. 93-1239, 93rd Cong., 2d Sess., at 4. For instance, although Section 431(9)(B)(i) speaks only of "news stor[ies], commentar[ies], or editorial[s]," the Commission's regulations have extended the protection to "costs incurred in covering or carrying" exempt material. 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2). See also, e.g., Advisory Opinion 1982-44 (cable television network's donation of time to national party committees for broadcasts in which candidates and other party leaders discussed issues and solicited contributions was protected by media exemption).

To determine whether the press exemption protects certain activity, the court, in Reader's Digest Ass'n v. FEC, 509 F. Supp. 1210 (S.D.N.Y. 1981), applied a two-prong test. The court stated that the exemption applies when the distribution of news or commentary falls within the media entity's "legitimate press function," and when the entity is not owned or controlled by any political party, political committee, or candidate. Id. at 1214.

2. Analysis

This matter presents the issue of whether the activity alleged by the complainant falls within the press exemption. As a threshold issue, the facts raise the question of whether Multimedia as a cable systems operator is the type of entity protected by the press exemption. Furthermore, assuming Multimedia is such an entity, the complaint and the information provided by Multimedia raise the issue of whether the alleged activity is outside Multimedia's legitimate press function.

a. Whether Multimedia falls within the types of entities contemplated by the press exemption.

Whether Multimedia falls within the types of entities contemplated by the press exemption is a novel issue. In Advisory Opinion 1982-44, the Commission considered the donation of program time by WTBS, a "super satellite" television station which was licensed to broadcast by the FCC in the Atlanta, Georgia area. The Commission, however, did not consider whether the cable systems operators that retransmitted the signals of WTBS fall within the realm of the press exemption. Although they are subject to regulation by the FCC, see 47 C.F.R. §§ 76.12-17, cable

9/04383771

system operators are not licensed to broadcast. Because the Commission has defined "broadcaster" narrowly to include those facilities licensed by the FCC to broadcast, it appears that Advisory Opinion 1982-44 does not address the issue of whether the press exemption applies to cable systems operators.

Although there appears to be little Commission precedent on this specific issue, there is some legislative history on the general purpose of the press exemption that may shed light on this matter. According to the legislative history, Congress included the provision to indicate that it did not intend the Act "to limit or burden in any way the first amendment freedom of the press" and to assure "the unfettered right of the newspapers, TV networks, and other media to cover and comment on political campaigns." H.R. Rep. No. 93-1239, 93rd Cong., 2d Sess., at 4. Thus, the rationale undergirding the press exemption is to prevent government interference with those press entities that cover and comment on political campaigns.

An issue then is whether Multimedia functions as a press entity that regularly covers and comments on political campaigns. As a cable systems operator, Multimedia delivers the programming of various cable programming networks as well as regular broadcast networks to its subscriber households via coaxial cable. According to its response, Multimedia also engages in origination programming and normally reserves several minutes of each hour for

9704383772

its own purposes such as editorials regarding public issues.[2] Although Multimedia has offered some evidence that it has aired editorials relating to public issues in the past, there is no indication that Multimedia's origination programming includes any news programming of its own. Thus, cable systems operators resemble traditional broadcast television stations in some respects but differ from them in other respects. This raises an inference that Multimedia may not be an entity that covers and comments on political campaigns as do traditional broadcast stations.

On the other hand, the United States Supreme Court and the FCC have acknowledged that cable operators can serve a press function. In the context of deciding other issues, the Court has acknowledged that cable systems operators in providing its subscribers news, information, and entertainment, function much like other press entities. See Leathers v. Medlock, 111 S. Ct. 1438, 1442 (1991) (reviewing First Amendment challenge to an Arkansas statute taxing cable systems differently from print media); see also Los Angeles v. Preferred Communications, Inc., 476 U.S. 488, 494 (1986) (reviewing First Amendment challenge to city ordinance providing franchises to cable operators through an auction process). Moreover, the FCC recognizes that cable operators engaging in origination cablecasting will endorse or oppose candidates for federal office and requires them to provide

2. The FCC regulations define origination cablecasting as programming (exclusive of broadcast signals) carried on a cable television system over one or more channels and subject to the exclusive control of the cable operator. 47 C.F.R. § 76.5(p).

9 1 0 4 3 0 4 3 7 7 3

an opposing candidate a reasonable opportunity to respond. See 47 C.F.R § 76.209(d). This provision governing political editorials by cable systems operators is similar to the one governing broadcast stations. See 47 C.F.R. § 73.1930.

Although these acknowledgments may indicate that Multimedia, as a cable systems operator, falls within at least the spirit of the press exemption, they were made outside the context of the purposes and requirements of the Act or Commission regulations. Thus, the resolution of this issue may require further inquiry to determine whether Multimedia is an entity contemplated by the Act's press exemption.

b. Assuming Multimedia is an entity contemlated by the press exemption, whether the activity falls within the press exemption.

Assuming arguendo that Multimedia is such an entity, the issue of whether the alleged activity falls within the press exemption must be addressed. For the press exemption to apply, Multimedia's activity must pass the Reader's Digest two-prong test: (1) does the distribution of the Glickman editorials fall broadly within Multimedia's legitimate press function and (2) are Multimedia's facilities owned or controlled by any political party, political committee or candidate.

Multimedia does not appear to be owned or controlled by a candidate or political party, but assuming Multimedia is a press entity, a question is raised as to whether the activity in question was outside Multimedia's legitimate press function. Applying the first prong to the distribution of the printed editorials with its customer billings, it appears that Multimedia

9704584774

was acting in a manner unrelated to its press function. Multimedia's medium of communication is cable television, not printed materials. Multimedia's press function, assuming it has one, would involve delivering news programming via cable television, not through printed mailings. Thus, the press exemption may not apply to mailing printed inserts expressly advocating the defeat of Congressman Glickman. See Reader's Digest Ass'n v. FEC, 509 F. Supp. 1210, 1214-15 (S.D.N.Y. 1981).

Absent the safe harbors of the press exemption, the general corporate prohibition against making communications to the general public expressly advocating the election or defeat of a federal candidate applies. The editorial inserts were mailed to 95,000 households along with Multimedia's billing for its services. The communications were made to Multimedia's subscribers, not to the class of persons permitted by Commission regulations, i.e., stockholders and executive or administrative personnel and their families. Thus, the costs associated with producing and mailing the billing inserts may be a corporate contribution.

In addition to the distribution of the printed editorial inserts, the airing of the Glickman editorials also raises press exemption issues. Applying the first prong of the Reader's Digest test to the airing of the Glickman editorials, the frequency at which the editorials were aired suggests that Multimedia may have been acting in a manner unrelated to its press function. Multimedia aired the Glickman editorials 100 times per day over a twelve day period. According to Multimedia, the frequency was due to the disparity in airing the editorials over cable networks as

9704343775

opposed to the broadcast network affiliate stations. In support of this assertion, Multimedia notes that it aired the responses by Congressman Glickman 700 times over a seven day period and the editorials regarding the cable legislation 2250 times during the month of September.

These instances of similar frequency, however, do not fully support the argument that airing the editorials 100 times a day was within Multimedia's normal practice. Although the Glickman responses and the cable legislation editorials may have been aired as frequently as the Glickman editorials, there is no indication that Multimedia has aired other editorials with the same frequency. Information provided by Multimedia does indicate that Multimedia has aired numerous editorials discussing community issues, but omits the frequency at which it aired these other editorials. Furthermore, the frequency of the Glickman responses may have been the result of an agreement in settlement of a complaint that the Glickman campaign filed with the FCC, rather than Multimedia's normal practice of airing editorials.

In addition to the frequency of the airing of the editorials, the mailing of the printed Glickman editorial inserts with Multimedia's customer billings, which appear to be a corporate expenditure in itself, suggests that the airing of the editorials may be unrelated to Multimedia's press function. As discussed above, Multimedia notes that it normally distributes printed editorials with its customer billings, citing the instance in which it distributed editorials discussing the cable legislation. There is no indication, however, that Multimedia

9/0430437776

normally distributes printed editorials in conjunction with the editorials it airs regarding the same subject matter. Indeed the only instances where Multimedia followed this practice, the cable legislation and the Glickman editorials, involved issues concerning Multimedia's own economic interests.

In sum, the frequency at which Multimedia aired the Glickman editorials and the distribution of similar printed editorials with Multimedia's customer billings suggests that Multimedia in producing and airing the Glickman editorials was acting in a manner unrelated to its legitimate press function. If the activity fails the first part of the Reader's Digest test, the press exemption would not apply to this activity. Thus, the costs associated with producing and airing the Glickman editorials may be a corporate contribution to the Yost Committee.

Regarding the Yost Committee's liability for this activity, the complaint alleges that Multimedia specifically confirmed to the Glickman campaign that it collaborated and consulted with the Yost Committee in producing the editorials. Multimedia and Michael Burrus, however, deny this allegation. In the Yost Committee response, Theron E. Fry, treasurer of the Yost Committee, states that he was not aware of Multimedia's activities in advance, but does not comment on whether other representatives of the campaign consulted with Multimedia as the complaint alleges. Because the Yost Committee response leaves open the question of whether other representatives of the Yost Committee were involved, further inquiry into this issue is required.

9704043777

Thus, based on the foregoing discussion, the Eric R. Yost Committee may have knowingly accepted a corporate contribution. Therefore, there is reason to believe the Eric R. Yost Committee and Theron E. Fry, as treasurer violated 2 U.S.C. § 441b(a).

9704356457770

WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 429-7000

JAN WITOLD BARAN
(202) 429-7330

FACSIMILE
(202) 429-7049
TELEX 248348 WYRN UR

October 29, 1993

VIA FACSIMILE

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

ATTN: Richard Denholm, II

Re: MUR 3657
Multimedia Cablevision, Inc.
Michael C. Burrus

RECEIVED
FEDERAL ELECTION COMMISSION
93 OCT 29 PM 4:50

Dear Mr. Noble:

This office represents Respondents in the above-captioned matter. Chairman Scott E. Thomas' letter of October 22, 1993, was received on October 28, 1993. Pursuant to conversations today with you and your staff, I hereby request an extension of two weeks, up to and including November 18, 1993, within which to file a Motion to Quash the Subpoena and Order to Multimedia Cablevision, Inc. approved by the Federal Election Commission on October 5 and executed by Chairman Thomas on October 22.

The purpose of this request is to give both Respondents and the Commission time to assess the effect of the decision in FEC v. National Rifle Association, No. 91-5350 (D.C. Cir., Oct. 22, 1993) on this case. The requested time should not be prejudicial in that the Motion to Quash would still be filed before the requested return date. Furthermore, I am informed that FEC staff assigned to this matter will be away from the office for three weeks.

This request is made with the express reservation that we do not waive our right to file a Motion to Quash in the unlikely event that this request is denied.

Sincerely,

Jan Witold Baran

9/0/0/4/3/7/9

RECEIVED
F.E.C.
SECRETARIAT

93 NOV -4 PM 5:23

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 4, 1993

SENSITIVE

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

SUBJECT: Requests for Extensions of Time In Which To Respond To Pre-NRA Issued Subpoenas

By letter dated October 29, 1993, counsel for Multimedia Cablevision, Inc. and Michael C. Burrus, two of the Respondents in MUR 3657, requested an extension of two weeks in which to file a Motion To Quash The Subpoena And Order executed on October 22, 1993. (See Attachment.) The letter explains that an extension is necessary "to give both Respondents and the Commission time to assess the effect of the decision in FEC v. National Rifle Association, No. 91-5350 (D.C. Cir., Oct. 22, 1993) on this case."

Absent objection from the Commission, the Office of General Counsel intends to grant requests for short extensions of time in which to respond to subpoenas that were issued prior to the NRA decision. Pending the Commission's decision on how to proceed with enforcement matters and because the Commission most likely will determine that it is necessary to reissue recently executed subpoenas, it appears that the better course is to grant such requests.

Attachment
Request for Extension

Staff Assigned: Richard Denholm

9704438578C

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: John C. Surina
Staff Director

FROM: Marjorie W. Emmons/Bonnie J. Ross
Secretary of the Commission

DATE: November 8, 1993

SUBJECT: MUR 3657 - Requests for Extensions of Time in Which to Respond to Pre-NRA Subpoenas. Memorandum to the Commission from the Office of General Counsel dated November 4, 1993.

The above-captioned matter was received in the Commission Secretariat at 5:23 p.m. on Thursday, November 4, 1993 and circulated to the Commission on a 24-hour no objection basis at 12:00 p.m. on Friday, November 5, 1993.

There were no objections to the recommendations to grant requests for short extensions of time in which to respond to subpoenas that were issued prior to the NRA decision.

9704383781

OGC 0404

PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011
(202) 628-6600 • FACSIMILE (202) 434-1690

November 10, 1993

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
93 NOV 10 PM 3:00

Lawrence Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: MUR 3657

Dear Mr. Noble:

I am replying as counsel to the Glickman for Congress Committee to the notification of "reason to believe" and related Subpoena to Produce Documents and Order to Submit Written Answers, dated October 21, 1993.

Counsel to Multimedia and I have scheduled a meeting with you in your offices at 4:00 p.m. Monday, November 15, 1993, to discuss this matter. In light of that meeting, and to allow for the time necessary to produce a response thereafter, the Committee respectfully requests an extension of 20 days for such response to run to December 6, 1993.

Very truly yours,

Robert F. Bauer

RFB:rfb

cc: The Honorable Daniel Glickman
L.D. Klenda, Esq.

[09901-0001/DA933148.022]

9104343782

WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 429-7000

JAN WITOLD BARAN
(202) 429-7330

FACSIMILE
(202) 429-7049
TELEX 248348 WYRN UR

November 17, 1993

RECEIVED
FEDERAL ELECTION COMMISSION
93 NOV 17 PM 2:10

9 7 0 4 3 0 4 3 7 8 3

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 3657 (Multimedia Cablevision, Inc. and Michael C. Burrus)

Dear Mr. Noble:

Thank you for taking the time to meet with me on Monday, November 15, 1993, regarding the above-captioned matter. This letter will confirm my understanding that the Commission will be taking a new vote regarding whether there is "reason to believe" that Respondents violated the Act. The effect of this is that there is no outstanding subpoena which will be enforced by the Commission and thus Multimedia need not file a Motion to Quash by November 18, 1993, nor otherwise respond to the subpoena issued October 22, 1993.

Should my understanding be mistaken I would appreciate immediate notice. I also wish to confirm to you that this office intends to submit additional information to your office for your and the Commission's consideration prior to its revote.

Thank you again for your attention to this matter.

Sincerely,

Jan Witold Baran

WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 429-7000

JAN WITOLD BARAN
(202) 429-7330

FACSIMILE
(202) 429-7049
TELEX 248349 WYRN UR

December 3, 1993

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

ATTN: Richard M. Denholm, II

Re: MUR 3657 (Multimedia Cablevision, Inc. and Michael C. Burrus)

Dear Mr. Noble:

Enclosed please find an original and six copies of Multimedia Cablevision Inc.'s Supplemental Response in the above-captioned matter. We have provided, for your convenience, six additional copies for distribution to each Commissioner.

Sincerely,

Jan Witold Baran

Encl.

9704353784

WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 429-7000

JAN WITOLD BARAN
(202) 429-7330

FACSIMILE
(202) 429-7049
TELEX 248349 WYRN UR

December 3, 1993

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Attn: Richard M. Denholm II

Re: MUR 3657 (Multimedia Cablevision, Inc. and Michael C. Burrus)

Dear Mr. Noble:

This letter is written as a Supplement to our Response of November 23, 1992, on behalf of Multimedia Cablevision, Inc. and Michael C. Burrus ("Respondents" or "Multimedia") in reply to the complaint filed by Robert F. Bauer on behalf of Congressman Dan Glickman and designated Matter Under Review ("MUR") 3657. This also follows Mr. Bauer's and my meeting with you and your staff in which we conveyed our clients' mutually held view that there is no reason to believe the law has been violated.

You have informed counsel for Respondents that the Commission will take a new vote to determine whether there is reason to believe a violation occurred in this matter in light of the Court of Appeals decision in FEC v. NRA

9704384375

Political Victory Fund, et al., No. 91-5360, 1993 WL 424433, (D.C. Cir. Oct. 22, 1993). Please be advised that we expressly do not waive any procedural deficiency in this matter caused by the acts of the unconstitutionally constituted agency.

Multimedia has received a copy of the General Counsel's Factual and Legal Analysis and the now void subpoena dated October 22, 1993. Multimedia wishes to respond directly to what appears to be an extremely narrow reading of the press exemption and at the same time an overly broad interpretation of the Commission's powers under the Act.

THE APPROPRIATE PRESS EXEMPTION STANDARD

The standard for the press exemption was adopted by the Commission from the holding in Reader's Digest Ass'n v. FEC, 509 F. Supp. 1210 (S.D.N.Y. 1981). The Court in that case stated:

> [U]ntil and unless the press exemption were found inapplicable, the FEC is barred from investigating the substance of the complaint. No inquiry may be addressed to sources of information, research, motivation, connection with the campaign, etc. Indeed all such investigation is permanently barred by the statute unless it is shown the press exemption is not applicable. The only investigation permitted in the first stage is into the two questions on which the exemption turns--whether the press entity is owned by the political party or

9704353786

> candidate and whether the press entity was acting as a press entity in making the distribution complained of.

Id. at 1215.[1]

In making this holding the court remarked that "the express statutory exemption in favor of dissemination of information or opinion by the press seems intended to bar the FEC from even investigating incidents that are exempted exercises of the press prerogatives," and that "this dispute involves First Amendment considerations based on a recognition that freedom of the press is substantially eroded by investigation of the press, even if legal action is not taken following the investigation." Id. at 1214.

Thus, under normal circumstances, pursuant to the Reader's Digest opinion, the only issue in this matter would be whether Multimedia was engaging in a legitimate press function in airing and distributing the editorials in question.[2] However, due to the Commission's failure to

---

[1] The Commission's previously issued subpoena flies in the face of this admonition.

[2] Under Reader's Digest the Commission could also inquire into whether Multimedia is owned or controlled by a political party, political committee or political candidate. However, the Commission has already been provided uncontroverted evidence that Multimedia "is not owned or controlled by any political party, political committee, or candidate," November 20, 1992 Affidavit of Michael G. Burrus Before the Federal Election Commission in MUR 3657. The (continued...)

9/0453787

recognize Multimedia as a press entity, Multimedia must also address the question of whether it is a press entity. The nature of Reader's Digest as a press entity and the nature of Phillips Publishing, Inc. as a press entity was presumed in those matters. Because Multimedia is a press entity and engaged in a legitimate press function, any other inquiry is beyond the power and jurisdiction of the Commission.[3]

MULTIMEDIA IS A PRESS ENTITY

While Multimedia believes that its November 23, 1992 Response provided the Commission sufficient unrefuted information upon which to dismiss this complaint, the purpose of this Supplemental Response is to assuage any doubt the Commission may have that Multimedia is a press entity. Multimedia, in fact, is a prototypical press entity whose press activities were explicitly meant to be protected by the press exemption, 2 U.S.C. § 431(9)(B)(i), as described by the legislative history long relied upon by the Commission.

---

[2](...continued)
Commission concedes this fact. See Factual and Legal Analysis in MUR 3657, p. 10.

[3] As discussed below in detail, the Factual and Legal Analysis misstates the second of these standards alleging that "an issue . . . is whether Multimedia functions as a press entity that regularly covers and comments on political campaigns." Factual and Legal Analysis at 7. This is not the standard. Rather, the standard is whether Multimedia was engaging in a legitimate press function.

> According to the legislative history, Congress included the provision to indicate that it did not intend the Act "to limit or burden in any way the first amendment freedom of the press" and to assure "the unfettered right of the newspapers, TV networks, and other media to cover and comment on political campaigns." H.R. Rep. No. 93-1239, 93rd Cong., 2d Sess., at 4.

Factual and Legal Analysis in MUR 3657, p. 7 (emphasis added).

Had this complaint been filed against the Washington Post Company, the Commission surely would immediately recognize the corporate owner of the Washington Post newspaper as a press entity exempt from the Federal Election Campaign Act of 1971, as amended. However, it appears that the Commission is unfamiliar with Multimedia which is a multifaceted news media communication and entertainment company virtually identical to the Washington Post Company. It is equally as apparent that the Commission's initial failure to recognize Multimedia as a press entity was not made in the face of any contradictory facts or evidence, but rather due to a lack of understanding of the scope of Multimedia as a press entity.

Multimedia herein submits as Exhibits 1 and 2 a copy of its 1992 annual report to stockholders and Form 10-K filed

9 / 0 4 3 0 3 7 8 9

with the Securities and Exchange Commission. As explained in the Form 10-K:

> Multimedia, Inc. (the "Company") is a diversified media communication company. The Company is a South Carolina corporation which began using its current name in 1968; however, its predecessor newspaper and broadcasting companies date back as early as 1888. The Company publishes 12 daily and approximately 50 non-daily newspaper publications; owns and operates five television and eight radio stations; serves approximately 410,000 cable television subscribers in five states; monitors approximately 35,000 security alarm customers; and produces and syndicates television programming.
>
> The Company's industry segments are newspaper publishing, broadcasting, cable television (including the Company's home security alarm business) and entertainment.

Form 10-K, p.1

In addition, Multimedia also submits as Exhibit 3 a copy of the Washington Post Company 1992 Annual Report. By comparing Exhibits 1 and 3, the Commission will see that Multimedia and the Washington Post Company are engaged in virtually the same broad-based media activities.

Specific properties owned by Multimedia include the Greenville News and Greenville Piedmont as well as other daily newspapers in Asheville, North Carolina, Montgomery, Alabama and several other markets; non-daily publications

include the Music City News and The Gospel Voice. Multimedia also wholly owns three NBC affiliates -- KSDK in St. Louis, WLWT in Cincinnati, and WBIR-TV in Knoxville as well as a CBS affiliate, WMAZ-TV in Macon, Georgia. Cable systems are operated by Multimedia in Oklahoma, Illinois, Indiana, and North Carolina as well as Kansas. Multimedia also syndicates Donahue, Sally Jessy Raphael, Jerry Springer, and Rush Limbaugh, all of which programs are transmitted over cable systems.

As the description from Form 10-K exemplifies, Multimedia Inc. falls squarely within the press exemption to the Act. Further, as explained above, Multimedia Cablevision, Inc., against which this complaint was filed, is one of Multimedia's four wholly-owned operating divisions and Multimedia itself is indisputably a press entity.[4] Thus, all of its operations are protected by the First Amendment. Cf. City of Cincinnati v. Discovery Channel, Inc., 113 S. Ct. 1505 (1993). (Application of First Amendment to commercial press as well as non-commercial/news press).

Furthermore, the October 22, 1993 Factual and Legal Analysis incorrectly asserts that the Commission has not

---

[4] Michael C. Burrus is presently a Vice President of Multimedia Inc., as well as President of Multimedia Cablevision, Inc.

previously considered the issue of the applicability of the press exemption to cable systems operators and attempts to distinguish Advisory Opinion 1982-44 from the current situation.[5] However, the question specifically presented in that Advisory Opinion was "[w]hether the donation of such free cablecast time by Turner, Inc. would constitute a prohibited corporate contribution under 2 U.S.C. §441b." Advisory Opinion 1982-44, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 5691 (1982) (emphasis added). The Commission concluded "that the donation of free cablecast time by Turner, Inc. to both the DNC and the RNC would not constitute a prohibited corporate contribution" based on 2 U.S.C. § 431(9)(B)(i). Id. (emphasis added). Thus, the Commission specifically addressed the issue of whether the press exemption applies in the cable context and correctly concluded that it did. Factually and by virtue of Commission

---

[5] In fact, the October 22, 1993 Factual and Legal Analysis is internally inconsistent with respect to this point. On the one hand, Advisory Opinion 1982-44 is described as "cable television network's donation of time to national party committees for broadcasts in which candidates and other party leaders discussed issues and solicited contributions was protected by media exemption." Factual and Legal Analysis at p. 6. On the other hand, the General Counsel's Office states that the Commission considered only "the donation of program time by WTBS, a "super satellite" television station . . . ." Factual and Legal Analysis at p. 7.

precedent, Multimedia is and must be considered a press entity under the Act.

MULTIMEDIA ENGAGED IN LEGITIMATE PRESS FUNCTIONS

Having established that Multimedia is a press entity, the remaining inquiry for the Commission is not whether Multimedia functions as "a press entity that regularly covers and comments on political campaigns" as suggested in the General Counsel's Factual and Legal analysis at page 7.[9] This has never been the standard with regard to the press exemption either under the Act, the Commission regulations, or Reader's Digest. Rather, the standard under Reader's Digest is whether Multimedia was operating in its capacity as a press entity when it aired editorials regarding Congressman Glickman and inserted editorials in its billing statements. It was.

---

[9] Had this been the proper test the Commission would not have found that the article about Ben Nighthorse Campbell in the Frontier Airlines Magazine was within its legitimate press function. In fact, the Commission did question whether Frontier Airlines usually wrote articles about political figures. Rather, the Commission determined that Frontier Airlines was a press entity and that distribution of the article was within its legitimate press function. MUR 2277. The Commission engaged in the same analysis with respect to The Evangelist publication, finding that the endorsement of Pat Robertson was either a "commentary or editorial" and thus qualified for the press exemption. MUR 2289.

First, editorials are explicitly exempt under the Act. Once a function such as editorializing is recognized as a legitimate press function there can be no further inquiry. See FEC v. Phillips Publishing, Inc., 517 F. Supp. 1308, 1313, 1314 (D.D.C. 1981) (Exhibit 4) and Reader's Digest, 509 F. Supp. at 1215. Neither the number of times the editorial is aired nor the content of the editorial is relevant to the inquiry of whether the press entity was engaging in a legitimate press function. The Commission itself recognized this to be true in Advisory Opinion 1982-44. In that opinion the Commission stated that "[t]he statute and regulations do not define the issues permitted to be discussed or the format in which they are to be presented under the "commentary" exemption nor do they set a time limit as to the length of a commentary." Id., 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 5691 (1982). Accordingly, if there is no time limit on the amount of commentary permitted by the press exemption, there is no rational basis for limiting the number of times an editorial can be disseminated.

The logical (but erroneous) extension of the Factual and Legal Analysis is that if a newspaper existed for 100 years without ever publishing an editorial and then one day did in fact publish an editorial regarding a candidate, that editorial would not be within a legitimate press function

because the paper had never before published an editorial. This is absolutely wrong. The point is that the newspaper always had the right to publish an editorial. Editorials are a recognized and legitimate press function. Whether the newspaper ever exercises its right has no effect on the legitimacy of the editorial as within the press function. By the same token, the number of times Multimedia aired its editorial has no bearing on whether Multimedia was acting within its legitimate press function. Moreover, Multimedia has submitted earlier uncontroverted proof that it has a history of editorializing.

Second, the General Counsel's Factual and Legal Analysis with respect to the billing inserts is contrary to the holding in FEC v. Phillips Publishing, Inc., 517 F. Supp. 1308 (D.D.C. 1981) (Exhibit 4) and to the Commission's finding in the Reader's Digest enforcement action, Matter Under Review ("MUR") 1271[7]. (Exhibit 5). In Phillips Publishing, which applied the two-pronged Reader's Digest test, the court refused to enforce an FEC subpoena regarding the distribution of a solicitation letter by the publisher of

---

[7] Reader's Digest had disseminated a videotape promoting an article regarding the so-called Chappaquiddick incident during the time Senator Kennedy was a candidate for President. A complaint was filed against the magazine company.

a newsletter stating that the Commission had no subject matter jurisdiction over the publisher since the distribution of the solicitation was within its legitimate press function. As the court found:

> [I]t is clear that the respondent was acting in its capacity as the publisher of a newsletter in printing and distributing the solicitation letter for *The Pink Sheet*. The court takes judicial notice of the fact that newsletters and other publications solicit subscriptions, and in their advertising doing so, they publicize content and editorial positions. If there is any doubt remaining as to whether the solicitation letter was distributed as part of the normal functions of a press entity, those doubts are dispelled by an examination of the newsletter and a copy of the solicitation letter. As the court explained in *Reader's Digest*,
>
> > [I]f RDA was acting in its magazine publishing function, --if, for example, the dissemination of the tape to television stations was to publicize the issue of the magazine containing the Chappaquiddick article, then it would seem that the exemption is applicable . . .
>
> *Reader's Digest, supra*, 509 F. Supp. 1215. Because the purpose of the solicitation letter was to publicize *The Pink Sheet* and obtain newspaper subscribers, both of which are normal, legitimate press functions, the press exemption applies.

Phillips Publishing, 517 F. Supp. at 1313.

There is no principled distinction between the Phillips Publishing case and this matter. Surely if, as a matter of law, a publisher of a newsletter can distribute a mass mail solicitation to the general public that contains partisan statements in an effort to obtain subscribers, then a press entity such as Multimedia may include editorial opinions in its regular billings to existing subscribers.

Moreover, in the Reader's Digest enforcement action itself, MUR 1271, the Commission found "no probable cause to believe" that any violation occurred, and the General Counsel's Report (Exhibit 5) acknowledged that Reader's Digest's distribution of a video tape was within its legitimate press function even though the videotape was not the same medium Reader's Digest regularly employed, i.e. -- print medium. Thus, the Factual and Legal Analysis' attempt to create a standard which relies on the type of medium used adds another layer to the exemption which has already been rejected by the Commission as well as the courts.

Thus, based on the Act, the decisions of the courts, and the Commission's own precedent, Multimedia was acting within its legitimate press function when it aired and distributed the editorials.

THE COMMISSION'S PROPOSED ANALYSIS SUBJECTS MULTIMEDIA TO COMPETING FEDERAL LAWS

One of several ironies in this case is that one United States agency (the FEC) has made a preliminary finding of a violation for conduct mandated by another federal agency (the FCC). Not only is this result absurd on its face, it totally overlooks the fact that the communications law and the Federal Communications Commission presume that cablecasters, like broadcasters, are the press and will editorialize. This disregard for the communications law and the FCC action is further exacerbated when the Commission cites, yet ignores, Supreme Court cases that bestow upon cablecasters First Amendment protection. Leathers v. Medlock, 111 S. Ct. 1438 (1991); City of Los Angeles v. Preferred Communications, Inc., 476 U.S. 488 (1986).

Thus, the Commission has stood the law on its head, and in the process placed Multimedia in the untenable position of complying with one federal agency's requirements at the expense of potentially violating another agency's requirements. This needless Hobson's choice results from the Commission refusal to acknowledge Multimedia as a press entity engaging in legitimate press functions, both of which facts the FCC actually presumes in its regulations. The Commission has also created a spectacle by making the

complainant and apparently all the other candidates in the race respondents because Multimedia followed the law of another federal agency. It is no wonder that everyone in this case, including the complainant, is urging the Commission to dismiss this matter.

* * *

Multimedia, Inc. is a press entity and the activities engaged in here were within Multimedia's legitimate press function. Therefore, there is no reason to believe that there has been a violation of the Act and the Commission should rule accordingly and dismiss this matter.

Sincerely,

Jan Witold Baran

Counsel for Multimedia
Cablevision, Inc. and
Michael C. Burrus

Exhibit List

1. Multimedia, Inc. Annual Report 1992
2. Form 10-K
3. Washington Post Company 1992 Annual Report
4. FEC v. Phillips Publishing, Inc.
5. General Counsel's Report in MUR 1271 (re: Readers Digest)

97044330306

MULTIMEDIA, INC.
ANNUAL REPORT
1 9 9 2

Multimedia, Inc. is a diversified media communications company with corporate headquarters in Greenville, South Carolina. Founded in 1968, Multimedia, Inc. is comprised of four operating divisions. Multimedia Newspaper Company publishes 12 daily and 49 non-daily newspapers; Multimedia Broadcasting Company owns and operates five network-affiliated television stations, eight radio stations and a video production company; Multimedia Cablevision Company operates more than 125 cable television franchises in Kansas, Oklahoma, Illinois, Indiana and North Carolina; and Multimedia Entertainment produces and syndicates quality television programming, including the *Donahue, Sally Jessy Raphael* and *Jerry Springer* shows, and *Rush Limbaugh, The Television Show.*

9 / 0 4 3 8 4 3 8 0 2

MULTIMEDIA, INC., P.O. Box 1688, Greenville, South Carolina 29602 (803) 298-4373

United States

Securities and Exchange Commission

WASHINGTON, D.C. 20549

FORM 10-K

☒ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 (FEE REQUIRED)

☐TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 (FEE REQUIRED)

For the fiscal year ended December 31, 1992

For the transition period from ____ to ____
Commission file number 0-6265

MULTIMEDIA, INC.

(Exact name of registrant as specified in its charter)

South Carolina
(State or other jurisdiction of incorporation or organization)

57-0173540
(I.R.S. Employer Identification No.)

305 South Main Street, Greenville, South Carolina
(Address of principal executive offices)

29601
(Zip Code)

Registrant's telephone number, including area code (803) 298-4373

Securities registered pursuant to Section 12(g) of the Act:

Common Stock, $.10 par value
(Title of Class)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.
Yes X No___

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

The aggregate market value of the voting stock held by nonaffiliates (shareholders holding as of December 31, 1992 less than 5% of the outstanding common stock, excluding directors and officers), computed by reference to the average bid and asked prices of such stock, as of March 4, 1993 was $748,447,000.

The number of shares outstanding of the Registrant's common stock, $.10 par value, was 36,885,319 at March 4, 1993.

DOCUMENTS INCORPORATED BY REFERENCE

Incorporated Documents	Location in Form 10-K
Portions of 1992 Annual Report to Shareholders	Parts I and II
Portions of Proxy Statement dated March 15, 1993	Part III

PART I

Item 1. Business.

Multimedia, Inc. (the "Company") is a diversified media communications company. The Company is a South Carolina corporation which began using its current name in 1968; however, its predecessor newspaper and broadcasting companies date back as early as 1888. The Company publishes 12 daily and approximately 50 non-daily newspaper publications; owns and operates five television and eight radio stations; serves approximately 410,000 cable television subscribers in five states; monitors approximately 35,000 security alarm customers; and produces and syndicates television programming.

The Company's industry segments are newspaper publishing, broadcasting, cable television (including the Company's home security alarm business) and entertainment. Financial information for these segments is presented in Note 14 of the Notes to Consolidated Financial Statements in the 1992 Annual Report, which material is incorporated herein by reference.

Further information relating to the development of the business since the beginning of the fiscal year covered by this report is included in the Notes to Consolidated Financial Statements in the 1992 Annual Report, which material is incorporated herein by reference.

RECAPITALIZATION MERGER

On September 20, 1985 the Company's shareholders approved a Recapitalization Agreement and Plan of Merger providing for the merger of MM Acquiring Corp., a new corporation which had been organized for purposes of the merger, with and into the Company (the "Recapitalization Merger"). The purpose of the Recapitalization Merger was to recapitalize the Company and thereby provide the Company's shareholders with an opportunity to receive a premium over historical prices for a significant portion of their shares while retaining an ongoing equity interest in the Company and to provide performance incentives to members of senior management of the Company by providing them with increased equity participation in the Company. The Recapitalization Merger was consummated on October 1, 1985. Further information relating to the Recapitalization Merger is included in Note 2 of the Notes to Consolidated Financial Statements in the 1992 Annual Report, which material is incorporated herein by reference.

NEWSPAPER OPERATIONS

The Company publishes the only daily newspapers in Greenville, South Carolina; Asheville, North Carolina; Montgomery, Alabama; Clarksville, Tennessee; Gallipolis and Pomeroy, Ohio; Point Pleasant, West Virginia; Staunton, Virginia; Moultrie, Georgia; and Mountain Home, Arkansas. It also publishes Sunday newspapers in each market except Moultrie, Point Pleasant and Mountain Home. The Company also publishes approximately 50 non-daily publications in Alabama, Arkansas, Georgia, North Carolina, Ohio, South Carolina, Virginia and Tennessee, including the monthly Music City News and The Gospel Voice.

In March 1990, the Company sold its Florida newspaper operations for approximately $10 million. Prior year comparisons have not been restated since the impact of the sale is not considered to be material.

Substantially all of the Company's newspaper revenues are obtained from advertising and circulation. Advertising rates and rate structures vary depending upon circulation and type of advertising (local, classified, national, etc.). The following table indicates billed newspaper advertising lineage and advertising revenues for 1992, 1991 and 1990. The decline in lineage is reflective of the recessionary economy during these years, shifts from in-paper advertising to preprint insertions and increases in competition for advertising dollars from direct mail, yellow pages and other media.

	1992	1991	1990
Advertising lineage	146,172,000	155,199,000	173,216,000
Advertising revenues	$ 98,254,000	$ 98,127,000	$105,895,000

The Company's newspapers are primarily home-delivered and are generally sold by independent carriers and circulation dealers. Certain non-daily publications are distributed free of charge, using both mail and carrier delivery. The following table indicates total paid newspaper circulation at year-end and circulation revenues for 1992, 1991 and 1990.

	1992	1991	1990
Circulation:			
Daily	325,000	318,000	319,000
Sunday	351,000	344,000	339,000
Non-daily	159,000	159,000	134,000
Circulation revenues	$ 28,491,000	$ 26,024,000	$ 25,244,000

The percentages of the Company's newspaper revenues contributed by advertising, circulation and other operating revenues for the five years ended December 31, 1992 were:

	1992	1991	1990	1989	1988
Advertising revenues	74%	76%	78%	79%	78%
Circulation revenues	22	20	19	19	18
Other operating revenues	4	4	3	2	4
	100%	100%	100%	100%	100%

Newsprint represents approximately 20% of the newspaper division's operating expenses. Prior to October 1990, the basis weight of newsprint used by the Company was 27.6 pound paper. The list price at that time for 27.6 pound paper was $667 per short ton.

In October 1990, the Company changed the basis weight of newsprint to 30 pound paper to improve the print quality of its papers. The list price through December 31, 1990 was $621 per short ton. Effective January 1, 1991, the list price increased to $653 per short ton. In March 1991, the price increase was rescinded, and the list price per short ton was reduced to $621.

The price of newsprint remains volatile. While the Company does not anticipate an increase in the list price in 1993, the average cost per ton may vary depending upon the competitive discount allowance throughout the year. Two newsprint suppliers provide the majority of the Company's newsprint. The Company believes that its newsprint supply sources under existing arrangements are adequate.

The Company's newspapers compete for advertising principally on the basis of readership and compete for circulation principally on the basis of content. The Company's daily newspapers do not compete directly with any other general circulation daily newspaper published in that community. Most of the Company's newspapers compete with other newspapers published in nearby cities and towns, or with free distribution advertising weeklies. Further, all of the Company's newspapers compete with newspapers having national or regional circulation, as well as with magazines, radio, television, outdoor and other advertising media.

BROADCASTING OPERATIONS

The Company wholly owns and operates four VHF television stations located in St. Louis, Missouri (KSDK, an NBC affiliate); Cincinnati, Ohio (WLWT, an NBC affiliate); Knoxville, Tennessee (WBIR-TV, an NBC affiliate); and Macon, Georgia (WMAZ-TV, a CBS affiliate). In addition, the Company owns a 51% majority interest in WKYC-TV (an NBC affiliate) Cleveland, Ohio and has operating control of the station.

Television stations operate under network affiliation contracts running from two to five years. The network provides programs to its affiliated stations and sells commercial time in the programs to national advertisers. The stations also sell commercial time in the programs to national and local advertisers. Generally, a network affiliation agreement can be cancelled prior to the expiration of the contract by either party with 180 days notice. The Company has experienced no difficulties in the past with such affiliation renewals. The Company's television stations' affiliation renewal dates follow:

Television Station	Network Affiliation Renewal
KSDK	May 1, 1994
WLWT	September 1, 1994
WBIR	September 10, 1994
WKYC	December 26, 1994
WMAZ	February 1, 1995

Each television station transmits live, filmed or taped programs purchased from others or produced by the station. For both television and radio, the Company endeavors to present a balanced schedule of programs, including entertainment, news, public affairs, sports and other programs of public service and public interest.

The Company owns and operates AM and FM radio broadcasting stations in Greenville, South Carolina; Macon, Georgia; and Shreveport, Louisiana; an AM station in Spartanburg, South Carolina; and an FM station in Milwaukee, Wisconsin. Each of these stations is authorized to operate 24 hours per day, and each maintains a daily operating schedule of at least 18 hours.

The Company also owns and operates a video production company. This company produces commercials and trade films for clients.

The principal sources of the Company's television and radio revenues consist of payments from national, regional and local advertisers or agencies for program time or advertising announcements, payments from the networks for broadcasting network programming and payments by advertisers and other broadcasters for services such as the production of films or the taping of advertising material.

The percentages of the Company's broadcasting revenues contributed by television and radio and other for the five years ended December 31, 1992 were:

	1992	1991	1990	1989	1988
Television revenues	91%	91%	89%	89%	89%
Radio and other revenues	9	9	11	11	11
	100%	100%	100%	100%	100%

The market size, rank and share for the Company's television stations are presented below:

	Rank	Share
WKYC (Market #12)		
1992	3	17
1991	3	17
1990	3	17
KSDK (Market #18)		
1992	1	24
1991	1	24
1990	1	30
WLWT (Market #30)		
1992	3	17
1991	2	21
1990	2	23
WBIR (Market #62)		
1992	1	27
1991	1	27
1990	1	28

WMAZ (Market #120)	Rank	Share
1992	1	43
1991	1	44
1990	1	44

Note: Information represents station ADI TV Household share sign-on/ sign-off for the November Arbitron or Nielsen of the respective period.

Source for market size: "Arbitron Television - 1992"

The Company believes that market share in the television business has declined because of the continuing expansion of alternative viewing sources, principally cable television. This downward trend has appeared to slow somewhat during the past two years. The Company is unable to predict the future impact of this trend.

The Company's television and radio stations compete for revenues principally on the basis of ratings. The Company's television and radio stations compete for revenues with other advertising media such as newspapers, magazines and other television and radio stations. Other sources of present and potential competition include cable television (CATV), pay cable and subscription TV operations. CATV systems currently operate in most of the market areas served by the Company's communications media. In addition, franchises for CATV systems have been granted by various communities in these market areas, and additional CATV franchises may be considered and granted from time to time. The future of broadcasting depends on a number of factors, including the general strength of the economy, population growth, overall advertising revenues, relative efficiency compared to other competing advertising media and existing and future governmental regulations and policies.

The business strategy of the Company's broadcasting division focuses on providing quality local programming and service to each of its respective communities. The most important local programming segment to the Company's broadcasting division is local news programming. Local news programming typically has the highest rating of any local programming segment, and television stations usually receive a significant portion of their advertising revenues from the local news segments. Quality local news coverage is also important to establishing a local station's public service reputation.

Further information regarding the Company's broadcasting operations is presented under "Federal Regulation of Broadcasting".

CABLEVISION OPERATIONS

The Company operates cable television systems serving subscribers in Kansas, Oklahoma, Illinois, Indiana and North Carolina. The following table shows homes passed, basic and pay subscribers, basic penetration, pay-to-basic ratio and average monthly revenue per cable subscriber at the end of 1992, 1991 and 1990.

	1992	1991	1990
Homes passed	688,000	623,000	615,000
Basic subscribers	410,000	365,000	351,000
Pay subscribers	333,000	312,000	285,000
Basic penetration	59.6%	58.6%	57.0%
Pay-to-basic ratio	81.2	85.5	81.2
Average monthly revenue per cable subscriber	$32.13	$30.36	$29.07

Cable television is the distribution of television signals and special information programs to subscribers within the community by means of a coaxial cable system. A cable system may also offer pay television services which provide, for an extra charge, special programs such as recently released movies, entertainment programs or selected sports events. Subscribers receive these programs on a designated channel of the cable system which is restricted with electronic security devices to isolate the pay television signal so that only subscribers to the service can receive it.

The Company holds approximately 135 franchises from local governing authorities which permit the Company to operate a CATV system in the granting community (See Federal Regulation of Cable Television). These franchises, which expire at varying dates ranging from one to twenty years, are generally non-exclusive and may be terminated for failure to comply with specified conditions. In most cases, the Company is required to pay fees generally ranging from three to five percent of the system's revenues to the particular local governing authority granting the franchise. At the end of 1992, approximately 52 systems, which account for more than 66% of the Company's subscribers, have franchise agreements expiring in the year 2000 and beyond.

The Company may compete with other companies and individuals in the submission of applications for additional franchises, the renewal of existing franchises and in seeking to acquire operating CATV systems and under-developed franchises. Since most franchises are granted on a non-exclusive basis, other applicants may obtain franchises in areas where the Company presently operates systems or holds franchises. The Company's cable television division competes for revenues principally on the basis of quality of service, a variety of programming options and pricing.

The Company's strategy is to develop clusters of cable television systems in suburban communities of major metropolitan markets and other areas with favorable demographics. Management believes that the clustering of cable systems produces operating, marketing and servicing efficiencies.

Wireless Cable Service

The Company operates wireless cable systems in the Oklahoma City, Oklahoma and Wichita, Kansas metropolitan areas. Wireless cable is over-the-air distribution to consumers' residences of video programming by means of microwave radio channels. It combines standard broadcast television reception equipment with microwave reception equipment and uses a combination downconverter and channel selector to provide a composite of broadcast and non-broadcast signals to subscribers. In this regard, wireless cable may provide an alternative programming delivery service to that offered by a traditional cable television system. The frequencies allocated by the

Federal Communications Commission ("FCC" or "Commission") for this use are those in the multichannel multipoint distribution service ("MMDS"), Private Operational Fixed Microwave Service ("OFS") and, on a part-time basis, the Instructional Television Fixed Service ("ITFS").

The Company has entered into lease agreements with the FCC license-holders for various MMDS and ITFS frequencies. Terms of these agreements vary from one year to five years with provision for renewal.

In 1990 and 1991, the Commission simplified its regulations and procedures applicable to the wireless cable business in order to allow wireless cable systems to compete more effectively with traditional cable systems. Among other things, the Commission eliminated its rules restricting the number of wireless cable channels a single entity can control in a market and modified interference requirements and processing practices to accelerate the application process. The Commission also limited the future ownership or lease of wireless cable channels by cable television operators within their local franchise areas, while grandfathering existing wireless cable operations owned by cable television operators. Further, the Commission modified restrictions on lease terms for MMDS use of ITFS frequencies and increased power limitations and channel assignment standards. The Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Act") prohibits common ownership of cable television and wireless cable operations in a franchise area. However, existing operations, such as those of the Company, are grandfathered and the FCC is authorized to grant waivers of the cross-ownership restriction in other situations.

Wireless cable operators that include local or distant television stations in their service offerings traditionally have relied upon the compulsory broadcast retransmission license established by the Copyright Act to cover their use of copyrighted material contained in such signals. The Copyright Office recently issued a ruling that the compulsory license does not cover wireless cable operations. The wireless cable industry is expected to seek legislation to clarify that wireless cable operators are eligible for the license. The provisions of the 1992 Act governing mandatory carriage of television broadcast signals (See Federal Regulation of Broadcasting, below) do not apply to wireless cable operations. However, those dealing with retransmission consent are applicable. Consequently, at the time FCC rules become effective, wireless cable operators will be required to obtain the consent of local broadcast stations prior to utilizing microwave frequencies to distribute such stations. The Company does not use microwave frequencies to distribute local over-the-air television stations in its Oklahoma City operations, but it does in Wichita.

The Company is unable to predict what effect these actions and proposals will have on its MMDS or traditional cable operations.

Home Security Alarm Business

The Company sells or leases and installs residential and commercial alarm equipment, and provides monitoring services for the alarm owner. These accounts are monitored through a central computer located in Wichita, Kansas. At year-end, the Company provided security monitoring services for approximately 35,000 customers (both residential and commercial) primarily located in the midwest and western United States. These accounts were obtained through acquisitions and through in-house sales efforts.

ENTERTAINMENT OPERATIONS

The Company's entertainment division produces television programming for broadcast both in the U.S. and internationally. The division derives nearly all of its operating profits from the production and syndication of two daytime television talk shows, the "Donahue" and "Sally Jessy Raphael" shows. Both of these shows are primarily distributed via satellite to the stations for showing. The Company's syndication activities continue to be an important source of revenues, particularly the "Donahue" show. A significant portion of operating profit for the division is contributed by the "Donahue" show. The Company contracts with television stations for exclusive rights to air these programs in their respective markets. The length of these contracts generally range from one to three years. Fees from these sales to stations and the sale of advertising in these shows are the principal sources of revenue for the Company's entertainment division. In addition, the Company produces special dramas, movies and docudramas for first-run syndication, the networks, cable, PBS and the international marketplace.

The "Donahue" show, hosted by Phil Donahue, is in its twenty-fifth year of production and syndication. The show is currently seen on 195 stations nationwide and in twelve foreign countries. Phil Donahue is currently under contract with the Company through August 31, 1994. Should the Company and Mr. Donahue agree, this commitment may be extended to August 31, 1995.

The "Sally Jessy Raphael" show is currently in its tenth season of production and syndication and is broadcast in 189 U.S. markets and four foreign countries. In September 1989, the show, which had begun in a half-hour format, went to a one-hour format exclusively. Due to the show's increased ratings, clearances and shift to a one-hour format, the show's revenues have grown significantly over the last five years. Sally Jessy Raphael is currently under contract with the Company through December 1995.

In September, 1991, the Company purchased certain television and first-run syndicated television assets from Carolco Pictures, Inc.'s wholly owned subsidiary, Orbis Communications, now named Multimedia Motion Pictures, Inc. ("MMPI"). MMPI's primary objective is to produce made for television movies or miniseries for the networks, syndication and cable marketplace. During 1992 "Desperate Rescue, The Cathy Mahone Story", a two hour movie of the week and "Deadly Matrimony", a four hour miniseries, were produced for NBC.

The Company introduced a talk show, "Jerry Springer", in September 1991 on four stations and began nationwide syndication in September 1992. The "Jerry Springer" show is currently seen in approximately 100 U.S. markets.

"Rush Limbaugh, The Television Show", a late-night talk show, premiered in September 1992 and is currently seen in over 200 U.S. markets. "Rush Limbaugh, The Television Show" is a joint venture between Ailes Communications, Rush Limbaugh and the Company.

The Company's entertainment division competes for revenues with other syndicated programming principally on the basis of ratings.

9704358 12

EMPLOYEE RELATIONS

The Company employs approximately 3,800 full-time employees and has contracts with local collective bargaining agents representing approximately 5% of its employees. Employees of the Company receive various supplemental benefits including group life and health insurance, pension and thrift plans. The Company considers its relationship with employees excellent.

REGULATION OF BROADCASTING AND CABLEVISION OPERATIONS

Federal Regulation of Broadcasting

The Company's television and radio broadcasting operations are subject to the jurisdiction of the FCC under the Communications Act of 1934 as amended (the "Act"). The Act empowers the FCC, among other things, to issue, revoke or modify broadcasting licenses, to assign frequency bands, to determine the location of stations, to regulate the apparatus used by stations, to establish areas to be served, to adopt such regulations as may be necessary to carry out the provisions of the Act and to impose certain penalties for violation of its regulations.

Under the Act, radio and television broadcast licenses may be granted for maximum periods of seven and five years, respectively. Upon application, and in the absence of conflicting applications or adverse findings as to the licensee's qualifications, existing radio and television licenses will be renewed without hearing by the FCC for additional seven and five year terms, respectively. The Act also prohibits the assignment of a license or the transfer of control of a license or significant modification of broadcast transmission facilities without prior approval of the FCC.

If a competing application is filed against a licensee's renewal application, the Act requires a full comparative hearing. The U.S. Court of Appeals for the District of Columbia Circuit affirmed a significant FCC decision in a comparative television renewal proceeding which recognized an incumbent licensee's "renewal expectancy" based on substantial service to its community. The Court's decision indicated that a renewal expectancy, if proven by sound past performance, should be considered by the FCC along with other standard comparative factors applicable to both the incumbent and the competing applicants such as (i) the applicants' other media holdings (in this context, FCC policy disfavors owners of multiple properties); (ii) the applicants' plans for management of the facility by their respective owners (which is normally not required in the case of a publicly owned broadcasting company); and (iii) other factors, including local residency, civic involvement and provision of signals to under-served populations. The FCC also recently established procedures placing strict limitation on settlement payments made to competing applicants in return for dismissal of their applications. These rules were intended to reduce the potential for abuse of the FCC's renewal procedures. The FCC currently has pending a rulemaking and inquiry proceeding to develop specific standards for determining whether an incumbent is entitled to a renewal expectancy and for comparing incumbent licensees with competing applicants as well as to establish procedures regarding the order of proof for determining entitlement to renewal expectancy.

Petitions to deny broadcast station license renewal applications (as well as other types of broadcast applications) have been filed in recent years by various parties asserting programming, employment and other complaints. Most such petitions have been denied by the FCC on the basis of pleadings and without formal hearings. The Company's applications for the renewal of its broadcast licenses for the regular term have heretofore been granted without hearing including four television station licenses in 1992; however, there is no assurance that this experience will be repeated in the future.

The Company's television stations' FCC license renewal dates follow:

Television Station	FCC License Renewal
WMAZ	April 1, 1997
WBIR	August 1, 1997
WKYC	October 1, 1997
WLWT	October 1, 1997
KSDK	February 1, 1998

FCC multiple ownership regulations prohibit the common ownership or control of most communications media (i.e., television and radio, television and daily newspapers, radio and daily newspapers or television and cable television operations ("Cable")) serving common or overlapping market areas. The Company owns daily newspapers and AM and FM radio stations in Greenville, South Carolina; and AM and FM radio stations and a television station in Macon, Georgia. These cross interests pre-dated the FCC's multiple ownership rules and thus are "grandfathered", and divestiture by the Company is not required. In the case of a sale or transfer of control (other than a "pro forma" or non-substantial transfer of control), however, the buyer or transferee would not be able to continue the common ownership of the relevant properties absent a waiver of the FCC's rules.

In addition, FCC multiple ownership regulations generally limit the number of cognizable broadcast interests which may be owned by an entity. Cognizable interests under FCC multiple ownership rules include 5% or greater voting stockholder interests (10% or more for investment companies, bank trust departments and insurance companies), general (and some types of limited) partnership interests and official positions as officers or directors. FCC multiple ownership regulations generally permit the common ownership of up to 12 television stations (without regard to whether they are in the UHF or VHF band), provided the total audience reach of commonly owned television stations is less than 25% of the nation's television households. (For purposes of calculating the total percentage of national television households, only 50% of each UHF station's audience reach is counted.) The Company does not believe that the FCC multiple ownership regulations for television stations will restrict its growth except in areas with overlapping coverage to its existing properties. In 1992 the FCC relaxed its "duopoly" rule governing ownership by a single entity of multiple radio stations in the same market. In local markets with 15 or more stations, one entity is permitted to own two AM and two FM stations, so long as the combined audience share of these stations does not exceed 25% of the market. In markets with fewer than 15 stations, ownership of up to three radio stations is permitted, no more than two of which may be in the same service, and provided that the total number of stations

owned comprises less than 50% of the total number of stations in the market. The FCC also increased the number of stations which may be owned by a single entity on a national basis to 18 AM and 18 FM stations; in 1994 this will increase to 20 AM and 20 FM stations.

The 1992 Act contains two provisions that will fundamentally alter the relationship that has existed in recent years between cable television systems and television broadcast stations whose signals are distributed to cable subscribers. The first deals with the rights of "local" commercial and non-commercial television broadcasters to mandatory carriage of their signals on cable systems ("must carry"). The second, in certain defined circumstances, prohibits cable operators from carrying the signals of television stations without first obtaining their consent ("retransmission consent"). The two provisions are related in that, with respect to local cable carriage, broadcasters must make a choice once every three years on a system by system basis whether to proceed under the must carry rules or whether to insist upon retransmission consent in order for their signal to be carried. The 1992 Act requires the FCC to adopt rules and regulations to implement both of these requirements and that proceeding is currently pending. The rules finally adopted by the FCC will change the way the Company's television stations deal with cable operators in their respective television markets. However, the precise nature of the changes will not be known until such time as the FCC proceedings are completed. Court challenges have been filed to both the must carry and retransmission consent provisions and legislation has been introduced in the 1993 session of Congress which would prohibit and/or significantly limit the ability of television stations to grant retransmission consent. Consequently, the Company is unable to predict with any certainty what effect implementation of the 1992 Act requirements, or their subsequent modification or elimination, will have on its broadcast operations.

The FCC's syndicated exclusivity and network non-duplication rules enable television broadcast stations, that have obtained exclusive distribution rights for programming in their market, to require cable systems (with more than 1,000 subscribers) to delete or "black-out" such programming from other television stations which are carried by the cable system. The FCC is studying whether to relax or abolish the geographic limitations on program exclusivity contained in its rules so as to allow parties to set by contract the geographic scope of exclusive distribution rights. In addition, as a result of the must carry/retransmission consent option contained in the 1992 Act, the FCC has been requested by certain cable interests to eliminate the network non-duplication rules.

In addition to full service television broadcast stations, the FCC, under its rules, provides for authorization of low power television stations ("LPTV"), subscription television stations ("STV"), multipoint distribution services ("MDS"), multichannel multipoint distribution services ("MMDS") and direct satellite-to-home broadcast services ("DBS"). These services have the technical capability to distribute television programming to viewers' homes and, thus, to compete with conventional full service television stations. The FCC also has in effect new rules which permit the assignment of additional FM channels to communities across the nation, permitting the establishment of new FM radio stations. Additional FM channels have been allocated under these rules, and applications for new stations to operate on these channels have been granted or currently are pending. Technological developments in broadcasting and related fields, such as High Definition Television ("HDTV"), Digital Audio Broadcasting ("DAB") as well as changes in FCC regulations, may affect the competitiveness of new and existing alternatives to conventional radio and television services or otherwise affect the market for radio and television

broadcast services. For example, the FCC favors relaxation of the cross-ownership ban on telephone companies providing cable television services in their telephone service area and recently authorized telephone companies to provide cable service on a "video dial tone" basis. (See Federal Regulation of Cable Television.) Congressional legislation to eliminate or modify this cross-ownership ban has also been proposed. Recently the FCC proposed the establishment of a local multipoint distribution service that could offer multiple channels of video programming using very high-frequency microwave signals. Under the proposal, two service providers in each of 489 markets across the country would be licensed to distribute video, data and other telecommunications services. The Company cannot assess the effect which future technological developments or changes in FCC regulations or policies may have on the Company's operations.

There are additional FCC regulations and policies, and regulations and policies of other federal agencies, regulating network-affiliate relations, political broadcasts, advertising practices, program content, equal employment opportunities, application procedures and other areas affecting the business or operation of broadcast stations. Proposals for additional or revised regulations or legislation are pending and considered by federal regulatory agencies and Congress from time to time. The Company cannot predict the effect of existing and proposed federal regulations, legislation and policies on its broadcasting business.

The foregoing does not purport to be a complete summary of all the provisions of the Act or the regulations and policies of the FCC thereunder.

Federal Regulation of Cable Television

The cable television industry is subject to extensive government regulation at the federal and local levels and, in some cases, at the state level. The relationship of various levels of government in regulating cable television and the extent of such regulation is established by the Cable Communications Policy Act of 1984 (the "1984 Act") and the recent amendment thereto, the 1992 Act. The FCC has had and will continue to have principal federal responsibility for regulating cable television. The 1992 Act has greatly expanded the regulatory framework of the FCC within which cable operators must operate. Under this new framework, the FCC's regulation will focus on such aspects of cable operations as rates for cable programming services, customer service obligations, carriage of television broadcast signals and other types of programming, technical matters, leased access, franchise issues, consumer electronics equipment standards and ownership and employment practices. Many of the provisions of the 1992 Act will be effected as a result of rules to be adopted by the FCC. Prediction of the likely direction and outcome of these various rulemaking proceedings, and their effect, if any, on the Company, is difficult. Additionally, the 1992 Act involves the FCC in certain areas in which it has no historical experience such as customer service, cable rate regulation and program distribution. Finally, many provisions of the 1992 Act have been challenged in court. Therefore, it is likely that many issues ultimately will be resolved judicially. Subject to the foregoing, the nature and scope of regulation imposed at different levels of government are summarized below.

A. Television Signal Carriage and Programming. The 1992 Act contains two elements that fundamentally alter the relationship between cable systems and television broadcast stations. The first reinstates the mandatory carriage of certain local over-the-air television stations ("must-carry" rules). Such rules have previously been held unconstitutional as violative of cable operators' First Amendment Rights. The second element provides that in certain circumstances

television stations may prohibit the carriage by cable systems absent consent ("retransmission consent"). The two provisions are related in that broadcast stations must elect either must-carry or retransmission consent. Election must be made every three years. The FCC is currently engaged in a rule-making proceeding to effectuate these provisions. (See also, Federal Regulation of Broadcasting, above.)

The FCC's syndicated exclusivity and network non-duplication rules enable television broadcast stations, that have obtained exclusive distribution rights for programming in their market, to require cable systems (with more than 1,000 subscribers) to delete or "black-out" such programming from other television stations which are carried by the cable system. The extent of such deletions varies from market to market but generally makes distant broadcast signals less attractive sources of programming. The FCC also is studying whether to relax or abolish the geographic limitations on program exclusivity contained in its rules so as to allow parties to set by contract the geographic scope of exclusive distribution rights. This could result in even more extensive program black-outs. As a result of the 1992 Act's must-carry and retransmission consent requirements, the cable industry has petitioned the FCC to delete the network non-duplication rule.

The FCC has recommended to Congress that it repeal at least part of the cable industry's compulsory copyright license which Congress established in 1976 to serve as a means of compensating program suppliers for cable retransmission of broadcast signals (see Copyright discussion, below). The FCC determined that the statutory compulsory copyright license for distant broadcast signals no longer served the public interest and that private negotiations between the applicable parties would better serve the public. The FCC has deferred a decision on whether to recommend the repeal of the statutory compulsory copyright license for retransmission of local broadcast signals. Legislation has been proposed to repeal the compulsory copyright license law. Without the compulsory license, cable operators might need to negotiate rights from the copyright owners for each program carried on each broadcast station in the channel lineup. Such negotiated agreements could increase the cost to cable operators of carrying broadcast signals. The exact relationship between the compulsory license and the 1992 Act's retransmission consent provision is unclear, and it is expected that additional legislation will be introduced to address this issue.

The FCC requires that non-broadcast cable origination programming comply with FCC standards similar to those imposed on broadcasters. These standards include regulations governing political advertising and programming, advertising during children's programming, prohibition of lottery information and sponsorship identification requirements.

The 1992 Act imposes certain restrictions on cable operators which have an attributable ownership interest in satellite programming services. Vertically-integrated companies are prohibited from unreasonably refusing to deal with a multichannel distributor and from discriminating in price, terms and conditions in the sale of programming to multichannel distributors if the effect is to hinder or prevent competition. The FCC is required to issue rules to promote competition and diversity in the programming market and to increase its availability to consumers. However, the FCC must allow programmers to: establish credit, financial or technical qualifications; establish different prices, terms and conditions based on actual and reasonable differences; and enter into exclusive arrangements if in the public interest.

B. Cable Television Ownership. As a result of the 1984 Act, the FCC is, with a few exceptions, the only governmental agency authorized to prescribe rules relating to cable system ownership or control by persons with interest in other mass media communications. The 1984 Act prohibits common ownership or control of a television station and a cable system in the station's Grade B signal coverage area (typically an area approximately 15-75 miles from the station's transmitting antenna). The 1992 Act imposes restrictions on common ownership or control of MMDS and Satellite Master Antenna Television ("SMATV") operations in a cable service area. (SMATV is a video delivery system that receives programming through a satellite earth station for distribution to viewers (without using public rights of way) in multiple dwelling complexes such as apartment buildings and hotels.) Existing ownership interests of MMDS or SMATV services are unaffected. The FCC is also required to adopt rules imposing horizontal and vertical ownership limitations with respect to cable operator interest in program networks, which they carry on their system. With respect to horizontal concentration, the FCC must prescribe rules to establish limits on the number of cable subscribers a cable operator is authorized to reach. With respect to vertical concentration, the FCC must prescribe rules to limit the number of channels on a system which can be occupied by a vertically integrated programmer. The 1992 Act grants local franchising authorities certain rights to deny franchise awards or transfer approvals upon a finding of common ownership by the applicant of another system in the same service area or that competition would be reduced or eliminated by such award or transfer.

Except for rural telephone companies as defined by the FCC, federal law restricts the ability of telephone companies to engage in cable television operations within their local service areas. Specifically, local telephone companies may not provide video programming, channels of communication, pole or conduit space or other rental arrangements to an affiliate. The FCC favors relaxation of this ban and authorizes telephone companies to provide cable service on a "video dial tone" basis by furnishing transmission facilities to customers who would distribute programming. In the FCC's view, neither the phone company nor its programmer/customer would be subject to local franchise requirements that would apply to a conventional cable operator. Legislation which would eliminate or modify this ownership ban has also been proposed. If the restrictions are relaxed or removed, cable television companies could face increased competition. Recently, a lawsuit was filed by one of the seven regional Bell operating companies challenging the 1984 Cable Act cable-telco cross ownership restrictions on the grounds that it violates free speech and equal protection guarantees.

In 1992 the FCC modified its regulations governing common ownership or control of cable systems with national television networks. The new rules allow national television networks to own cable systems if such a system (when aggregated with all other cable systems in which the network holds such an interest) does not pass (i) more than 10 percent of homes passed on a nationwide basis, and (ii) 50 percent of the homes passed within any one Arbitron area of dominant influence (ADI).

The 1992 Act prohibits, with some exceptions, cable operators from selling a system within thirty-six months of acquisition or construction. Franchise authorities must act within a certain time period to act on a request for transfer by a cable operator. The FCC is required to adopt rules dealing with both of these matters.

C. Leased Access. Cable systems with more than 36 activated channels are required by the 1984 Act to make a certain number of those channels available for commercial leased access by third parties unaffiliated with the system operator. Certain exceptions apply to sources of qualified minority or educational programming. (This provision does not, however, require a system in operation on or before December 29, 1984, to delete existing programming that was on the system before July 1, 1984, to accommodate potential lessees). Under the 1992 Act, the FCC must determine maximum reasonable rates for commercial use of designated channel capacity and establish reasonable terms and conditions for such use. Under the 1984 Act, initial disputes regarding leased access were to be resolved in federal court, and the FCC had jurisdiction over cases involving repeated violations. The 1992 Act requires the FCC to develop procedural mechanisms to expedite resolution of complaints regarding leased access. As a result of the 1992 Act, it is unclear whether the FCC can (or will attempt to) interpose an administrative complaint process before a dispute must go to trial.

Under the 1992 Act, Cable operators may prohibit the carriage of any material deemed to be obscene or otherwise patently offensive on commercial access channels. Alternatively, cable operators may place all "indecent" leased access programming on a single channel and must block the channel unless otherwise requested by a subscriber.

D. Other Non-Programming Requirements. The 1992 Act mandates that the FCC modify and adopt new rules regarding frequency utilization standards for cable systems. The FCC has preempted, except upon an FCC-granted waiver, state and local authorities from enforcing technical standards which are more stringent than the FCC's guidelines.

The 1992 Act requires the FCC to issue regulations to ensure compatibility between cable systems and television receivers and video cassette recorders ("VCR"). Regulations shall include, among other things, requirements that cable operators notify subscribers if certain functions of television receivers and VCRs are not compatible with converter boxes. Regulations must also be adopted to promote the commercial availability of converter boxes and remote control devices. The FCC will also determine whether, and under what circumstances, to permit cable operators to scramble signals.

The FCC issues licenses for microwave relay stations, mobile radios and receive-only earth stations, all of which are commonly used in the operation of cable systems. A cable system's failure to comply with any of these FCC requirements may result in a variety of sanctions including monetary fines or revocation or suspension of licenses for stations used in connection with the system. A cable system's inability to use a microwave relay station or a mobile radio due to license revocation could adversely affect system operations, particularly if the relay microwave is used to provide service to distant communities or to relay distant television signals to the system.

The FCC rules contain signal leakage monitoring standards which must be complied with by all cable systems annually. These requirements pertain to cable operators' use of certain frequencies at specified power levels and involve specific testing which must be completed each year to test for signal leakage.

The FCC currently regulates the rates and conditions imposed by public utilities for use of their poles, unless under the Federal Pole Attachments Act state public service commissions are able

to demonstrate that they regulate the cable television pole attachment rates. Sixteen states (including Illinois among those served by the Company) have certified to the FCC that they regulate the rates, terms and conditions for pole attachments. In the absence of state regulation, the FCC administers such pole attachment rates through use of a formula which it has devised. The validity of this FCC function was upheld by the U.S. Supreme Court.

The 1992 Act expands the Equal Opportunity provisions of the 1984 Act by requiring employment information for certain additional employment positions. Information is to indicate race, sex, hiring, promotion and recruitment practices for the designated positions. In addition, the FCC must adopt rules to ensure compliance by cable companies with federal equal opportunity policies governing both employment and use of the services of female and minority entrepreneurs.

E. Rate Regulation. The 1992 Act establishes a mechanism for regulation of the rates charged by a cable operator for its service. Local regulation of basic (that level of service which includes broadcast signals) cable rates will be permitted for those cable systems not subject to "effective competition". The definition of "effective competition" (fewer than 30 percent of the households in the service area subscribe; or at least 50 percent of the households in the service area are served by two multichannel video programming distributors and at least 15 percent subscribe to the smaller operator; or a franchising authority serves as a multichannel video programming distributor and offers service to at least 50 percent of the households) ensures that virtually all cable systems are now subject to rate regulation. According to the 1992 Act, basic cable rates must be reasonable, taking into account various factors including ensuring a reasonable profit for the system as a whole. Local authorities must be certified by the FCC that they are capable of regulating rates, will adopt regulations in conformity with FCC regulations and will provide a reasonable opportunity to consider views of interested parties before local regulation will be permitted. The FCC will also have the authority to regulate rates for tiers other than basic if such rates are "unreasonable". The FCC is currently engaged in a rule-making proceeding which will more fully define the scope and procedures of rate regulation.

F. Franchise Fees and Access. Although franchising authorities may impose franchise fees under the 1984 Act, such payments cannot exceed 5 percent of system revenues per year. Franchising authorities are also empowered to require that the operator provide certain cable-related facilities, equipment and services to the public and to enforce operator compliance with franchise requirements and voluntary commitments. The 1992 Act permits cable operators to itemize on its subscriber bills amounts assessed as a franchise fee or dedicated to certain franchisor-imposed requirements. When changed circumstances render compliance with such requirements commercially impracticable, the 1984 Act requires franchising authorities to renegotiate performance standards and, under certain conditions, permits the operator to make changes in program commitments without local approval.

Although franchising authorities are permitted to require and enforce the dedication of system channels for non-commercial public, educational and governmental access use, they must permit the operator to make other use of such channels until the demand for use of designated access purposes is sufficient to occupy the dedicated capacity. In addition, if the franchising authority requires or the operator volunteers to provide free services or financial support for non-commercial access users, the value of such commitments must be credited toward the franchise fee payment.

G. Local Franchising. Because a cable distribution system uses local streets and rights-of-way, cable television systems have been subject to state and local regulation, typically imposed through the franchising process. State and local officials have been involved in franchisee selection, system design and construction, safety, service rates, consumer relations and billing practices and community-related programming and services. Except for cable systems lawfully operating without a franchise on or before July 1, 1984, the 1984 Act requires that a cable operator obtain a franchise prior to instituting service. Under the 1992 Act, franchising authorities may not award an exclusive franchise or unreasonably deny a competitive franchise. Local authorities may, without obtaining a franchise, operate their own cable system, notwithstanding the granting of one or more franchises by a local authority.

The FCC will adopt rules which will establish minimum customer service requirements. However, the 1992 Act permits local franchising authorities to establish, in excess of or in addition to those of the FCC, certain customer service requirements regarding such matters as office hours, telephone availability and service calls.

H. Renewal. The 1992 Act did not significantly alter the procedures for the renewal of cable television franchises which provide an incumbent franchisee certain protections against having its franchise renewal application denied. These procedures are designed to provide the incumbent franchises with a fair hearing on past performance, an opportunity to present a renewal proposal and to have it fairly and carefully considered, and a right of appeal if the franchising authority either fails to follow the procedures or denies renewal unfairly. Nevertheless, renewal is not assured, as the franchisee must meet certain statutory and franchise standards. Moreover, even if a franchise is renewed, the franchising authority may attempt to impose new and more onerous requirements such as significant upgrading of facilities and services or higher franchise fees as a condition of renewal.

I. Theft of Cable Service and Unauthorized Reception of Satellite Programming. The 1984 Act addresses the problem of unauthorized connections to cable systems and the use of private earth stations capable of receiving many of the attractive satellite-delivered program services offered by cable systems without payment to or authorization of the program owner. Both of these practices are potential sources of significant revenue loss for cable systems. The 1992 Act has raised the penalties for engaging in theft of service and the manufacturing or sale of devices used to assist theft of service. However, it is not a violation to receive satellite-delivered programming by private earth stations without permission, if the program signal in question is not scrambled (transmitted in an encoded form which cannot be received without special decoding equipment), and the program owner has no specific marketing arrangement in place for granting such user permission.

J. Copyright. Cable television systems are subject to a federal copyright licensing scheme covering carriage of television broadcast signals. In exchange for contributing a percentage of their revenues to a federal copyright royalty pool, cable operators receive blanket permission (a "compulsory license") to retransmit copyrighted material in broadcast signals. The amount of this royalty payment varies depending on the amount of system revenues from certain sources, the number of distant signals carried and the location of the cable system with respect to over-the-air television markets. A federal Copyright Royalty Tribunal ("CRT") is empowered to make periodic adjustments in the royalty rates paid by operators in order to compensate for the effects of national monetary inflation and for FCC rule changes that increase the amount of

television broadcast signals that cable systems carry. Legislative proposals have been and continue to be made to simplify or eliminate the compulsory license. The FCC has recommended to Congress that the compulsory license for the carriage of distant broadcast signals be eliminated. In addition, the full impact of the 1992 Act's retransmission consent provision is unclear. Therefore, the nature or amount of future payments for broadcast signal carriage cannot be predicted at this time. For the copyrighted materials they use in carriage or origination of non-broadcast programming, cable systems, like broadcasters, must have the permission of each copyright holder. System compliance with both the statutory copyright license and provisions of the Copyright Act of 1976 requiring private clearance is enforced through copyright infringement litigation brought by either the copyright holder or its representative, or in the case of violations of the statutory copyright license, by a local broadcaster or the copyright holder.

K. Regulatory Change. Since its adoption in 1984, the Cable Act has been shaped by FCC regulations and by judicial interpretation. The 1992 Act will in all likelihood result in significant changes in the operation of cable television systems. As discussed above, the FCC has been charged with adopting rules and regulations and implementing the new provisions, although at present it is difficult to predict the course of such rules and regulations. Additionally, major provisions of the 1992 Act have been challenged in the courts, most significantly, the must-carry, retransmission consent and rate regulation provisions. It is likely that FCC regulations will also be challenged in court. Until the FCC has concluded its rule-making proceedings and the courts have adjudicated the issues presented to them, it would be premature to assess the full impact of the 1992 Act on the Company.

The foregoing does not purport to be a complete summary of all present and proposed federal, state and local regulations relating to the cable industry.

Item 2. Properties.

The Company owns all of its newspaper publishing plants and properties; 222,000 square feet in Greenville, South Carolina; 124,000 square feet in Montgomery, Alabama; 91,000 square feet in Asheville, North Carolina; 65,000 square feet in Clarksville, Tennessee; 27,000 square feet in Staunton, Virginia; 19,000 square feet in Gallipolis, Ohio; 11,000 square feet in Moultrie, Georgia; and 14,000 square feet in Mountain Home, Arkansas. In addition, the Company leases approximately 30,000 square feet of newspaper production and office space in Alabama, North Carolina, South Carolina and Tennessee.

In its broadcasting operations, the Company owns buildings with approximately 68,000 square feet in St. Louis, Missouri; 12,000 square feet in Cincinnati, Ohio; 39,000 square feet in Knoxville, Tennessee; 10,000 square feet in Greenville, South Carolina; 28,000 square feet in Macon, Georgia; and 10,000 square feet in Shreveport, Louisiana. The Company leases transmitter sites in Shreveport and Milwaukee and leases its studio buildings in Cincinnati, Cleveland and Milwaukee.

The Company owns all of its cable television systems and equipment. The Company leases certain offices and tower sites. The Company owns the offices in Wichita, Great Bend and McPherson, Kansas; Edmond and Bixby, Oklahoma; Oak Lawn and Harvey, Illinois; Rocky Mount, New Bern, Greenville, Washington and Kinston, North Carolina; and Laporte, Indiana.

In its entertainment operations, the Company leases approximately 16,000 square feet in New York, New York and 13,000 square feet in Los Angeles, California.

Except as noted above, the Company generally owns the equipment used in its newspaper, broadcasting, cablevision and entertainment operations.

The Company believes that all of its properties are in good condition, well maintained and adequate for its current operations.

Item 3. Legal Proceedings.

The Company from time to time becomes involved in litigation incidental to its business, including libel actions. In the opinion of management, the Company carries adequate insurance against any judgments of material amounts which are likely to be recovered in such actions. At the present time, the Company is not a party to any litigation in which it is anticipated that the amount of any likely recovery would have a material adverse effect on its financial position.

Item 4. Submission of Matters to a Vote of Security Holders.

Not applicable.

PART II.

Item 5. Market for Registrant's Common Equity and Related Stockholder Matters.

The Company's Common Stock is traded in the National Market System over-the-counter market and appears on The National Association of Securities Dealers Automated Quotation ("NASDAQ") under the symbol MMEDC.

The following table sets forth the range of closing high and low bid prices for the Company's Common Stock in the over-the-counter market by quarter since January 1, 1991. The prices were reported by The NASDAQ Information Exchange System. These prices represent prices between dealers in securities and, as such, do not include retail mark-ups, mark-downs, or commissions and do not necessarily represent actual transactions. The prices have been retroactively adjusted for the 3-for-1 stock split effected in April 1991.

	Low Bid	High Bid
1991:		
First Quarter	$19.33	$24.42
Second Quarter	$24.13	$29.00
Third Quarter	$23.75	$29.50
Fourth Quarter	$19.75	$23.75
1992:		
First Quarter	$23.00	$28.00
Second Quarter	$26.00	$29.00
Third Quarter	$23.50	$28.75
Fourth Quarter	$24.00	$32.00

The Company's Credit and Note Agreements limit the payment of dividends on any capital stock of the Company. Currently the most restrictive of these limits the annual payment of dividends to 25% of annualized net income. No dividends were declared or paid during 1992 or 1991. The Company has no intention of paying any cash dividends in the foreseeable future. See Note 6 to the Consolidated Financial Statements included in the 1992 Annual Report, which material is incorporated herein by reference.

As of March 4, 1993, there were approximately 1,283 record holders of the Company's Common Stock.

Item 6. Selected Financial Data.

The required information is set forth on pages 14 and 15 of the accompanying 1992 Annual Report, which material is incorporated herein by reference.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

The required information is set forth on pages 13 through 20 of the accompanying 1992 Annual Report, which material is incorporated herein by reference.

Item 8. Financial Statements and Supplementary Data.

The following information is set forth in the accompanying 1992 Annual Report, which material is incorporated herein by reference:

All Consolidated Financial Statements of Multimedia, Inc. and Subsidiaries (pages 21 through 24); all Notes to Consolidated Financial Statements (pages 25 through 38); and the "Independent Auditors' Report" (page 39).

With the exception of the information herein expressly incorporated by reference, the 1992 Annual Report of the Registrant is not deemed filed as part of this Annual Report on Form 10-K.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.

None.

PART III.

Item 10. Directors and Executive Officers of the Registrant.

The required information is incorporated herein by reference from the information in the Company's definitive proxy statement dated March 15, 1993 for the Annual Meeting of Shareholders to be held April 21, 1993, under the headings "Election of Directors" and "Executive Officers".

Item 11. Executive Compensation.

The required information is incorporated herein by reference from the information in the Company's definitive proxy statement dated March 15, 1993 for the Annual Meeting of Shareholders to be held April 21, 1993, under the headings "Management Compensation" and "Compensation Committee Interlocks and Insider Participation".

Item 12. Security Ownership of Certain Beneficial Owners and Management.

The required information is incorporated herein by reference from the information in the Company's definitive proxy statement dated March 15, 1993 for the Annual Meeting of Shareholders to be held April 21, 1993, under the headings "Election of Directors", "Principal Shareholders of the Company" and "Executive Officers".

Item 13. Certain Relationships and Related Transactions.

The required information is incorporated herein by reference from the information in the Company's definitive proxy statement dated March 15, 1993 for the Annual Meeting of Shareholders to be held April 21, 1993, under the headings "Election of Directors", "Management Compensation" and "Compensation Committee Interlocks and Insider Participation".

PART IV.

Item 14. Exhibits, Financial Statement Schedules, and Reports on Form 8-K.

(a) (1) The following consolidated financial statements are incorporated by reference from the 1992 Annual Report attached hereto:

Consolidated Statements of Earnings, years ended December 31, 1992, 1991 and 1990

Consolidated Statements of Stockholders' Equity (Deficit), years ended December 31, 1992, 1991 and 1990

Consolidated Statements of Cash Flows, years ended December 31, 1992, 1991 and 1990

Consolidated Balance Sheets, December 31, 1992 and 1991

Notes to Consolidated Financial Statements

Independent Auditors' Report

(a) (2) The following auditors' report and financial schedules for years ended December 31, 1992, 1991 and 1990 are submitted herewith:

Independent Auditors' Report on 10-K Schedules

Schedule V - Property, Plant and Equipment

Schedule VI - Accumulated Depreciation - Property, Plant and Equipment

Schedule VIII - Valuation and Qualifying Accounts

Schedule X - Supplementary Income Statement Information

All other schedules are omitted as the required information is inapplicable or the information is presented in the financial statements or related notes.

(a) (3) Exhibits:

(3.1) Restated Articles of Incorporation of the Company filed on December 22, 1967 in the office of the Secretary of State of South Carolina: Incorporated by reference to Exhibit 4.4 to the Company's Registration Statement on Form S-3, No. 33-9622.

(3.2) Amendments to the Company's Restated Articles of Incorporation filed on June 27, 1969; April 20, 1972; April 25, 1978; May 1, 1980 and May 13, 1983 in the office of the Secretary of State of South Carolina: Incorporated by reference to Exhibit 4.5 to the Company's Registration Statement on Form S-3, No. 33-9622.

(3.3) Amendment to the Company's Restated Articles of Incorporation attached as Annex B to Articles of Merger filed on October 1, 1985, in the office of the Secretary of State of South Carolina: Incorporated by reference to Exhibit 4.6 to the Company's Registration Statement on Form S-3, No. 33-9622.

(3.4) Articles of Amendment filed February 8, 1990 in the office of the Secretary of State of South Carolina: Incorporated by reference to Exhibit 3.4 to the Company's Annual Report on Form 10-K for the year ended December 31, 1989 ("1989 Form 10-K") (File No. 0-6265).

(3.5) Articles of Amendment to the Company's Restated Articles of Incorporation filed April 18, 1991 in the office of the Secretary of State of South Carolina: Incorporated by reference to Exhibit 4.1.4 to the Company's Registration Statement on Form S-8, File No. 33-40050 ("S-8 No. 33-40050").

(3.6) By-Laws of the Company: Incorporated by reference to Exhibit 3.3 to the Company's Annual Report on Form 10-K for the year ended December 31, 1985 ("1985 Form 10-K") (File No. 0-6265).

(3.6.1) Amendment to By-laws of the Company, effective April 23, 1992: Incorporated by reference to Exhibit 4.2.1 to the Company's Registration Statement on form S-3, File No. 33-46557.

(4.1) See Exhibits 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.6.1, 10.5 and 10.7.

(4.2) Form of Certificates for Common Stock.

(4.3) Rights agreement, dated as of September 6, 1989 by and between the Company and South Carolina National Bank, Rights agent: Incorporated by reference to Exhibit 1 to Form 8-K of the Company dated September 6, 1989.

(4.4) The Company hereby agrees to furnish to the Securities and Exchange Commission, upon request of the Commission, a copy of any instrument with respect to long-term debt not being registered in a principal amount less than 10% of the total assets of the Company and its subsidiaries on a consolidated basis.

(10.1)* Restricted Option Plan of the Company: Incorporated by reference to Exhibit 10.1 to the Company's 1985 Form 10-K.

(10.2)* Performance Stock Option Plan of the Company: Incorporated by reference to Exhibit 10.2 to the Company's Form 10-K for the year ended December 31, 1987 (File No. 0-6265).

(10.2.1)* Amendment of Performance Stock Option Plan: Incorporated by reference to Exhibit 10.2.1 to the Company's Form 10-K for the year ended December 31, 1988 ("1988 Form 10-K") (File No. 0-6265).

(10.3)* Key Executive Stock Option Plan of the Company: Incorporated by reference to Exhibit 28.1 to the Company's Registration Statement on Form S-8, No. 33-17234.

(10.4)* Bonus Plan of the Company: Incorporated by reference to Exhibit 10.4 to the Company's 1985 Form 10-K.

(10.4.1)* Amended Bonus Plan of the Company: Incorporated by reference to Exhibit 10.4.1 to the Company's 1989 Form 10-K.

(10.5) Credit Agreement between the Company and the Chase Manhattan Bank (National Association) and Citibank, N.A. as Lead Agents, the First National Bank of Chicago, First Union National Bank of North Carolina and the Toronto-Dominion Bank, Cayman Islands Branch, as Co-Agents and the Chase Manhattan Bank (National Association), as Administrative Agent, and various banks (excluding schedules and certain exhibits); the Registrant agrees to furnish supplementally to the Securities and Exchange Commission a copy of any omitted Schedule or Exhibit upon request of the Commission: Incorporated by reference to Exhibit 4.1 of the Company's 1990 second quarter Form 10-Q (File No. 0-6265).

(10.5.1) List of Lenders under Credit Agreement as of March 4, 1993.

(10.6) Contract for Services between Multimedia Entertainment, Inc. and Phillip J. Donahue, dated as of April 15, 1982, as amended by letter agreements dated April 15, 1982, February 10, 1984 and August 6, 1985: Incorporated by reference to Exhibit 10.6 to the Company's 1985 Form 10-K.

(10.6.1) Amendment to Contract for Services: Incorporated by reference to Exhibit 10.6.1 to the Company's 1988 Form 10-K.

(10.6.2) Amendment to Contract for Services: Incorporated by reference to Exhibit 10.6.2 to the Company's quarterly report on Form 10-Q for the quarter ended June 30, 1991.

(10.7) Form of Note Agreement between the Company and various institutional holders (excluding schedules and certain exhibits); the Registrant agrees to furnish supplementally to the Securities and Exchange Commission a copy of any omitted schedule or exhibit upon request of the Commission: Incorporated by reference to Exhibit 4.2 of the Company's 1990 second quarter Form 10-Q.

(10.8) Recapitalization Agreement and Plan of Merger, dated May 1, 1985, as amended and restated between MM Acquiring Corp. and the Company: Incorporated by reference to Exhibit 2 to the Company's Registration Statement on Form S-14 dated August 20, 1985 (Registration No. 2-99786).

(10.9)* Executive Salary Protection Plan: Incorporated by reference to Exhibit 10.15 to the Company's Form 10-K for the year ended December 31, 1986.

(10.10)* Executive Salary Protection Agreement - First Amendment: Incorporated by reference to Exhibit 10.10 to the Company's Form 10-K for the year ended December 31, 1992 ("1992 Form 10-K").

(10.11) Purchase Agreement by and between Multimedia, Inc. and National Broadcasting Company, Inc.: Incorporated by reference to Exhibit 10.1 to the Company's Form 10-Q for the quarter ended September 30, 1990.

(10.12) Exchange Agreement between National Broadcasting Company, Inc. and Multimedia, Inc.: Incorporated by reference to Exhibit 10.2 to the Company's Form 10-Q for the quarter ended September 30, 1990 (File No. 0-6265).

(10.13)* 1991 Stock Option Plan: Incorporated by reference to Exhibit 10.15 to the Company's Form 10-K for the year ended December 31, 1990 (File No. 0-6265).

(10.13.1)* Amendment to 1991 Stock Option Plan: Incorporated by reference to Exhibit 28.2 to S-8 No. 33-40050.

(10.13.2)* Amendments to 1991 Stock Option Plan, dated as of February 24, 1993.

(10.14)* Management Committee Incentive Plan: Incorporated by reference to Exhibit 10.14 to 1992 Form 10-K.

(10.15)* Executive Incentive Plan: Incorporated by reference to Exhibit 10.15 to 1992 Form 10-K.

(10.16)* Summary of Supplemental Retirement Program for Messrs. Bartlett and Sbarra: Incorporated by reference to Exhibit 10.16 to 1992 Form 10-K.

(10.17)* Agreements between Multimedia, Inc. and J. William Grimes dated August 6, and September 20, 1991: Incorporated by reference to Exhibit 10.16 to the Company's quarterly report on Form 10-Q for the quarter ended September 30, 1991 (File No. 0-6265).

(10.17.1)* Resolution of Board of Directors relating to J. William Grimes, adopted April 23, 1992: Incorporated by reference to Exhibit 10.7.1 to the Company's Form 10-Q for the quarter ended March 31, 1992.

(10.17.2)* Resolution of Board of Directors relating to J. William Grimes, adopted December 18, 1992.

(10.18)* Agreement with Robert L. Turner, dated January 29, 1991: Incorporated by reference to Exhibit 10.18 to 1992 Form 10-K.

(10.19) Contract for Services between Multimedia Entertainment, Inc. and Rabbit Ears Enterprises f/s/o Sally Jessy Raphael, dated as of April 26, 1989, as amended by letter dated December 4, 1990: Incorporated by reference to Exhibit 10.19 to 1992 Form 10-K.

(10.20)* Director Stock Option Plan.

(10.21) Asset Purchase and Sale Agreement by and between Prime Cable Income Partners, L.P., as seller and Tar River Communications, Inc., as buyer, relating to Valparaiso and Laporte, Indiana systems dated as of July 30, 1992, as amended by letter supplement dated as of December 3, 1992: Incorporated by reference to Exhibits to Form 8-K dated December 16, 1992.

(11) Computation of Primary and Fully Diluted Earnings per Share.

(13) 1992 Annual Report.

(22) Subsidiaries of the Registrant.

(24) Accountants' Consent to incorporate by reference in Registration Statements No. 2-68069, 33-17234, 33-40050 and 33-40253, on Form S-8, and in Registration Statements No. 33-42179 and 33-46557 on Form S-3.

(28) Proxy Statement dated March 15, 1993.

---

* This is a management contract or compensatory plan or arrangement.

(b) Reports on Form 8-K.

Items reported on Form 8-K dated December 16, 1992:

(2) Acquisition of Assets
(7) Exhibits

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

MULTIMEDIA, INC.
By:

Signature	Title	Date
/s/ Walter E. Bartlett Walter E. Bartlett	Chairman and Chief Executive Officer	March 25, 1993
/s/ Robert E. Hamby, Jr. Robert E. Hamby, Jr.	Chief Financial Officer, Treasurer	March 25, 1993
/s/ Thomas L. Magaha Thomas L. Magaha	Vice President, Controller	March 25, 1993

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities as of the dates indicated.

By:

/s/ Walter E. Bartlett Walter E. Bartlett	Director	March 25, 1993
/s/ Rhea T. Eskew Rhea T. Eskew	Director	March 25, 1993
/s/ David L. Freeman David L. Freeman	Director	March 25, 1993
/s/ J. William Grimes J. William Grimes	Director	March 25, 1993
/s/ Robert E. Hamby, Jr. Robert E. Hamby, Jr.	Director	March 25, 1993
/s/ James E. Jolley James E. Jolley	Director	March 25, 1993
/s/ Elizabeth P. Stall Elizabeth P. Stall	Director	March 25, 1993

KPMG Peat Marwick

Certified Public Accountants

One Shelter Place, Suite 600
P.O. Box 10529
Greenville, SC 29603

Independent Auditors' Report 10-K Schedules

The Board of Directors and Stockholders
Multimedia, Inc.:

Under date of February 12, 1993, we reported on the consolidated balance sheets of Multimedia, Inc. and subsidiaries as of December 31, 1992 and 1991 and the related consolidated statements of earnings, stockholders' equity (deficit), and cash flows for each of the years in the three-year period ended December 31, 1992, as contained in the 1992 annual report to stockholders. These consolidated financial statements and our report thereon are incorporated by reference in the annual report on Form 10-K for the year 1992. In connection with our audits of the aforementioned consolidated financial statements, we also have audited the financial statement schedules as listed in Item 14(a)(2). These financial statement schedules are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statement schedules based on our audits.

In our opinion, such financial statement schedules, when considered in relation to the basic consolidated financial statements taken as a whole, present fairly, in all material respects, the information set forth therein.

KPMG Peat Marwick

February 12, 1993

9 7 0 4 3 0 4 3 8 3 2

9 7 0 4 3 3 4 5 8 3 3

MULTIMEDIA, INC. AND SUBSIDIARIES
Property, Plant and Equipment
Years ending December 31, 1992, 1991 and 1990

	Balance at Beginning of Year	Additions During Year At Cost	Retirements or Sales During Year	Other Changes During Year (A)	Balance at End of Year
Year ending December 31, 1992:					
Land and land improvements	$ 5,166,000	18,000	4,000	42,000	5,222,000
Buildings	37,465,000	1,102,000	138,000	284,000	38,713,000
Broadcasting equipment	60,880,000	3,695,000	1,288,000	(187,000)	63,100,000
Publishing equipment	53,367,000	6,269,000	2,070,000	---	57,566,000
Cablevision equipment	212,881,000	22,665,000	1,873,000	25,226,000	258,899,000
Other equipment and fixtures	36,057,000	4,499,000	1,708,000	664,000	39,512,000
Construction in progress	1,221,000	(755,000)	---	(30,000)	436,000
	$ 407,037,000	37,493,000	7,081,000	25,999,000	463,448,000
Year ending December 31, 1991:					
Land and land improvements	$ 5,021,000	102,000	---	43,000	5,166,000
Buildings	37,150,000	1,556,000	201,000	(1,040,000)	37,465,000
Broadcasting equipment	58,321,000	3,042,000	1,156,000	673,000	60,880,000
Publishing equipment	52,109,000	2,879,000	1,621,000	---	53,367,000
Cablevision equipment	191,541,000	20,481,000	1,463,000	2,322,000	212,881,000
Other equipment and fixtures	32,524,000	4,858,000	1,622,000	297,000	36,057,000
Construction in progress	1,951,000	(731,000)	---	1,000	1,221,000
	$ 378,617,000	32,187,000	6,063,000	2,296,000	407,037,000
Year ending December 31, 1990:					
Land and land improvements	$ 5,200,000	84,000	350,000	87,000	5,021,000
Buildings	35,958,000	928,000	874,000	1,138,000	37,150,000
Broadcasting equipment	44,159,000	3,760,000	796,000	11,198,000	58,321,000
Publishing equipment	53,472,000	2,123,000	3,486,000	---	52,109,000
Cablevision equipment	172,689,000	17,351,000	1,008,000	2,509,000	191,541,000
Other equipment and fixtures	27,615,000	3,714,000	2,048,000	3,243,000	32,524,000
Construction in progress	1,375,000	517,000	---	59,000	1,951,000
	$ 340,468,000	28,477,000	8,562,000	18,234,000	378,617,000

Note:
(A) Other changes include property, plant and equipment of acquired companies, recorded principally at fair market values, and reclassifications between categories.

Schedule V

MULTIMEDIA, INC. AND SUBSIDIARIES

Accumulated Depreciation - Property, Plant and Equipment

Years ending December 31, 1992, 1991 and 1990

	Balance At Beginning of Year	Charged To Costs and Expenses (A)	Retirements or Sales During Year	Other Changes During Year (B)	Balance At End of Year
Year ending December 31, 1992:					
Land improvements	$ 295,000	40,000	4,000	---	331,000
Buildings	16,249,000	1,340,000	137,000	---	17,452,000
Broadcasting equipment	44,248,000	4,583,000	1,231,000	(140,000)	47,460,000
Publishing equipment	27,407,000	3,694,000	1,888,000	1,000	29,214,000
Cablevision equipment	109,726,000	18,060,000	1,623,000	85,000	126,248,000
Other equipment and fixtures	21,636,000	3,993,000	1,534,000	138,000	24,233,000
	$ 219,561,000	31,710,000	6,417,000	84,000	244,938,000
Year ending December 31, 1991:					
Land improvements	$ 230,000	36,000	---	29,000	295,000
Buildings	15,695,000	1,270,000	181,000	(535,000)	16,249,000
Broadcasting equipment	41,274,000	5,085,000	1,145,000	(966,000)	44,248,000
Publishing equipment	25,646,000	3,321,000	1,560,000	---	27,407,000
Cablevision equipment	95,108,000	15,799,000	1,181,000	---	109,726,000
Other equipment and fixtures	18,012,000	3,629,000	1,477,000	1,472,000	21,636,000
	$ 195,965,000	29,140,000	5,544,000	---	219,561,000
Year ending December 31, 1990:					
Land improvements	$ 259,000	29,000	58,000	---	230,000
Buildings	14,099,000	1,241,000	278,000	633,000	15,695,000
Broadcasting equipment	28,471,000	4,518,000	774,000	9,059,000	41,274,000
Publishing equipment	24,544,000	3,256,000	2,154,000	---	25,646,000
Cablevision equipment	81,381,000	14,391,000	664,000	---	95,108,000
Other equipment and fixtures	16,348,000	3,029,000	1,849,000	484,000	18,012,000
	$ 165,102,000	26,464,000	5,777,000	10,176,000	195,965,000

Notes:

(A) Depreciation for financial reporting purposes is calculated principally on the straight-line basis over the estimated useful lives of the respective assets. The useful lives of the assets range from 10 to 15 years for land improvements; 15-40 years for buildings; 3-25 years for broadcasting equipment; 3-20 years for publishing equipment; 5-20 years for cablevision equipment and 3-15 years for other equipment and fixtures.

(B) Other changes represent accumulated depreciation from property, plant and equipment of acquired companies and reclassifications between categories.

Schedule VI

MULTIMEDIA, INC. AND SUBSIDIARIES

Valuation and Qualifying Accounts

Years ending December 31, 1992, 1991 and 1990

		Balance at Beginning of Year	Additions: Charged to Costs and Expenses	Additions: Collection of Writeoffs	Deductions from Reserves	Balance at End of Year
Year ending December 31, 1992:						
Allowance for discounts	$	14,000	902,000	---	862,000	54,000
Allowance for doubtful accounts		3,371,000	4,112,000	584,000	4,176,000	3,891,000
	$	3,385,000	5,014,000	584,000	5,038,000	3,945,000
Year ending December 31, 1991:						
Allowance for discounts	$	52,000	964,000	---	1,002,000	14,000
Allowance for doubtful accounts		3,454,000	4,493,000	494,000	5,070,000	3,371,000
	$	3,506,000	5,457,000	494,000	6,072,000	3,385,000
Year ending December 31, 1990:						
Allowance for discounts	$	103,000	1,100,000	---	1,151,000	52,000
Allowance for doubtful accounts		3,299,000	3,832,000	719,000	4,396,000	3,454,000
	$	3,402,000	4,932,000	719,000	5,547,000	3,506,000

MULTIMEDIA, INC. AND SUBSIDIARIES

Supplementary Income Statement Information

Years ending December 31, 1992, 1991 and 1990

	Charged directly to Costs and Expenses		
	1992	1991	1990
Amortization of intangible assets	$ 11,272,000	9,308,000	4,191,000
Advertising costs	$ 9,669,000	8,785,000	6,455,000

All other information is inapplicable or less than one percent of total revenue.

THE WASHINGTON POST COMPANY

CONTENTS

1 FINANCIAL HIGHLIGHTS

2 TO OUR SHAREHOLDERS

8 NEWSPAPER DIVISION

10 POST-NEWSWEEK STATIONS

12 POST-NEWSWEEK CABLE

14 NEWSWEEK

16 OTHER BUSINESSES

18 REPORT OF INDEPENDENT ACCOUNTANTS

19 MANAGEMENT'S DISCUSSION AND ANALYSIS OF RESULTS OF OPERATIONS AND FINANCIAL CONDITION

23 CONSOLIDATED STATEMENTS OF INCOME

24 CONSOLIDATED BALANCE SHEETS

26 CONSOLIDATED STATEMENTS OF CASH FLOWS

27 CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY

28 NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

38 TEN-YEAR SUMMARY OF SELECTED HISTORICAL FINANCIAL DATA

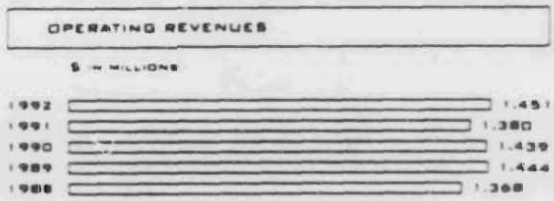
40 THE WASHINGTON POST COMPANY IN BRIEF

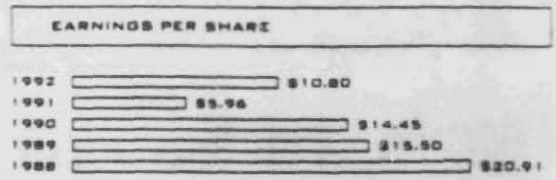
42 CORPORATE DIRECTORY

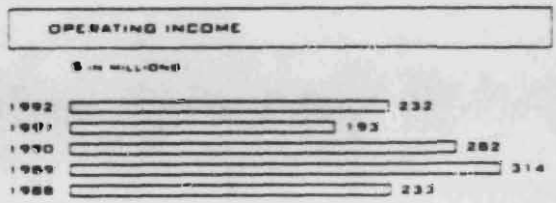
FINANCIAL HIGHLIGHTS

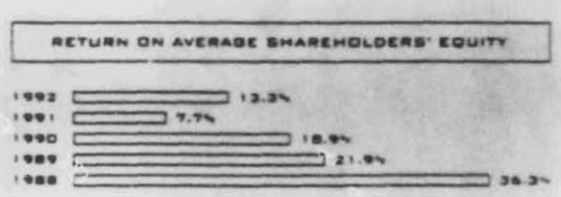
(IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)	1992	1991	% CHANGE
Operating revenues	$1,450,867	$1,380,261	+5%
Income from operations	$ 232,112	$ 192,866	+20%
Net income			
Before cumulative effect of change in accounting principle in 1991*	$ 127,796	$ 118,721	+8%
After cumulative effect of change in accounting principle in 1991*	$ 127,796	$ 70,824	+80%
Earnings per share			
Before cumulative effect of change in accounting principle in 1991*	$ 10.80	$ 10.00	+8%
After cumulative effect of change in accounting principle in 1991*	$ 10.80	$ 5.96	+81%
Dividends per share	$ 4.20	$ 4.20	–
Shareholders' equity per share	$ 84.17	$ 78.12	+8%
Average number of shares outstanding	11,830	11,876	–

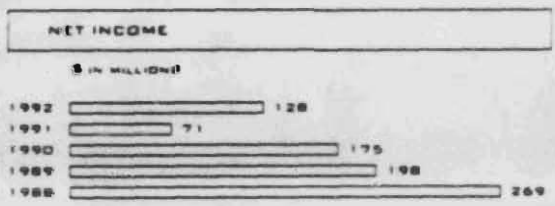
* *The cumulative effect of a change in the method of accounting for postretirement benefits other than pensions was recognized at the beginning of 1991.*











TO OUR SHAREHOLDERS

The Washington Post Company had a better year in 1992 than in 1991. All of the company's major operating units reported improved results. Newsweek turned in an especially strong performance, achieving a 163 percent gain in operating income.

For the company as a whole, net income rose to $127.8 million ($10.80 per share), up 80.4 percent from net income of $70.8 million ($5.96 per share) in 1991. However, a number of one-time charges and credits are included in the 1991 figures and should be taken into account when measuring the company's performance in 1992.

Specifically, 1991 earnings included a one-time, after-tax charge of $47.9 million ($4.04 per share) relating to a change in accounting for certain employee postretirement benefits, and a one-time, after-tax charge of $3.5 million ($.30 per share) for severance and related costs resulting from a voluntary reduction in staff at The Washington Post newspaper. Net income in 1991 also included a credit of $10 million ($.84 per share) resulting from a favorable settlement with the Internal Revenue Service. Excluding these one-time charges and credits in 1991, net income for 1992 increased 13.9 percent.

Operating income for 1992 rose 20.3 percent to $232.1 million, from $192.9 million in 1991. Lower newsprint expense, which fell by $22 million, or 18.8 percent, was a major factor in the gain. This benefit is ephemeral and will erode in 1993.

Revenue for 1992 totaled $1.451 billion, an increase of 5.1 percent from $1.380 billion the previous year. Advertising remained anemic. Although advertising revenue rose 5.1 percent to $895.6 million, from $852.4 million the previous year, volume in most divisions was flat or down.

Softness in the Washington market persisted in 1992. Total Washington Post advertising inches (not including preprints) declined 3.8 percent, with retail advertising especially weak. Despite the downturn in volume, The Post registered a 3.7 percent gain in advertising revenue.

Post-Newsweek television stations also battled recessionary local economies in all four markets. In addition, Hurricane Andrew caused a loss of ad dollars at WPLG in Miami, as national advertisers temporarily withdrew from the market in the wake of the storm. WDIV in Detroit had lower revenue from sports programming. These losses were partially offset by $6.8 million in political advertising, and the division's revenue was down slightly for the year.

Newsweek posted a significant increase in advertising volume and revenue. Cable advertising revenue rose 17 percent to $7 million.

The company's circulation and subscriber revenue increased 5.6 percent to $436.2 million, from $412.9 million in 1991, reflecting solid circulation performances at The Post and Newsweek and continued growth at the cable division.

Expense control continues to receive the full, acute attention of every Washington Post Company manager — and, indeed, every employee. Total expenses rose only 2.6 percent in 1992, again reflecting in part the lower newsprint costs.

The company's results in 1992 include The Gaithersburg Gazette, Inc., publisher of 14 suburban weekly newspapers; and Pro Am Sports System (PASS), a Detroit-area cable sports network acquired in November, as well as other smaller acquisitions. Results in 1992 also reflect the inclusion for bookkeeping purposes of a 53rd week at The Washington Post newspaper.

The company's equity in earnings of affiliates for 1992 was a loss of $11.7 million, compared with a loss of $1.9 million in 1991. Continued weakness at the company's newsprint manufacturing affiliates was the major contributor to the loss.

LOOKING AHEAD, we believe the company's future will depend primarily upon three factors: how well we manage our existing businesses, how well we invest the cash they generate and, more generally, how well we navigate through the currents of change that are transforming the media industry. We would like to explore these subjects in the remainder of this letter.

THE QUALITY OF LEADERSHIP provided by division managers is key to the performance of existing businesses. The role of division heads is critical. Bill Ryan at Post-Newsweek Stations, Rick Smith at Newsweek and Howard Wall at Post-Newsweek Cable are intensely focused leaders who live and breathe their operations. Each is passionately committed both to high quality and low costs, two core values of the company. Each has shown a willingness constantly to probe traditional businesses and move aggressively to renew and advance them.

For example, under Rick Smith's leadership, with Maynard Parker as editor, Newsweek has evolved constantly — but incrementally — to anticipate the needs of readers. New editorial departments, such as "The Family" and "Newsweek Just for Kids!!!," have been introduced in recent years. Changes in layout and organization — including the division of the magazine into six general sections — make Newsweek more accessible. The popular and much-imitated "Perspectives" section and "Conventional Wisdom Watch" reflect Newsweek's conviction that readers can be entertained while being informed.

Newsweek also is determined to move quickly to seize opportunities. For instance, Newsweek's special 1992 elections issue, which tracked behind the scenes each candidate's campaign from the primaries through the election, was published just 36 hours after the polls closed.

The result is a dynamic magazine with an exceptionally loyal subscriber base. Newsweek's renewals are at the highest level in years, and Newsweek sells more longer-term subscriptions than its competitors.

Advertisers have recognized — and responded to — Newsweek's quality and vitality. In a marketplace characterized by frenzied rate negotiations, Newsweek was able to increase both advertising volume and rates in 1992.

Newsweek International has strengthened its position in the slippery global marketplace, thanks in large part to hard work by its president, Peter Luffman. Ad revenue increased last year, and all three international editions — Atlantic, Asia and Latin America — gained circulation.

Cost-control efforts have been especially productive at this business. For example, Newsweek International rethought and rearranged its production system around the world to reduce costs and improve delivery and printing quality. In Europe, Newsweek has built the most cost-effective, English-language news publication by focusing on readers with desirable demographic characteristics — a gutsy call in the face of costly efforts by others to inflate broadly their circulation numbers.

THE WASHINGTON POST newspaper also worked hard to meet the needs of its readers and advertisers. With executive editor Len Downie at the helm, The Post provided first-class coverage of the 1992 election, crises in Somalia and Bosnia, and a difficult year in the local Washington, D.C., community. The Post's editorial and op-ed pages, under Meg Greenfield, continue to be one of the country's most authoritative and provocative forums for discussion of national, international and local issues.

At a time when many newspapers are reporting circulation declines, The Post's daily circulation grew by more than 10,000 copies in the six-month period ending September 30, 1992. This marked the second year in a row that daily circulation

increased by more than 10,000 — and the ninth consecutive year of daily circulation gains. Sunday circulation rose for the 12-month period ending September 30, 1992, but declined by 2,056 copies in the six-month period, reflecting a price increase among other factors. The Post's primary-market penetration remains high — 68 percent on Sunday and 51 percent daily.

Expense control becomes even more vital in difficult economic times. In addition to benefiting from lower newsprint costs, The Post has reduced the number of full-time employees by 7 percent in the past three years through voluntary buyouts and early retirement programs. Productivity gains, particularly in The Post's production department, also are contributing to improved results.

HIGH-QUALITY NEWS AND PUBLIC AFFAIRS programming is critical in the fiercely competitive world of television, where leadership commands a disproportionate share of advertising dollars. The singular achievement of Bill Ryan and Post-Newsweek's station managers is that they have enhanced their leadership in news, expanded news programming and lowered costs at the same time.

In the latest ratings period, all four Post-Newsweek stations again ranked number one in both early and late news, with the single exception of early news in Detroit, in the number two spot. All four stations also ranked number one sign-on to sign-off in their markets, again excepting Detroit, a strong number two.

To capitalize on its news franchises, Post-Newsweek has increased news programming more than 25 percent since 1986. Our stations each now average more than 20 hours of news per week. In the same 1986-1992 period, full-time station staff decreased 16 percent. In fact, the division's operating costs in 1992 were less than in 1989.

Two events in 1992 highlighted Post-Newsweek's strength in news. During the election, both Bill Clinton and George Bush accepted invitations from our Detroit and Florida television stations to hold televised town meetings. President Clinton also chose WPLG in Miami to be part of his first televised town meeting as president.

The second major event of the year was Hurricane Andrew, which struck south Florida in August. The storm's 140-mile-per-hour wind surge toppled WPLG's concrete microwave tower and knocked the station off the air. Thinking fast, the staff rigged an inventive temporary connection, and the station was back in business within four hours. WPLG then provided eight days of around-the-clock coverage of this devastating event, which continues to take a severe toll on the area.

POST-NEWSWEEK CABLE delivers dependable growth year after year — the kind of monotony that obscures the immense effort and meticulous attention to detail that distinguish the management of Howard Wall and his team.

Howard became president of Post-Newsweek Cable when we acquired the division in January 1986. Since then, the number of U.S. basic subscribers has increased by almost 30 percent to 463,000. Revenue has more than doubled to $174 million. Operating income has grown almost eightfold, rising from $5 million at the time of the acquisition to $39 million in 1992.

Nineteen-ninety-two continued the trend. The number of domestic basic subscribers grew by almost 12,000, not including 10,000 subscribers gained through the acquisition at year-end of a cable system in Long Beach, Mississippi. Domestic capital expenditures, which averaged $24 million annually in the 1987-1991 period, declined to $18 million in 1992.

Of course, reregulation of the cable industry will present new challenges in the years ahead and place additional demands on cable management. Fortunately, two of the company's best managers are now leading the division during this critical period. At the beginning of 1993, Howard became chairman and chief executive officer of Post-Newsweek Cable. He will be overseeing the expansion of the company's cable operations in the United Kingdom.

97 0 4 3 8 4 5 8 4 2

described below. Tom Might became president and chief operating officer of Post-Newsweek Cable, with responsibility for domestic operations. Tom previously had been vice president-advertising/marketing of The Washington Post newspaper. He also served as The Post's vice president-production. Tom's experience and track record equip him well for managing the investment, technological and marketing issues facing the cable division.

With Tom's and Howard's leadership, we believe Post-Newsweek Cable will be less adversely affected by reregulation than some others in the business. Post-Newsweek has been conservative in pricing and conscientious in providing high-quality customer service.

STANLEY H. KAPLAN EDUCATIONAL CENTER has embarked upon a major effort to meet the demands of an increasingly competitive marketplace. Although Kaplan remains the leader of the test-preparation industry, its success has spawned a number of aggressive imitators. In addition, higher-priced Kaplan courses have been hurt by the recession, and the number of 14-to-18 year olds is the lowest since the early 1970's.

To lead the rebuilding, we brought in Greg Rorke, who became Kaplan's president and chief executive officer in September. Greg is an outstanding marketer with experience in reinvigorating businesses under competitive pressure. Most recently, he engineered a dramatic turnaround as president of Dunkin. Greg will be very important to Kaplan's growth in the future. His appointment marks the transition in leadership from Stanley H. Kaplan, who founded the company — and the industry — 50 years ago. Stanley remains active as chairman.

A major element of Kaplan's restructuring is a change in its distribution system to gain more control over field operations. This restructuring resulted in a charge against Kaplan earnings in 1992.

INVESTING THE CASH generated by current businesses is the second critical variable in the company's future. Doing this job well is essential to building value, achieving continued earnings growth and delivering high returns to shareholders. The principles with which we approach and evaluate new investment opportunities remain unchanged:

- We're interested in businesses with competitive barriers.
- We're interested in businesses in which capital expenditures are not overwhelming and are not dictated to us by the market.
- We're interested in businesses in which we have reasonable pricing power.
- We're interested in businesses in which distinctive quality is highly rewarded in the market equation.
- We have a strong preference for businesses we know.
- Rather than spread our investment dollars around thinly, we're more likely to invest in a handful of big bets with the characteristics listed above.

Our goal is to develop substantial and robust income streams at favorable investment costs. Knowing when to say "no" is just as important as knowing when to say "yes" — if not more so.

While no investment can satisfy completely all of our criteria, in 1992 the company pursued two major opportunities that we believe meet most of our admittedly high standards.

CABLE OPERATIONS IN THE U.K. have the potential for providing attractive investment returns. The case for multi-channel television consumption in the U.K. is now established and strong. The licensing and regulatory environment is hospitable. The industry is now building with confidence. Moreover, our experience to date in Scotland has encouraged us to expand our commitment to this business.

Post-Newsweek Cable has pioneered an innovative and unique construction approach in which we build our systems in privately owned soft ground, rather than digging up city streets. This has significantly lowered our construction costs.

9 7 0 4 3 0 4 3 8 4 3

Our entry-level pricing strategy, featuring below-market rates, has enabled us to achieve exceptional penetration — with substantial pricing reserves to draw on in the future. We are now achieving penetration rates in excess of 35 percent, among the highest in the U.K.

Over the past three years, the company has invested $29 million in U.K. cable operations. We currently have licenses to pass almost 300,000 homes in three areas of Scotland, and we now have about 20,000 subscribers, compared to 8,000 at the end of 1991. We are actively pursuing additional cable opportunities in both Scotland and England.

The company also is evaluating the possibility of providing telephony, in addition to cable service, in its franchise areas.

PERSONAL COMMUNICATIONS SERVICES, or PCS, is an exciting new technology with the ability to make portable telephone communications available to everyone. PCS has low price points, high digital quality and full portability — with the size and convenience needed by busy people. It offers many options for a range of functionality.

PCS has large potential consumer and business demand and reasonable capital requirements. Of particular interest, PCS will have many value-added applications for data transmission.

In 1990 the company launched a partnership with our former cellular partners to exploit this new opportunity. Our partnership, called American Personal Communications (APC), has been operating test PCS systems in the Washington/Baltimore area since November 1991.

In October 1992, APC received a major boost when the Federal Communications Commission awarded the partnership a tentative pioneer's preference for personal communications services. APC was one of only three companies among 90-plus applicants to be awarded a pioneer's preference. If finalized, the pioneer's preference will likely give APC a PCS license for a market area in the Washington/Baltimore region.

Nonetheless, a number of key decisions must still be made by the FCC before the prospects for this business can be evaluated. The number of licensees, size of markets and bandwidth of spectrum per license all are crucial to the economics of PCS. Under the right circumstances, we will be aggressive in this industry.

STOCK REPURCHASES will continue to be an important part of the company's investment strategy. In 1992 we repurchased 33,949 shares of Class B common stock at a cost of $7.5 million.

NEW AND CONVERGING TECHNOLOGIES, in both communications and information-processing, are revolutionizing our world and our industry. Technology is speeding the flow of information and permitting data to be manipulated more creatively and productively. Technology is linking databases, networks and people. Perhaps most significant, technology is engendering a new level of interactivity between individuals and the media, a phenomenon that will increase dramatically in the future.

As a result of technological advances, previously distinct businesses are drawing much closer together, and previously separate industries have turned into rivals in some cases — and strange bedfellows in others.

We view today's technological revolution with optimism. We believe it will provide significant new opportunities for the company to increase productivity and expand current businesses, as well as develop new ones.

In March 1993, for example, Newsweek became the first general-interest magazine to be made available in a dynamic, new, interactive format on CD-ROM. The "Newsweek Interactive" disks are issued quarterly and focus on major news topics. Newsweek Interactive enables users to see and hear — at their direction — original text, still photography, video, sound, graphics and animation. The disks also include three months of Newsweek, selected Washington Post articles, and interviews

from Newsweek on Air, the weekly radio show. Our aim is to exploit ways to position Newsweek as a leader in this new field, which suggests an interesting future for traditional print media.

The New Media Center at The Washington Post newspaper also is exploring a number of technologies that could generate new services and increase the interactivity of the newspaper. For instance, exploratory work is under way with The Post's newsroom to determine how The Post can be transferred to other environments, such as personal computers. We are examining how screen telephones could combine voice and data to add value to Washington Post information. New technologies also are being investigated for advertising applications.

Meanwhile, the Center's Post-Haste telephone service, which provides stock quotes, sports scores and other information, rang up over 8.5 million calls in 1992. Post-Haste also is expanding its interactive services. One recent example: the night President Clinton presented his economic plan to Congress, Post-Haste opened a "tax-calculation" line. Users could call Post-Haste, enter code number 1040, provide their tax-filing status and gross income and find out how much their personal income taxes would be affected by the Clinton plan.

Some of the company's smaller businesses are making the most creative use of advanced technology. Legi-Slate, for example, provides online information about federal legislation and regulatory activity. It uses two large, current-generation mainframe computers that store enough information to fill a 65,000-volume library. Advanced search technology developed by Legi-Slate allows customers to find a single word or phrase anywhere in that library within seconds.

ACTV, Inc., creates and markets interactive-television programming and technology for entertainment and education applications. The Washington Post Company acquired an interest in this evolving, new-venture business in 1992. With ACTV's educational technology, each student sees and hears a program that responds to his or her individual answers. In some applications, teachers and administrators have worked hand-in-hand with ACTV to create unique interactive programs designed especially for their students.

These are just a few examples of the development work that is taking place throughout the company — and that builds on our skills and knowledge. Every division is engaged in this enterprise. To assist in this effort at the corporate level, Ralph Terkowitz was named the company's vice president-technology last September. Ralph had been vice president-data processing of The Washington Post newspaper since 1986.

It goes without saying, of course, that not every new technology will find commercially successful applications. There will be much trial and error along the way, and the road to profitability can be long. Nonetheless, we intend to pursue opportunities aggressively, take intelligent risks and extend our gaze farther afield than in the past.

ABOVE ALL, we remain convinced that regardless of the medium — the pages, pipes or particle fields through which data are transmitted — information content ultimately will govern business success. Journalistic skill and insight will be essential. Quality and integrity will be recognized and rewarded.

Although the challenges ahead are great, we believe the company has the people, resources and commitment to enhance editorial quality and exploit new technologies. We believe we can continue to deliver above-average returns to shareholders over the long term.

Sincerely,

Katharine Graham
Chairman of the Board

Donald E. Graham
President and Chief Executive Officer

Alan G. Spoon
Executive Vice President and Chief Operating Officer

March 5, 1993

Newspaper division operating income rose to $120.8 million in 1992, a gain of 35 percent from $89.5 million in 1991. Division revenue totaled $677.6 million, an increase of 5.4 percent over revenue of $642.7 million the previous year. Advertising linage at The Washington Post fell for the third consecutive year. After two years of decline, Post profits rose because of cost controls and more because of a declining price of newsprint.

THE THREE-YEAR RECESSION in the Washington market continued to have its effect on Post advertisers. More major stores went bankrupt or closed their doors. Retail ad inches fell almost 8 percent, although some of the lost inches were diverted to preprints, which rose 14 percent. Classified ad inches rose 0.4 percent, as both recruitment and real estate strengthened somewhat. General ad inches declined 7 percent. Total ad revenue rose for the first time in three years, though only by 3.7 percent.

While The Post's daily and Sunday circulation were up in the 12-month period ending September 30, 1992, Sunday circulation in the six-month period ending September 30 fell by 2,056, after a price increase from $1.25 to $1.50. Over ten years, Post circulation has risen by 30,000 daily and 179,000 Sunday. Circulation service continued to improve, partly because the production department printed the paper on time or early 99 percent of the time.

READERS BENEFITED from continued improvements in The Post's reporting. Several changes in election coverage served readers well and charted new directions for the media. In particular, The Post focused more on the voters themselves, with major national polling and reporting from across the country, where Post reporters traveled to find out directly what people were thinking. Post reporters came back knowing how dissatisfied voters were with politics as usual, gridlock in Congress and a sense that the national economy was slipping away from the people. The Post reported early on a surge of voter interest in this election — and a change in people's attitudes toward politics, the election and traditional candidates.

The Post also focused imaginatively on the issues. National staff reporters went to various parts of the country to write about problems voters had identified in their communities, such as health care and job retraining. The Post then examined the campaign promises made by the three major candidates about these issues and asked experts to evaluate the effectiveness of the candidates' proposals.

The Post's financial staff did a multi-part series on the national debt that explained its origins and impact and what could be done about it.

In addition, The Post tried to stand outside the political process and explain to readers what was taking place beneath the surface impression candidates were attempting to create through advertising, staged events and spin control.

Post photographers had an especially good year. Carol Guzy won Photographer of the Year awards from the National Press Photographers Association and the White House News Photographers Association. Dayna Smith won first-place awards in both competitions.

Steve Hills, who began his Post career as an ad sales representative, became the ad director. Bill Tompkins, who began as a circulation intern, became marketing director. Lee Horton, hired as a sales representative, became display advertising director. Rick Tippett, whose first job was merchandising clerk, became national advertising manager.

Carol Guzy won the Photographer of the Year award from the White House News Photographers Association. Davina Smith and John McDonnell won first-place awards in the competition. Carol also won the Photographer of the Year award from the National Press Photographers Association in the annual Pictures of the Year contest, and Davina won a first-place award in news photography for her photographs of the Los Angeles riots.

Under Springfield plant manager Gary Lucke and packaging and distribution manager Kelly Benson, the mailers and helpers of The Post's newly expanded Springfield mailroom handled large increases in daily and Sunday preprint volumes.

In its sixth year, The Post's "500 Club" scholarship program at Eastern High School has given college scholarships to 376 students. Eastern students, by getting all "A's" or "B's" on their report cards, can win a $500 college scholarship each semester. The program was conceived by vice president-public relations Vince Reed, and personnel director Jacqui Marshall carries out its administration.

Under editor Steve Luxenberg, reporter Charles Shepard wrote an important series of stories about waste at United Way of America national headquarters and, with freelancer Florence Graves, revealed the complaints by women of unwanted sexual advances by Senator Robert Packwood.

The Herald's publisher, Larry Hanson, celebrated his 35th anniversary with the Snohomish County (Washington) newspaper. The Everett High School graduate started his career at the paper as an advertising messenger.

9/0435847

Keith Richburg brought breadth, depth and readability to his coverage of Africa, especially of the calamity in Somalia, the dimension of which he was one of the first to report. His front-page reporting and analysis were on the breakfast tables of U.S. decision makers, who intervened to end the starvation in Somalia.

Home delivery circulation complaints fell for the fifth straight year. In five years, daily complaints are down by more than 30 percent, Sunday by 34 percent. Home delivery managers Steve Reed, David Dudisman, Lou Fabian, Phil Hottle, Lee McAdory and Paul Poff lead the team that did it.

Peggy Hackman, editor of the Style Plus page, and staff writer Don Oldenburg held a "Dear Mr. President" essay contest asking children to express their ideas for President Clinton. Unexpectedly, the Clinton transition team invited the winners to bus to Monticello, meet the President-elect and tell him their ideas. Circulation's Kathy Soulia orchestrated the trip to rave reviews.

Under Angela Green, Kris Jirgl and Tom Konisiewicz, the Business Development Unit increased revenue from The Post's smallest retail customers by 20 percent and signed up 800 new accounts.

Circulation's Tony Mineart and Candace Medd worked with the Metro transit system to develop a newspaper recycling bin. Subway riders can deposit newspapers for easy collection. Capitol Fiber, a Post subsidiary, buys and sells to recyclers all the newspapers collected by the D.C. government and several Maryland counties.

Blaine Harden and Mary Battiata covered the war in Bosnia for The Post. They covered the whole story of what was happening: Sarajevo, the prison camps, ethnic cleansing, daily life. Harden's six extended trips to Sarajevo and Battiata's continued courageous war reporting brought the reality of the war to Washington readers.

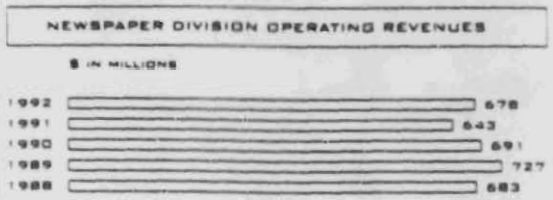
Sherry Gryder, who began her Post career as a mailroom helper, became the composing room superintendent.

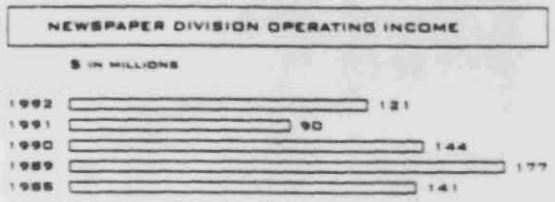
THE NATIONAL WEEKLY EDITION of The Post averaged 113,000 circulation for the year, up from 45,000 in its first full year, 1984. Advertising has increased by more than 10 percent a year since the launch.

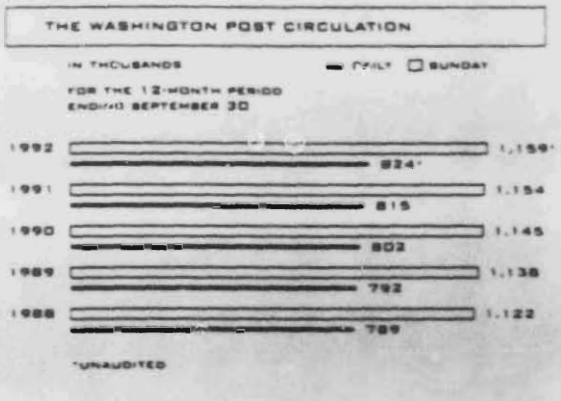
THE HERALD, the company-owned paper in Everett, Washington, had a good year. Operating income increased. Circulation also grew as a result of The Herald's conversion in 1991 from afternoon to morning publication. The circulation department has begun establishing regional distribution centers that will provide additional revenue opportunities while significantly reducing distribution costs.

THE WASHINGTON POST WRITERS GROUP had a strong year, thanks in part to the political season. Columnists George Will, Ellen Goodman, David Broder and William Raspberry are among the most respected commentators in the country. Although the Writers Group specializes in op-ed material, the Group's comic strips — Non Sequitur, Outland and Pickles — showed dramatic growth.

ACQUISITION of an 84 percent interest in The Gaithersburg Gazette, Inc., was completed during 1992. The company publishes 13 free-distribution community newspapers in suburban Maryland. Total circulation of the group is in excess of 120,000. The Gazette also publishes a paid legal newspaper serving Montgomery County, Maryland.







Broadcast division operating income rose to $54.6 million, an 11.2 percent increase from $49.1 million in 1991. Division revenue was down slightly to $162.2 million, compared to $163.5 million in 1991.

Post-Newsweek Stations battled against soft advertising environments in all four markets — and against the fury of Hurricane Andrew. Without Miami's lost revenue in the wake of Andrew and, in Detroit, less revenue from sports advertising, division revenue would have increased by about 4 percent.

Post-Newsweek managers intensified their efforts to control costs in 1992. Budgeted expenses for the four stations in 1993 are actually $3 million lower than the PNS budget of five years ago.

WDIV/TV4-DETROIT continued as ratings leader in the key 11:00 p.m. news slot, despite NBC's primetime decline to third place. Channel 4 also ascended to the number one position in daytime, with strong syndicated programming.

Post-Newsweek's acquisition in November of Pro Am Sports System (PASS) provided WDIV with new opportunities for future growth. PASS, a cable sports network with 775,000 subscribers in Michigan and northwest Ohio, offers Tigers baseball, Red Wings hockey and Pistons basketball, as well as major college sports and a variety of other sports programming. PASS will build on WDIV's strengths: sports programming and production skills, substantial and deep relationships with teams in the market and ad sales capabilities.

As part of the company's effort to tap syndicated programming opportunities that derive from our unique news resources, WDIV produced "Hoffa: The True Story," a one-hour special on the life and disappearance of the teamster leader. The program attracted national attention and was syndicated to more than 120 stations in the United States.

The Washington Post newspaper and Post-Newsweek Stations also joined forces to produce a two-hour special on Watergate that was broadcast in June on CBS and ranked number one in its time period.

WPLG/TV10-MIAMI enjoyed its eighth straight year as the number one station in South Florida.

In August Hurricane Andrew hit south Miami with devastating force, leaving a trail of destruction in its wake. Channel 10's Eyewitness News provided eight days of around-the-clock live coverage of the storm and its aftermath. Many employees worked 12-hour shifts.

The station used its annual primetime "Time to Care Volunteerathon" to aid hurricane victims, collecting over 6.75 million volunteer hours donated by local citizens.

WFSB/TV3-HARTFORD met the challenge of a recessionary local economy that continues to suffer from a downturn in defense spending. WFSB again achieved first-place ratings with news leadership, the Super Bowl and the Winter Olympics, and

9 7 0 4 3 0 4 3 8 5 C

AT WDIV... *Weathercaster Mal Sillars, a scuba diver, thought of broadcasting live from the bottom of the Detroit River to document the recovery of an anchor lost by the ship Edmund Fitzgerald. Obstacles included developing underwater audio communications and transmitting the live signal from the river bottom. Engineering supervisor Tim Redmond and maintenance engineer Kim Culhane developed the video and communications link. Mal hosted the live anchor raising with reporter Mike Wendland. The primetime program, "Live Dive," won its time period and raised $100,000 for the Dossin Museum of the Great Lakes.*

Marcus Williams, WDIV's chief engineer, coordinated and supervised the move of Pro Am Sports System (PASS) from Ann Arbor, Michigan, to the WDIV building under an eight-week time constraint. After extensive reworking of WDIV's technical areas, PASS went on the air from WDIV without a problem.

Under the supervision of vice president for programming and promotion Henry Maldonado, with production manager Don Graham (no relation) directing, promotion manager Terri Turpin-Amato producing and staff videographer Kevin Hewitt filming, WDIV brought all of its on-air promotions in-house. WDIV turned out a series of promotional commercials that exceeded agency quality at one-fourth of the cost.

Weathercaster Chuck Gaudica developed an idea for a dramatic change in the visual presentation of the weather. He introduced a new computer map system that animates the weather forecast in 3-D. With the creative help of weather producer Paul Gross and the technical expertise of chief engineer Marcus Williams and engineer Bill Mullin, WDIV tailored the computer graphics and an innovative chromakey display into a distinctive weather presentation unlike any other in the country.

AT WPLG... *Weatherman Todd Tongen left his weather maps and filed reports on Hurricane Andrew from the Sky 10 helicopter. Todd flew over rooftop signs that identified a group of migrant workers who had been stranded for several days without food and water. Todd reported their location, and they received supplies within hours.*

Steve Flanagan, WPLG's chief engineer and Post-Newsweek Stations' vice president of engineering, masterminded WPLG's return to air after the tower that links the studio with the transmitter came crashing down during the hurricane. WPLG was broadcasting again within three hours and 20 minutes.

Community services director Mindy Welch mobilized Southern Bell and the Red Cross to create the Time to Care Hurricane Helpline. It logged over 500 calls daily for eight weeks. Over 30,000 hurricane victims were helped by the service.

9 / 0 4 3 0 6 3 8 5 2

Because there was no power to run air conditioning, Paul Kamienski and Jim Knutt, promotion producers, edited the first Hurricane Andrew Time to Care public service announcement in a 110-degree edit room. Between edits they had to turn off all equipment to allow for cooling. The announcement took ten hours to complete and was on the air within 24 hours after the storm.

A SPECIAL THANK YOU TO: *Beth Horowitz, Frank Discenza and Dave Wszykowski at WFSB; Jim Riggers, Terry Farrar, Tammie McMillan, Jennifer Jaronski and Tina Schultz at WJXT; and Barry Schlegel from the Washington Bureau for coming to WPLG to help weather the storm.*

AT WFSB... *General sales manager Kathleen Keefe instituted a job-share plan that enabled two valued employees to share an account executive position and successfully balance careers and responsibilities at home. Kathleen's leadership was largely responsible for WFSB's gain in advertising share in 1992.*

After he underwent heart transplant surgery, urban affairs director Elijah Young worked a good part of 1992 from Hartford Hospital and from home. Co-workers gave 65 pints of blood. Elijah returned to the station at year-end.

AT WJXT... *In addition to her normal duties as manager of community services, Tracy Gaffney spent countless hours coordinating and staffing the WJXT Voter Van, a mobile voter registration unit that traveled all over Jacksonville. Tracy and her volunteers signed up 7,190 new voters. The project was inspired by a similar effort at WFSB.*

Under the direction of general sales manager Tom Bornhauser, local sales manager Jack Potter and national sales manager Steve Danowski, WJXT's sales department dramatically exceeded its revenue budget and posted strong gains over the previous year. The local and regional staff significantly outperformed the marketplace. J. J. Currie led the effort to garner new business and won the station's new business contest.

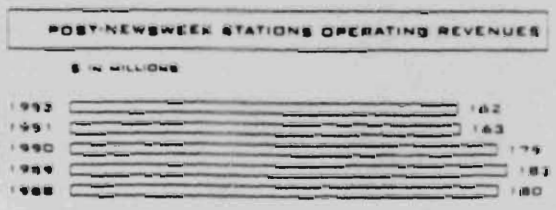
George Winterling, chief meteorologist, celebrated his 30th anniversary with WJXT. On an anniversary road tour through Jacksonville and outlying viewing areas in July, George broadcast live weather reports and showcased the various communities. In turn, the communities saluted George for his depth of knowledge about weather, innovations in weather graphics and dedication to his profession.

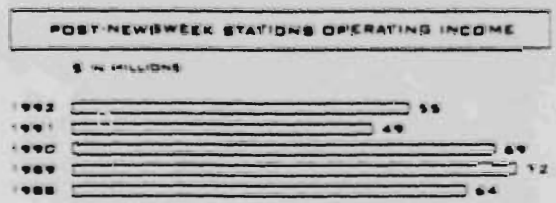
improved CBS programming. Despite tough economic times, the station realized spot revenue growth of 11 percent and is the market revenue leader.

WESB also continued its leadership role in addressing community concerns with daily editorials and award-winning documentaries on economic and social problems. A news series on protecting children and adults from abuse and molestation met with tremendous viewer response. The series was complemented by a public awareness campaign, including the distribution of 130,000 brochures on how to protect children from abusers.

WJXT TV4-JACKSONVILLE maintained its perennial market dominance for another year, closing out 1992 with some of the highest ratings in the station's history. November Nielsen ratings revealed that WJXT had achieved a 45 percent viewer share for its 6:00 p.m. newscast — compared to a 30 percent share for the other two local news stations *combined*.

The station also enjoyed a revenue resurgence in 1992, increasing its overall revenue share thanks to successful new marketing strategies, increased automobile advertising and election-year revenue.





The cable division turned in another strong performance in 1992, with operating income from both domestic and U.K. operations totaling $39.0 million, an 11 percent increase compared to $35.0 million in 1991. Revenue for 1992 was $174.1 million, an increase of 9 percent over revenue of $159.5 million in 1991. Post-Newsweek Cable's domestic cable cash flow rose 9 percent to $82.0 million, from $75.3 million the previous year.

Domestic fixed costs increased by 5 percent — the result of more subscribers and continuing increases in the cost of doing business.

DOMESTIC BASIC SUBSCRIBERS rose to 463,015 at the end of the year, a gain of 11,336 from the beginning of 1992. This number represents 68.7 percent of homes passed, up slightly from last year's 68.4 percent. In the two previous years, subscriber gains were approximately 15,000 and 20,000, respectively. The Highland Park, Illinois, and Sioux City, Iowa, systems were the biggest gainers, with subscriber increases of more than 1,000 each.

California, victim of earthquakes, floods and riots, continued to experience tremors from the national recession in 1992. Post-Newsweek Cable's two largest systems, Modesto and Santa Rosa, also felt the impact. Modesto lost almost 1,000 subscribers, after gaining almost 5,000 during the three previous years.

In December PNC acquired more than 10,000 subscribers in Long Beach, Mississippi, expanding the Gulfport area operations to over 31,000 subscribers. The Kirksville, Missouri, system grew by 500 subscribers, with an expansion of service to the student dormitories at Northeast Missouri State University.

ADVERTISING SALES rose 17.1 percent to $7.1 million. Twenty-one Post-Newsweek Cable systems now sell both spot and classified advertising, while 13 sell spot only, and three sell classified only. Advertising in 17 systems is sold by PNC employees, while advertising in 20 systems is contracted out to third parties.

Pay-per-view revenue declined by 6.2 percent in 1992 to $2.9 million, down from 1991's $3.1 million. Compared to the previous year, there were relatively few pay-per-view events offered in 1992. NBC's "Triplecast" of the Summer Olympics from Barcelona was an important milestone for the pay-per-view business, providing a high name recognition event. However, successful as the event was in terms of programming, the Triplecast fell far short of expectations. Although the programming was available to almost 90 percent of Post-Newsweek Cable subscribers, fewer than 1 percent purchased any part of the Triplecast coverage.

Post-Newsweek Cable of Ardmore, Oklahoma, made available its production equipment to Summer Intervention Program, an initiative designed to identify, work with and encourage students at risk of dropping out of school. David Wall, Susan Brown and Lanola Borin coordinated Post-Newsweek's involvement with the students, who wrote, produced and filmed a video on the history of Ardmore.

Jim Perry, Greg Sare, Bob Richard, Don Muths, Gail Engle and other Post-Newsweek Cable employees in Concordia and Abilene, Kansas, worked for 26 consecutive days to construct new cable program reception towers to restore distant over-the-air television channels from Wichita and Kansas City. The two 400-foot towers were toppled by tornadoes and devastating high winds in July.

Bob Foster, director of public access for Post-Newsweek Cable of Modesto, California, in cooperation with Modesto Junior College, produced a 12-minute video describing employment success stories about people with disabilities. In April 1992 President Bush's Committee on Employment of People with Disabilities honored the program with the 1992 media award for best information/education television programming.

Sooland Cable in Sioux City, Iowa, participated in a working partnership with a new magnet school for students with above-average ability. The new school's need for promotion was met by Sam Attolico, manager of Sooland Cable, and other system employees. They devoted their efforts and time explaining the school to the public via their Community Bulletin Board Channel, which carried the school's weekly activities. Their efforts also included special encouragement to teachers and administrators to use the resources of Cable in the Classroom programs. Employees visited the school and demonstrated equipment and technology necessary to obtain the programming.

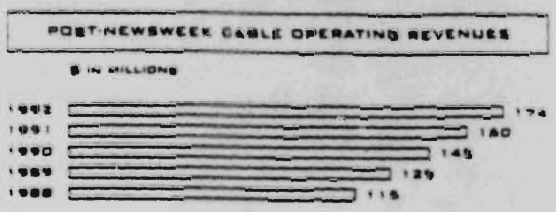
Every year many Post-Newsweek systems and employees play key roles in the activities of the communities they serve, such as telethons, United Way campaigns and charity events. To highlight a few in 1992:

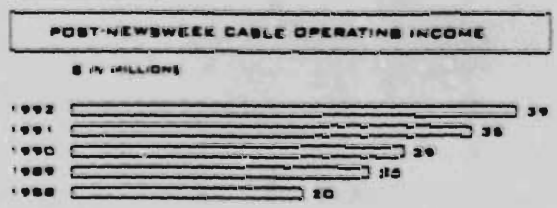
Pacific Cable Television, managed by Susan Adams and located in Burlingame and Union, California, received the Award of Achievement from the San Mateo County United Way in recognition of management's support of, and employee participation in, an outstanding United Way campaign.

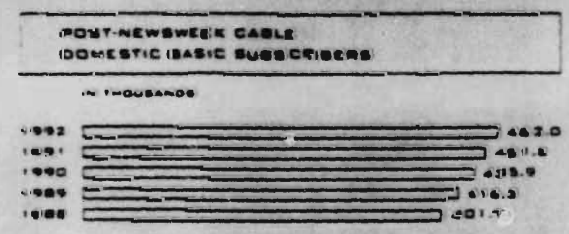
Post-Newsweek Cable of Highland Park, Illinois, hosted a one-day telethon that raised over $15,000 for 28 social service providers in the Chicago area; donated and installed a security camera in a low-income housing complex for the elderly to permit the residents to screen visitors; and donated equipment and provided staff to decorate Highwood's streets for the holidays.

Post-Newsweek Cable of Sherman, Texas, donated use of office space in Denison to Helping Hands, a non-profit organization that annually provides food and clothing to hundreds of needy families in Grayson County, Texas.

CABLE REREGULATION drew closer in October when Congress passed the Cable Act of 1992, overriding President Bush's veto. The new law will increase cable regulation in many areas, but its full impact cannot be assessed until FCC rulemakings are further defined. Post-Newsweek Cable systems have long anticipated reregulation and are well positioned for the new law.







Newsweek successfully swam upstream all the way in 1992, achieving revenue and income gains against the adverse currents of a soft magazine advertising environment. Operating income increased 162.9 percent to $23.9 million, from $9.1 million in 1991. Revenue totaled $347.1 million, up 6.3 percent from $326.5 million in the previous year.

Newsweek posted a significant increase in advertising volume, with advertising revenue up 9 percent over 1991 levels. Large increases came from the business products, financial services and packaged goods categories. Circulation revenue rose 3 percent.

Total expenses increased less than 2 percent in 1992. Cost control remains a top priority.

NINETEEN NINETY-TWO was an exciting year for Newsweek and its readers. It was an election year marked by the tenacity of Bill Clinton, the resurrection of Ross Perot and the self-destruction of George Bush. It was a year when readers struggled to make sense of the terror in Bosnia, the agony in Somalia and the explosion of racial strife in Los Angeles.

Thirty-six hours after the polls closed, Newsweek's special election issue, "How We Won: The Untold Story of Bill Clinton's Triumph," arrived at the newsstands. The 59-page "inside story" was the product of a first-rate reporting effort by Newsweek's special projects election team, which had access to confidential memos and strategy sessions. Correspondent Mark Miller shadowed Clinton so closely that campaign manager James Carville joked Miller knew more about what was happening in the Clinton camp than Carville did. Senior White House correspondent Tom DeFrank showed how Bush lost the election because he lost the confidence of his inner circle. Correspondent Andrew Murr infiltrated the Perot campaign and emerged with a first-hand account of a secretive, autocratic and politically naive contender who ultimately unraveled his own candidacy. Newsweek's team of crack political reporters — Eleanor Clift, Howard Fineman, Jonathan Alter, Ann McDaniel and Joe Klein — provided superior coverage on a weekly basis. The net result was the most complete and insightful account of the entire 1992 campaign, earning Newsweek its sixth Best in the Business award from journalism colleagues surveyed by the American Journalism Review.

Last spring, when Los Angeles exploded in rioting, Newsweek devoted almost an entire issue to the crisis and followed up the next week with the comprehensive "Beyond Black & White" cover story to further explore the roots of the riots and fallout from the turmoil. Newsweek medical editor Geoffrey Cowley kept health issues at the forefront ("Tuberculosis: A Deadly Return" and "Is A New AIDS Virus Emerging?"). Five Newsweek correspondents and four photographers traveled to ten countries on four continents to produce "Slavery," a tragic story about how this practice continues in Europe, Latin America, Southeast Asia, the Persian Gulf and Africa, as told by the victims themselves.

Assistant managing editor Alexis Gelber and senior editor George Hackett developed "Newsweek Just for Kids!??," a special pull-out section geared to children. The first edition, produced in 1992, was an election special profiling the candidates and explaining their positions. A "Where's Waldo?" section encouraged kids to find well-known political figures. "Kids" editions on the environment and technology will be published in 1993.

Taking the lead from U.S. director of finishing/distribution Jack Widener, who identified cost reduction opportunities, Mark Heeman and Sean Fenlon of U.S. manufacturing/distribution renegotiated the method their printers use to determine the cost of printing Newsweek's numerous domestic editions. Mark Heeman and Bill Anderson also implemented a new transportation program for subscriber copies. These two changes resulted in a savings of almost $200,000.

Mike Anslow, Atlantic circulation newsstand representative, successfully developed sales and distribution in some of the most troubled countries in Eastern Europe, including the recently independent Baltic states. He established Newsweek distribution throughout his territory, while avoiding non-convertible currencies.

Newsweek decided to develop the CD-ROM version of the magazine for Sony's new MMCD player through a marketing partnership nurtured by regional marketing director Randy Siegel and executive vice president and general manager Harold Shain.

Newsweek was able to sell its "election extra" to two major advertisers, thanks to a successful sales effort led by regional marketing director Nick Friese. Major investments were made by Chrysler, sold by Detroit advertising manager Terry Brady and sales representative Ron Frederick, and Hewlett Packard, handled by San Francisco advertising manager Bill Murray.

Janet Rouse, Atlantic subscription promotion controller, undertook the task of introducing a new and personalized series of renewal mailings. This required careful monitoring of subscriber names across over 100 countries to ensure they were addressed correctly. The result was a significant increase in responses, which contributed to renewals exceeding 100,000 for the first time.

In a year of extraordinary news events, including the election and the Olympics, director of photography Jimmy Colton kept photo costs on budget. Colton also launched Photo Journal, a regular department that showcases photo journalism.

9 7 0 4 3 8 4 3 8 6 C

London bureau chief Dan Pedersen displayed extraordinary initiative, persistence and tact in lining up a piece by former British Prime Minister Margaret Thatcher. In the article Thatcher sharply criticized her successor, John Major, whom Dan also persuaded to write a piece.

When the art department switched its layout procedure from boards to desk-top computers, production manager Rose Lines helped devise a new system that made the difficult transition work efficiently.

Haruhiko Suzuki sold Citizen, a major watch manufacturer, a truly timely series of five spreads on the America's Cup. Citizen wanted the ads to cover qualifying events that took place after normal ad closings — sometimes hours before the magazine was printed. Tokyo and New York special sections used the latest high-speed transmission equipment, on-the-spot photography and writers, and minute-by-minute coordination to publish the spreads.

A team from U.S. sales proved that Newsweek is the best environment for travel advertising, winning one of the most coveted accounts among magazines. Cruise Lines International Association (CLIA) ran its second advertising supplement exclusively in Newsweek, generating 60 pages of business in 1991-1992. Newsweek's advertising/marketing team included New York ad manager Lee Jones, director of travel advertising Patricia Slattery, and managers of special sections Bill Grafton and Beth Polazzo.

Rather than mailing Newsweek International from printing sites, Atlantic traffic manager Brian Bamford negotiated successfully with several foreign postal authorities to mail the magazines within countries of destination. The results have been great in terms of money saved and improved delivery, often 24 hours faster. Brian found his way through bureaucratic red tape, secured new mailing houses, handled the logistics of changing address formatting demands and coordinated transportation.

Maggie Buehler, associate director of personnel, juggled multiple projects at once, including conversion of the personnel information computer system, a change of savings plan administrators and creation of personnel communication materials to support several project teams.

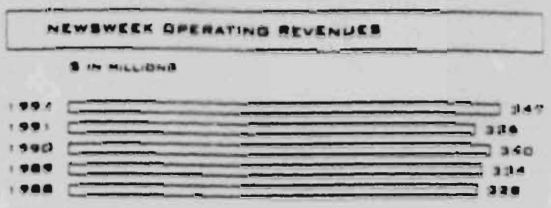
Newsweek saved almost $1.2 million on subscription sales taxes in 1992. Led by tax director Joe Sampson, a team of staffers from accounting, circulation, customer service and information systems developed a computer software system that calculates sales tax and bills it to subscribers.

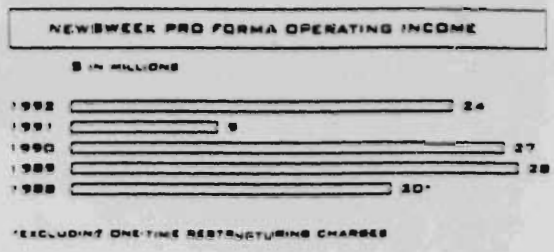
NEW TECHNOLOGIES enabled Newsweek to expand its reach and appeal to readers. Newsweek Interactive — an interactive CD-ROM version of the magazine with original text, sound, photos and moving images — was conceived and developed for introduction in 1993. Peter McGrath, managing editor of Newsweek International, and technology editor Michael Rogers led development of editorial content. Newsweek will offer annual subscriptions to the quarterly disks, which also contain three months of Newsweek and selected Washington Post articles, as well as interviews from "Newsweek On Air," the weekly radio show.

Newsweek Focus also reinforced Newsweek's reputation as an innovator. Newsweek was the first major magazine to use selective binding to enable subscribers to customize their magazines. Subscribers can choose among four topics — Books in the News, On Your Money, International Scene and Science and Technology. Each eight-page section appears once a month.

NEWSWEEK INTERNATIONAL posted record circulation and advertising revenue in 1992. Steady circulation growth enabled Newsweek International to increase rate bases in all three of its principal editions for 1993. The Atlantic edition increased its base by 1.5 percent to 340,000; Asia increased by 2.3 percent to 225,000; and Latin America increased by 7.7 percent to 70,000.

Newsweek's two foreign-language editions enjoyed a successful year. The Japanese-language edition, Nihon Ban, maintained its 1993 rate base at 160,000, while Hankuk Pan, Newsweek's Korean-language edition, maintained its 1993 rate base at 70,000. Newsweek remains the only newsweekly with foreign-language editions.





OTHER BUSINESSES

Other businesses, including Stanley H. Kaplan Educational Center, Legi-Slate and American Personal Communications (APC), produced revenue of $89.9 million in 1992, up slightly from 1991's total of $88.1 million. Continuing investment in APC accounted for a large part of the $6.1 million operating loss of this segment in 1992. Also included in the loss is the effect of the restructuring at Kaplan.

STANLEY H. KAPLAN EDUCATIONAL CENTER, the nation's leading test preparation company, continued to head the class with enrollments higher than last year. However, revenue decreased, and Kaplan results were affected by a one-time restructuring charge.

The restructuring charge related to the conversion of 82 independent contractors and their 3,500 employees to Kaplan employee status. This move, scheduled for completion in early 1993, will create greater operating efficiencies and should enhance marketing opportunities. The company expanded its marketing and field operations management teams in 1992 to optimize these new opportunities.

KAPLAN'S INTERNATIONAL prospects appear bright. In today's global economy, U.S. educational institutions are attracting more students from around the world. Kaplan is capitalizing on this phenomenon with aggressive development of its international operations. In the past year Kaplan signed licensing agreements with partners in Hong Kong, China, Taiwan and the Philippines, and began offering advanced medical programs in Western Europe. Additional courses and licensees are anticipated for 1993.

AT KAPLAN... *The New Technology Group, including Paul Sciabica, Bill Caplis, Bob Edelman and Rob Garrelick, developed an exciting new selling tool — a 20-minute SAT diagnostic test with an immediate two-page personalized analysis. The computer-based system is up and running at all 151 Kaplan centers.*

Bob Stanton, associate director of the product development and research department, oversaw the complete modernization of the SAT Challenge course.

In her information seminars, Dr. Rochelle Rothstein, MCAT and advanced medical product manager, has helped thousands of physicians understand the complex licensing process. Her work in product development and marketing was a key factor in increased enrollment in 1992.

Despite tough competition and a soft economy, Westchester County (New York) marketing coordinator Dawn Fagenson increased the number of Kaplan SAT enrollments by 26 percent.

National director of nursing programs Judy Berkhardt and product manager/nursing Cathy Mansell are in the forefront of dealing with the nation's nursing shortage as frequent speakers at state and national nursing conventions. Kaplan nursing enrollment was up 40 percent in 1992, and Kaplan students had a much higher pass rate than the national average.

David Cleland, vice president/international, hit the ground running when he joined Kaplan in July. Since then he has signed up licensing partners in Hong Kong, Taiwan, China and the Philippines. David also has selected sites for Kaplan-owned centers in London, Paris and Rome, set to open in early 1993.

As 82 independent contractors and their 3,500 employees prepared to become Kaplan employees, the team of director of human resources Faith Wittner, benefits manager Willie Margalis and payroll supervisor Angela Palumbo successfully developed and implemented policies and systems for this important undertaking.

9/0458864

AT LEGI-SLATE... *Legi-Slate unveiled its new "Hot Bills" service. The service provides an instant summary of information on the "hottest" pieces of legislation coursing through Congress, as measured by committee activity, floor speeches and debates, news stories and constituent inquiries. Judi Merriman, Legi-Slate's supervisor of congressional information, culled 144 "hot bills" from 12,000 bills that were not so hot and kept them all up-to-date for Legi-Slate subscribers.*

Karen Caldwell Eldridge, a Legi-Slate account representative, enlisted the assistance of three District of Columbia high school students to help her computerize client information. Names, addresses, renewal dates and subscription levels have been put into easy-to-use graphic form. The computer model is available to other Legi-Slate marketing reps. The three students received academic credit for the practical, hands-on training they received.

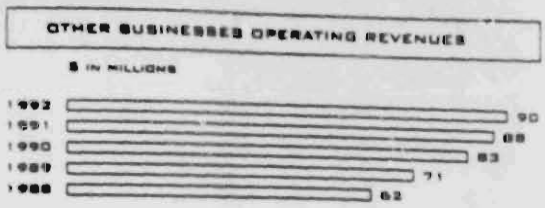
9/0438865

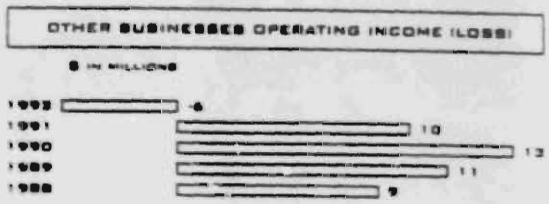
LEGI-SLATE, INC., the nation's leading online information service for Congress and federal regulations, celebrated its fifteenth anniversary year by posting record revenues and operating income. The White House, Congress, Cabinet departments, law firms and a who's who of domestic and foreign corporations are among the thousands of subscribers who depend on Legi-Slate for immediate access to the most up-to-date versions of U.S. laws, federal regulations and the current U.S. Code.

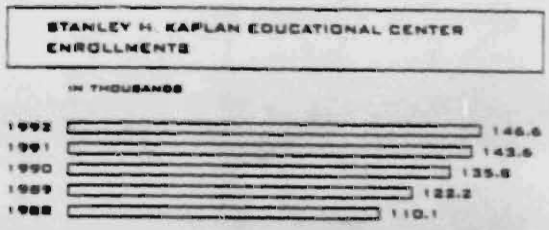
To accommodate growing subscriber demand, Legi-Slate upgraded its computer system. Other technical improvements made Legi-Slate's research service still easier to use.

The company reached an agreement with The Bureau of National Affairs, Inc., to market, in early 1993, BNA online information services as enhancements to Legi-Slate subscriptions. BNA is a highly respected publisher of government-related news and information, and Legi-Slate is the only online subscription service of its kind to have such a marketing arrangement with BNA.

Legi-Slate also joined the Internet system in 1992, making its legislative, regulatory and statutory information more widely available to universities and other academic and research institutions. Internet, established by the National Science Foundation, is the computer "network of networks," linking dozens of database services with thousands of students and computer users.







REPORT OF INDEPENDENT ACCOUNTANTS

To the Board of Directors and Shareholders of
The Washington Post Company

In our opinion, the consolidated financial statements appearing on pages 23 through 37 present fairly, in all material respects, the financial position of The Washington Post Company and its subsidiaries at January 3, 1993 and December 29, 1991, and the results of their operations and their cash flows for each of the three fiscal years in the period ended January 3, 1993, in conformity with generally accepted accounting principles. These financial statements are the responsibility of the Company's management; our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with generally accepted auditing standards which require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for the opinion expressed above.

Price Waterhouse

Washington, D.C.
February 2, 1993

9/0438867

MANAGEMENT'S DISCUSSION AND ANALYSIS OF RESULTS OF OPERATIONS AND FINANCIAL CONDITION

This analysis should be read in conjunction with the consolidated financial statements, notes thereto and the comparative data relating to the company's operating divisions included in the Letter to Shareholders on pages 2 through 7.

RESULTS OF OPERATIONS — 1992 COMPARED TO 1991

In 1992 net income increased 80 percent to $127.8 million, from net income of $70.8 million in 1991. Earnings per share increased 81 percent to $10.80, from $5.96 last year. The company's 1991 earnings included a one-time, after-tax charge of $47.9 million ($4.04 per share) relating to a change in accounting for certain employee postretirement benefits. Net income in 1991 also included a credit of $10.0 million ($.84 per share) resulting from a favorable settlement with the Internal Revenue Service (IRS) and an after-tax charge of $3.5 million ($.30 per share) for severance and related costs resulting from a voluntary reduction in staff at The Washington Post newspaper. Excluding these nonrecurring charges and credits from 1991 results, both net income and earnings per share for 1992 increased 14 percent.

Results for 1992 include 53 weeks at The Washington Post and The Herald newspapers; 1991 included 52 weeks. Also included in 1992 are the acquisitions of The Gaithersburg Gazette, Inc., and Pro Am Sports System, Inc. (PASS), as well as several other smaller businesses.

Total operating revenues in 1992 were $1,451 million, an increase of 5 percent from $1,380 million in 1991. The improvement was due to a 5 percent rise in advertising revenues, an increase of 6 percent in circulation and subscriber revenues and a 4 percent increase in other revenues.

Revenues at the newspaper division rose 5 percent from 1991 levels, mostly due to a 5 percent increase in advertising revenues. Results at The Gaithersburg Gazette also contributed to the increase. Rate increases more than offset the 4 percent decrease in advertising linage at The Washington Post, reflecting the slow economic recovery of the Washington, D.C., market. Retail volume decreased 8 percent, and general volume was down 7 percent, while classified volume was flat. Preprint volume, on the other hand, rose 14 percent as a result of increased daily demand for inserts by advertisers, some of which were formerly users of ROP. Circulation revenues increased 5 percent in 1992, due to an increase in Sunday rates.

Broadcast division revenues decreased 1 percent. Local advertising revenues rebounded from 1991 levels, increasing 6 percent. However, national and network revenues fell 6 percent and 9 percent, respectively, more than offsetting the increase in local advertising. Results also reflect the impact of Hurricane Andrew on WPLG in Miami and lower advertising revenue related to sports programming at WDIV in Detroit.

At Newsweek total revenues increased 6 percent in 1992. Advertising revenues increased 9 percent, bolstered by a combination of volume and rate increases at both the domestic and international editions. Newsweek circulation revenues rose 3 percent over 1991 levels. Higher subscription rates at the domestic edition were principally responsible for the increase. During the year the domestic edition produced the same number of weekly issues as in 1991 (52); 1992 also included the publication of one special issue, compared to four in 1991. The international edition published 51 issues in both 1992 and 1991.

Cable division revenues in 1992 rose 9 percent over the prior year. Contributing to the increase were a 3 percent rise in the number of basic subscribers, higher rates and increased advertising at the domestic systems. On December 31, 1992, the company acquired the assets of Coast TV Cable, Inc., which added approximately 10,000 subscribers. The number of subscribers in the company's cable systems in the United Kingdom rose to 20,000 at the end of 1992, from 8,000 at the end of 1991.

In 1992 revenues from other businesses increased 2 percent, primarily as a result of the newly acquired businesses in 1992. At Stanley H. Kaplan Educational Center, enrollments increased 2 percent; however, the improvement resulted from increased registrations for lower priced courses, while enrollments in higher priced courses decreased.

Total operating costs and expenses were $1,219 million, an increase of 3 percent over $1,187 million in 1991. Included in 1991 operating expenses was a pretax charge of $6 million for severance and related costs resulting from a voluntary reduction in staff at The Washington Post newspaper. Also included in 1991 expenses was a write down of the company's programming rights to "The Cosby Show." Excluding these charges in 1991, total operating costs and expenses increased approximately 4 percent in 1992. This increase reflects normal increases in payroll and related fringe benefit costs and other expenses, partially offset by lower newsprint and magazine paper costs. Higher costs related to the expansion of cable operations in the United Kingdom and continued investment in personal communications services (PCS) also contributed to the increase. Several nonrecurring charges are included in 1992, including charges related to a restructuring at Kaplan and net expenses related to the termination of one of the health care plans at The Washington Post newspaper.

Income from operations increased 20 percent in 1992. The newspaper division's operating margin increased to 18 percent, from 14 percent in 1991. Included in 1991 were the costs related to the voluntary reduction of staff mentioned previously. The operating margin at the broadcast division increased to 34 percent, from 30 percent in 1991, which included the write down of programming rights to "The Cosby Show." Newsweek's operating margin increased to 7 percent, from 3 percent in the prior year. The cable division's operating margin was 22 percent in 1992, unchanged from the prior year. Operating income at the company's other businesses decreased from $10.2 million in 1991 to an operating loss of $6.1 million in 1992, due to the continuing investment in PCS and lower operating results at Kaplan.

The company's equity in earnings of affiliates for 1992 was a loss of $11.7 million, compared with a loss of $1.9 million in 1991. Further weakness at the company's newsprint manufacturing affiliates contributed to the loss.

Net interest income totaled $5.5 million in 1992, compared with net interest expense of $.4 million in 1991. Included in 1991 were a fee of $2.1 million related to the $50 million prepayment on the company's 10.68 percent unsecured promissory notes and interest of $1.6 million related to the tax settlement with the IRS, mentioned previously.

Other expense in 1992 and 1991 included the costs related to the disposition of certain plant, property and equipment. In 1992 other expense also included the recognition of unrealized losses on the company's forward foreign currency contracts.

The effective tax rate increased to 43 percent in 1992, from 37.6 percent in 1991, exclusive of the cumulative effect of the change in accounting principle. The favorable settlement with the IRS significantly lowered the effective tax rate in 1991.

RESULTS OF OPERATIONS — 1991 COMPARED TO 1990

In 1991 net income decreased 59 percent to $70.8 million, from net income of $174.6 million in 1990. Earnings per share also declined 59 percent to $5.96, from $14.45 in 1990. Included in 1991 results was an after-tax charge of $47.9 million ($4.04 per share) relating to a change in accounting for certain postretirement benefits. Excluding this one-time charge, the company's net income decreased 32 percent to $118.7 million ($10.00 per share).

Also included in 1991 was a credit of $10 million ($.84 per share) resulting from a favorable settlement with the IRS and an after-tax charge of $3.5 million ($.30 per share) for severance and related costs associated with a voluntary reduction of staff at The Washington Post newspaper.

During 1991 the national recession had an adverse impact on the advertising-related businesses of the company. Total operating revenues in 1991 were $1,380 million, a decrease of 4 percent from $1,439 million in 1990, principally due to a 10 percent decline in advertising revenues. This decrease was partially offset by a 7 percent increase in circulation and subscriber revenues and a 6 percent rise in other revenues.

Revenues at the newspaper division fell 7 percent from 1990 levels, primarily due to a 9 percent decrease in advertising revenues. Advertising linage at The Washington Post fell 13 percent, with the largest decline of 19 percent occurring in classified volume, while retail and general volume each decreased 11 percent. Circulation revenues increased 3 percent in 1991 as a result of a price increase and the continued public demand for news after the Persian Gulf War.

Broadcast division revenues decreased 9 percent, reflecting the effect of the recession on advertisers, who reduced spending in both the local and national markets. Local advertising revenues declined 7 percent, while national revenues fell 10 percent.

At Newsweek total revenues declined 4 percent in 1991. Advertising revenues decreased 11 percent, primarily due to reduced volume at the domestic edition and partially offset by the effect of rate increases. Newsweek circulation revenues rose 7 percent over 1990 levels. The number of subscribers at both the domestic and international editions grew 3 percent in 1991, while the average number of copies sold at the newsstand increased 8 percent for both editions. During the year the domestic edition published 50 issues, one more than in 1990; the international edition published 51 issues, one less than in 1990.

Cable division revenues in 1991 rose 10 percent over the prior year. Contributing to the increase were a 4 percent rise in the number of basic subscribers, higher rates and increased advertising and pay-per-view revenues at the domestic systems. The number of subscribers in the company's cable systems in the United Kingdom rose to over 8,000.

In 1991 revenues from other businesses – Stanley H. Kaplan Educational Center, Legi-Slate and American Personal Communications – rose 7 percent compared to 1990, primarily due to a 6 percent increase in enrollments at Kaplan.

Total operating costs and expenses were $1,187 million, an increase of 3 percent over $1,157 million in 1990. Included in 1991 operating expenses were the following pre-tax charges: $7 million related to the adoption of the accounting for certain employee postretirement benefits and $6 million for severance and related costs associated with a voluntary reduction of staff at The Washington Post newspaper. Also included in 1991 expenses was a write down of the company's programming rights to "The Cosby Show." Excluding these charges in 1991, total operating costs and expenses increased approximately 1 percent over 1990. This increase reflects normal increases in payroll and related fringe benefit costs, distribution costs and depreciation expenses, partially offset by a significant decrease in the cost of newsprint and magazine paper.

Income from operations declined 32 percent in 1991 as the recession continued to take its toll on the media industry. Operating margins at most of the divisions also were adversely affected by the adoption of the accounting for certain employee postretirement benefits. The newspaper division's operating margin fell to 14 percent, from 21 percent in 1990. Included in 1991 were the costs related to the voluntary reduction of staff mentioned previously. The operating margin at the broadcast division decreased from 38 percent to 30 percent in 1991, which included the write down of programming rights to "The Cosby Show." Newsweek's operating margin declined to 3 percent, from 8 percent in the prior year. In 1991 operating income included an additional $5 million in postal costs and accelerated amortization of leasehold improvements related to the expiration of an operating lease. The cable division's operating margin rose from 20 percent to 22 percent in 1991, while the margin for the company's other businesses decreased from 16 percent in 1990 to 12 percent in 1991.

The company's equity in earnings of affiliates for 1991 was a loss of $1.9 million, compared with earnings of $6.2 million in 1990. Continued weakness at the company's newsprint manufacturing affiliates contributed to the loss in 1991. In 1990 affiliate results reflected higher earnings from Cowles Media Company, which reported nonrecurring gains on the sales of two small newspapers.

Net interest expense totaled $.4 million in 1991, compared with net interest income of $4.7 million in 1990. Included in 1991 were a fee of $2.1 million related to the $50 million prepayment on the company's 10.68 percent unsecured promissory notes and interest of $1.6 million related to the tax settlement with the IRS.

In 1991 and 1990 other expense included the costs related to the disposition of certain plant, property and equipment.

The effective tax rate, before the cumulative effect of the change in accounting principle, decreased from 40.1 percent in 1990 to 37.6 percent in 1991, as the favorable settlement with the IRS significantly lowered the effective tax rate.

FINANCIAL CONDITION: CAPITAL RESOURCES AND LIQUIDITY

During the period 1990 through 1992 the company spent approximately $450 million on purchases of additional property, plant and equipment, investments in new businesses, various other capital programs, and the repurchase of Class B common stock. At the end of 1991 the company made a $50 million prepayment on its 10.68 percent unsecured promissory notes. In January 1992 the company made the final debt payment of $25 million on the 10.68 percent notes. Despite this, since the end of 1991 working capital has increased by approximately $59 million. At January 3, 1993, the company had $87 million in cash and cash equivalents, $241 million in marketable securities and $52 million in debt.

In 1993 the company estimates that it will spend approximately $100 million to $120 million for plant and equipment, principally for the expansion of cable operations in the United Kingdom and the completion of various projects at the newspaper division. It expects to fund these expenditures from cash flow from operations.

Based upon existing tax legislation, the company's effective tax rate in 1993 is expected to be approximately 42 percent, reflecting the adoption of Statement of Financial Accounting Standards No. 109, "Accounting for Income Taxes" (SFAS No. 109), which significantly changes the approach and methodology of accounting for income taxes. The implementation of SFAS No. 109 will occur in the first quarter of 1993. The company estimates that its deferred tax liability would be reduced by approximately $10 million, based on current tax rates.

During 1992 and 1991 the company repurchased 33,949 and 42,900 shares, respectively, of its Class B common stock at a cost of $7.5 million and $7.4 million, respectively. The annual dividend rate in 1993 remains at $4.20 per share.

In management's opinion the changes in financial position mentioned above or anticipated in the near future are not expected to impair the company's liquidity position.

CONSOLIDATED STATEMENTS OF INCOME

(IN THOUSANDS, EXCEPT SHARE AMOUNTS)	FISCAL YEAR ENDED JANUARY 3, 1993	DECEMBER 29, 1991	DECEMBER 30, 1990
OPERATING REVENUES			
Advertising	$ 895,645	$ 852,438	$ 943,676
Circulation and subscriber	436,193	412,937	386,756
Other	119,029	114,886	108,208
	1,450,867	1,380,261	1,438,640
OPERATING COSTS AND EXPENSES			
Operating	787,256	775,936	778,574
Selling, general and administrative	356,799	337,492	309,807
Depreciation and amortization of property, plant and equipment	59,222	58,695	53,509
Amortization of goodwill and other intangibles	15,478	15,272	14,982
	1,218,755	1,187,395	1,156,872
INCOME FROM OPERATIONS	232,112	192,866	281,768
Equity in (losses) earnings of affiliates	(11,730)	(1,856)	6,235
Interest income	11,854	17,382	21,342
Interest expense	(6,385)	(17,759)	(16,653)
Other expense, net	(1,655)	(412)	(1,266)
INCOME BEFORE INCOME TAXES AND CUMULATIVE EFFECT OF CHANGE IN ACCOUNTING PRINCIPLE	224,196	190,221	291,426
PROVISION FOR INCOME TAXES	96,400	71,500	116,850
INCOME BEFORE CUMULATIVE EFFECT OF CHANGE IN ACCOUNTING PRINCIPLE	127,796	118,721	174,576
CUMULATIVE EFFECT OF CHANGE IN METHOD OF ACCOUNTING FOR OTHER POSTRETIREMENT BENEFITS (NET OF TAXES OF $30,311)	—	(47,897)	—
NET INCOME	$ 127,796	$ 70,824	$ 174,576
EARNINGS PER SHARE:			
BEFORE CUMULATIVE EFFECT OF CHANGE IN ACCOUNTING PRINCIPLE	$ 10.80	$ 10.00	$ 14.45
CUMULATIVE EFFECT OF CHANGE IN ACCOUNTING PRINCIPLE	—	(4.04)	—
NET INCOME	$ 10.80	$ 5.96	$ 14.45

The information on pages 28 through 37 is an integral part of the financial statements.

CONSOLIDATED BALANCE SHEETS

(IN THOUSANDS, EXCEPT SHARE AMOUNTS)	JANUARY 3, 1993	DECEMBER 29, 1991
ASSETS		
CURRENT ASSETS		
Cash and cash equivalents	$ 86,840	$ 106,122
Marketable securities	241,429	174,238
Accounts receivable, net	128,368	138,604
Inventories	20,258	19,563
Program rights	17,842	17,314
Other current assets	30,238	16,378
	524,975	472,219
INVESTMENTS IN AFFILIATES	162,410	181,764
PROPERTY, PLANT AND EQUIPMENT		
Buildings	161,048	156,197
Machinery, equipment and fixtures	571,312	537,206
Leasehold improvements	29,644	28,761
	762,004	722,164
Less accumulated depreciation and amortization	(422,236)	(374,447)
	339,768	347,717
Land	28,176	26,904
Construction in progress	22,860	15,692
	390,804	390,313
GOODWILL AND OTHER INTANGIBLES, less accumulated amortization of $113,552 and $98,074	325,420	320,641
DEFERRED CHARGES AND OTHER ASSETS	164,512	122,724
	$ 1,568,121	$ 1,487,661

The information on pages 28 through 37 is an integral part of the financial statements.

(IN THOUSANDS, EXCEPT SHARE AMOUNTS)	JANUARY 3, 1993	DECEMBER 29, 1991
LIABILITIES AND SHAREHOLDERS' EQUITY		
CURRENT LIABILITIES		
Accounts payable and accrued liabilities	$ 188,525	$ 160,967
Federal and state income taxes	12,867	26,053
Deferred subscription revenue	80,956	76,240
Current portion of long-term debt	—	25,000
	282,348	288,260
OTHER LIABILITIES	194,114	175,186
LONG-TERM DEBT	51,842	51,915
DEFERRED INCOME TAXES	46,812	48,015
	575,116	563,376
SHAREHOLDERS' EQUITY		
Preferred stock, $1 par value, 1,000,000 shares authorized	—	—
Common stock		
Class A common stock, $1 par value, 7,000,000 shares authorized; 1,843,250 shares issued and outstanding	1,843	1,843
Class B common stock, $1 par value, 40,000,000 shares authorized; 18,156,750 shares issued; 9,954,885 and 9,988,530 shares outstanding	18,157	18,157
Capital in excess of par value	18,747	18,725
Retained earnings	1,454,505	1,376,468
Cumulative foreign currency translation adjustment	4,939	6,870
Cost of 8,201,865 and 8,168,220 shares of Class B common stock held in Treasury	(505,186)	(497,718)
	993,005	924,285
	$ 1,568,121	$ 1,487,661

The information on pages 28 through 37 is an integral part of the financial statements.

CONSOLIDATED STATEMENTS OF CASH FLOWS

(IN THOUSANDS)	FISCAL YEAR ENDED JANUARY 3, 1992	DECEMBER 29, 1991*	DECEMBER 30, 1990*
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net income	$ 127,796	$ 70,824	$ 174,576
Adjustments to reconcile net income to net cash provided by operating activities:			
Cumulative effect of change in accounting principle	—	78,208	—
Depreciation and amortization of property, plant and equipment	59,222	58,695	53,509
Amortization of goodwill and other intangibles	15,478	15,272	14,982
Amortization of program rights	20,308	28,939	26,215
Provision for doubtful accounts and returns	57,629	52,920	52,900
(Decrease) increase in accrued interest and income taxes payable	(14,162)	391	3,141
Provision for deferred income taxes	(1,577)	(34,336)	11,289
Change in assets and liabilities:			
(Increase) in accounts receivable	(47,393)	(59,685)	(50,742)
(Increase) decrease in inventories	(695)	5,639	(6,404)
Increase (decrease) in accounts payable and accrued liabilities	16,102	(978)	(5,053)
(Increase) in other assets and other liabilities, net	(14,347)	(2,388)	(25,247)
Other	23,886	16,400	11,767
Net cash provided by operating activities	242,247	229,901	260,933
CASH FLOWS FROM INVESTING ACTIVITIES:			
Purchases of property, plant and equipment	(58,889)	(55,657)	(73,249)
Purchases of marketable securities	(533,082)	(249,057)	(157,344)
Proceeds from sales of marketable securities	465,891	180,203	91,207
Investments in certain businesses	(32,353)	(19,301)	(31,121)
Payments for program rights	(22,013)	(19,917)	(20,779)
Other	978	969	336
Net cash (used) by investing activities	(179,468)	(162,760)	(190,950)
CASH FLOWS FROM FINANCING ACTIVITIES:			
Principal payments on debt	(25,000)	(75,000)	(2,742)
Dividends paid	(49,699)	(49,872)	(48,541)
Common shares repurchased	(7,484)	(7,430)	(163,267)
Other	122	150	99
Net cash (used) by financing activities	(82,061)	(132,152)	(214,451)
NET (DECREASE) IN CASH AND CASH EQUIVALENTS	(19,282)	(65,011)	(144,468)
CASH AND CASH EQUIVALENTS AT BEGINNING OF YEAR	106,122	171,133	315,601
CASH AND CASH EQUIVALENTS AT END OF YEAR	$ 86,840	$ 106,122	$ 171,133
SUPPLEMENTAL CASH FLOW INFORMATION:			
Cash paid during the year for:			
Income taxes	$ 110,700	$ 72,300	$ 102,300
Interest	$ 7,200	$ 19,500	$ 15,900
NONCASH INVESTING ACTIVITIES:			
Program rights acquired	$ 25,200	$ 19,800	$ 11,000

** Certain amounts have been reclassified in 1991 and 1990 to conform with 1992 presentation.*

The information on pages 28 through 37 is an integral part of the financial statements.

CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY

(IN THOUSANDS, EXCEPT SHARE AMOUNTS)	CLASS A COMMON STOCK	CLASS B COMMON STOCK	CAPITAL IN EXCESS OF PAR VALUE	RETAINED EARNINGS	CUMULATIVE FOREIGN CURRENCY TRANSLATION ADJUSTMENT	TREASURY STOCK
BALANCE DECEMBER 31, 1989	$ 1,852	$18,148	$16,946	$1,229,421	$ 3,931	$(328,776)
Net income for the year				174,576		
Dividends – $4.00 per share				(48,541)		
Repurchase of 641,500 shares of Class B common stock						(163,267)
Issuance of 15,547 shares of Class B common stock, net of restricted stock award forfeitures			(514)			888
Change in foreign currency translation adjustment					239	
Other			209			
BALANCE DECEMBER 30, 1990	1,852	18,148	16,641	1,355,456	4,170	(491,155)
Net income for the year				70,824		
Dividends – $4.20 per share				(49,872)		
Repurchase of 42,900 shares of Class B common stock						(7,430)
Issuance of 13,611 shares of Class B common stock, net of restricted stock award forfeitures			1,833			867
Conversion of 9,128 shares of Class A common stock to Class B common stock	(9)	9				
Change in foreign currency translation adjustment					2,700	
Other			251			
BALANCE DECEMBER 29, 1991	1,843	18,157	18,725	1,376,408	6,870	(497,718)
Net income for the year				127,796		
Dividends – $4.20 per share				(49,699)		
Repurchase of 33,949 shares of Class B common stock						(7,484)
Issuance of 304 shares of Class B common stock, net of restricted stock award forfeitures			(52)			16
Change in foreign currency translation adjustment					(1,931)	
Other			74			
BALANCE JANUARY 3, 1993	$ 1,843	$18,157	$18,747	$1,454,505	$ 4,939	$(505,186)

The information on pages 28 through 37 is an integral part of the financial statements.

INCOME TAXES. Deferred income taxes result from timing differences in the recognition of certain revenue and expense items, including pensions, postretirement benefits other than pensions, and depreciation expenses, for tax and financial reporting purposes, and from timing differences in the recognition of investment tax credits that for financial reporting purposes are being applied as a reduction of income taxes over the depreciable lives of the related assets.

FOREIGN CURRENCY TRANSLATION. Gains and losses on foreign currency transactions and the translation of the accounts of the company's foreign operations where the U.S. dollar is the functional currency are recognized currently in the Consolidated Statements of Income. Gains and losses on translation of the accounts of the company's foreign operations where the local currency is the functional currency and the company's equity investments in its foreign affiliates are accumulated and reported separately in the "Cumulative foreign currency translation adjustment" in the Consolidated Balance Sheets.

POSTRETIREMENT BENEFITS. The company provides certain health care and life insurance benefits for retired employees. Effective in 1991, the expected cost of providing these postretirement benefits is accrued over the years that employees render the necessary service. Previously these costs were expensed as claims were paid. The cumulative effect of adopting this method of accounting for previously unrecognized years of service has been recognized in net income in 1991 as a change in accounting principle. This change in method is defined within the Statement of Financial Accounting Standards No. 106.

B. MARKETABLE SECURITIES

The company's marketable securities at January 3, 1993, and December 29, 1991, include the following (in thousands):

	1992	1991
U.S. Government and Government agency obligations	$221,395	$87,397
State obligations	—	20,673
Commercial paper	20,034	66,168
	$241,429	$174,238

C. ACCOUNTS RECEIVABLE AND ACCOUNTS PAYABLE AND ACCRUED LIABILITIES

Accounts receivable at January 3, 1993, and December 29, 1991, consist of the following (in thousands):

	1992	1991
Accounts receivable, less estimated returns, doubtful accounts and allowances of $33,300 and $35,642	$120,531	$131,294
Other	7,837	7,310
	$128,368	$138,604

Accounts payable and accrued liabilities at January 3, 1993, and December 29, 1991, consist of the following (in thousands):

	1992	1991
Accounts payable and accrued expenses	$125,241	$ 98,827
Accrued payroll and related benefits	28,459	27,038
Accrued interest expense	5,693	7,118
Film contracts payable	19,824	19,955
Due to affiliates (newsprint)	9,308	8,029
	$188,525	$160,967

D. INVESTMENTS IN AFFILIATES

The company's investments in affiliates at January 3, 1993, and December 29, 1991, include the following (in thousands):

	1992	1991
Cowles Media Company	$ 80,415	$ 79,952
Newsprint mills	55,829	73,616
Other	26,166	28,196
	$162,410	$181,764

The company's investments in affiliates includes a 28 percent interest in the stock of Cowles Media Company, which owns and operates The Minneapolis Star Tribune and several other smaller properties.

The company's interest in newsprint mills includes a 49 percent interest in the common stock of Bowater Mersey Paper Company Limited, which owns and operates a newsprint mill in Nova Scotia; a one-third limited partnership interest in Bear Island Paper Company, which owns and operates a newsprint mill near Richmond, Virginia; and a one-third limited partnership interest in Bear Island Timberlands Company, which owns timberland and supplies Bear Island Paper Company with a

major portion of its wood requirements. Operating costs and expenses of the company include newsprint supplied by Bowater Mersey Paper Company and Bear Island Paper Company and used in operations, the cost of which was $51,000,000 in 1992, $59,200,000 in 1991 and $60,400,000 in 1990.

The company's other investments represent a 50 percent common stock interest in the International Herald Tribune newspaper, published near Paris, and a 50 percent common stock interest in the Los Angeles Times-Washington Post News Service, Inc. In 1991 investments also included a 30 percent common stock interest in The Gaithersburg Gazette, Inc. This investment increased in 1992 to an 84 percent interest and, accordingly, it is included as a fully consolidated subsidiary (see Note K on acquisitions). In 1990 the company's ownership of the International Herald Tribune was a one-third common stock interest.

Summarized financial data for the affiliates' operations are as follows (in thousands):

	1992	1991	1990
FINANCIAL POSITION			
Working capital	$(119,305)	$ (93,737)	$ (76,521)
Property, plant and equipment	436,620	478,502	495,932
Total assets	718,352	759,850	770,071
Long-term debt	197,203	212,923	225,938
Net equity	175,618	200,997	212,938
RESULTS OF OPERATIONS			
Operating revenues	$ 650,194	$644,811	$670,345
Operating income	20,588	10,599	31,712
Net (loss) income	(13,175)	6,543	31,162

The following table summarizes the status and results of the company's investments in affiliates (in thousands):

	1992	1991
Beginning investment	$181,764	$168,512
Equity in losses	(11,709)	(1,856)
Dividends and distributions received	(2,577)	(5,217)
Additional investments	—	17,811
Foreign currency translation	(1,061)	2,494
Other	(3,898)	—
Ending investment	$162,419	$181,764

At January 3, 1993, the unamortized excess of the company's investments over its equity in the underlying net assets of its affiliates at the date of acquisition was approximately $92,500,000. Amortization included in equity in earnings of affiliates for the years ended January 3, 1993, December 29, 1991, and December 30, 1990, was $2,600,000, $2,550,000 and $2,250,000, respectively.

E. INCOME TAXES

The provision for income taxes consists of the following (in thousands):

	CURRENT	DEFERRED
1992		
U.S. Federal	$ 79,380	$ (295)
Foreign	488	(1,219)
State and local	18,109	(63)
	$ 97,977	$ (1,577)
1991		
U.S. Federal	$ 60,732	$ (3,195)
Foreign	567	(528)
State and local	14,226	(302)
	$ 75,525	$ (4,025)
1990		
U.S. Federal	$ 85,385	$ 9,489
Foreign	412	(454)
State and local	19,764	2,254
	$ 105,561	$ 11,289

Deferred tax is attributable to the following (in thousands):

	1992	1991	1990
Net pension credits in excess of contributions	$ 7,469	$ 5,335	$ 7,098
Accrued postretirement benefit expenses (current year)	(4,138)	(3,163)	—
Difference between tax depreciation and depreciation for financial reporting purposes	(1,783)	(2,437)	3,338
Deferral of investment tax credits for financial reporting purposes	(1,146)	(1,350)	(539)
Other	(1,979)	(2,410)	1,392
	$ (1,577)	$ (4,025)	$ 11,289

The provision for income taxes exceeds the amount of taxes determined by applying the U.S. Federal statutory rate of 34 percent to income before taxes as a result of the following (in thousands):

	1992	1991	1990
U.S. Federal income taxes	$ 76,226	$ 64,675	$ 99,085
State and local taxes net of Federal income tax benefit	11,911	9,190	14,532
Amortization of goodwill not deductible for income tax purposes	2,922	2,805	2,887
Prior period tax adjustments	—	(10,013)	—
Other	5,341	4,843	346
Provision for income taxes	$ 96,400	$ 71,500	$ 116,850

Contributing to the lower effective tax rate in 1991 was a credit of $10 million resulting from a favorable settlement with the Internal Revenue Service, which related to adjustments to prior year's income taxes.

In February 1992 the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards No. 109, "Accounting for Income Taxes" (SFAS No. 109), which significantly changes the approach and methodology of accounting for income taxes. The company plans to adopt SFAS No. 109 in the first quarter of 1993. The adoption of SFAS No. 109 will require the implementation of the liability method of accounting for income taxes and the adjustment of deferred taxes to reflect changes in tax rates at the time they are enacted. The company estimates that its deferred tax liability would be reduced by approximately $10 million, based on current tax rates. This resulting benefit will be recorded in the 1993 Consolidated Statements of Income as the cumulative effect of a change in accounting principle.

F. DEBT

Long-term debt of the company as of January 3, 1993, and December 29, 1991, is summarized as follows (in thousands):

	1992	1991
10.1 percent unsecured European Currency Unit notes due 1996	$ 30,342	$ 30,315
10.68 percent unsecured promissory notes due 1991-1993	—	25,000
10.875 percent unsecured Eurodollar notes due 1995	1,500	1,500
Less amounts included in current liabilities	—	(25,000)
	$ 31,842	$ 31,915

In December 1991 the company prepaid $50,000,000 of the 10.68 percent unsecured promissory notes. A related $2,100,000 prepayment fee was included in interest expense for the year.

Annual maturities of long-term debt based on existing loan repayment schedules are $1,400,000 in 1995 and $50,000,000 in 1996.

G. CAPITAL STOCK, STOCK OPTIONS AND STOCK AWARDS

CAPITAL STOCK. Each share of Class A common stock and Class B common stock participates equally in dividends. The Class B stock has limited voting rights and as a class has the right to elect 30 percent of the board of directors; the Class A stock has unlimited voting rights including the right to elect a majority of the board of directors. In 1991, 9,128 shares of the company's Class A common stock were converted into an equal number of shares of the company's Class B common stock.

During 1992 and 1991 the company purchased 33,949 and 42,900 shares, respectively, of its Class B common stock at a cost of $7,484,000 and $7,430,000.

STOCK OPTIONS. In 1971 the company adopted a Stock Option Plan and reserved 1,400,000 shares of Class B common stock for options to be granted under the plan. The purchase price of the shares covered by an option cannot be less than the fair value on the granting date. At January 3, 1993, there were 163,450 shares reserved for issuance under the Stock Option Plan, of which 143,000 shares were subject to options outstanding and 20,450 shares were available for future grants. Changes in options outstanding for the years ended January 3, 1993, and December 29, 1991, were as follows:

	1992		1991	
	NUMBER OF SHARES	AVERAGE OPTION PRICE	NUMBER OF SHARES	AVERAGE OPTION PRICE
Beginning of year	125,000	$260.49	53,000	$ 227.39
Granted	19,000	226.00	73,500	283.11
Exercised	(1,000)	121.50	(750)	199.38
Canceled	—	—	(750)	199.38
End of year	143,000	256.88	125,000	260.49

Of the shares covered by options outstanding at the end of 1992, 48,250 are now exercisable; 17,625 will become exercisable in 1993; 11,750 will become exercisable in 1994; 10,625 will become exercisable in 1995; 4,750 will become exercisable in 1996; and 50,000 will become exercisable in 1999.

STOCK AWARDS. In 1982 the company adopted a Long-Term Incentive Compensation Plan that, among other provisions, authorizes the awarding of stock to key employees. Stock awards made under the Incentive Compensation Plan are subject to the general restriction that stock awarded to a participant will be forfeited and revert to company ownership if the participant's employment terminates before the end of a specified period of service to the company. At January 3, 1993, there were 152,411 shares reserved for issuance under the Incentive Compensation Plan. Of this number, 24,765 shares were subject to awards outstanding, and 127,646 shares were available for future awards. Activity related to stock awards for the years ended January 3, 1993, and December 29, 1991, was as follows:

	1992		1991	
	NUMBER OF SHARES	AVERAGE AWARD PRICE	NUMBER OF SHARES	AVERAGE AWARD PRICE
AWARDS OUTSTANDING				
Beginning of year	25,461	$202.62	30,812	$182.86
Awarded	192	228.58	16,031	197.18
Vested	—	—	(18,212)	164.64
Forfeited	(888)	197.83	(3,170)	200.71
End of year	24,765	202.99	25,461	202.62

For the share awards outstanding at January 3, 1993, the aforementioned restriction will lapse in January 1993 for 11,340 shares, and in January 1995 for 13,425 shares.

AVERAGE NUMBER OF SHARES OUTSTANDING. Earnings per share are based on the weighted average number of shares of common stock outstanding during each year, adjusted for the dilutive effect of shares issuable under outstanding stock options, and awards made under the Incentive Compensation Plan. The average number of shares outstanding was 11,830,000 for 1992, 11,876,000 for 1991 and 12,081,300 for 1990.

H. RETIREMENT PLANS

The company and its subsidiaries have various funded and unfunded pension and incentive savings plans and in addition contribute to several multi-employer plans on behalf of certain union-represented employee groups. Substantially all of the company's employees, including some located in foreign countries, are covered by these plans. Pension cost (benefit) for all retirement plans combined was $5,200,000 in 1992, $3,000,000 in 1991 and $(4,000,000) in 1990. Included in 1992 are costs of $8,300,000 related to a new deferred compensation arrangement at The Washington Post newspaper. Included in 1991 are costs of $4,900,000 associated with the voluntary reduction of staff at The Washington Post newspaper.

The costs for the company's defined benefit pension plans are actuarially determined and include amortization of prior service costs over various periods, generally not exceeding 20 years. The company's policy is to fund the costs accrued for its defined benefit plans.

The following table sets forth the funded status of the defined benefit plans and amounts recognized in the Consolidated Balance Sheets at January 3, 1993, and December 29, 1991 (in thousands):

	1992	1991
Actuarial present value of accumulated plan benefits, including vested benefits of $129,144 and $122,058	$ 139,980	$ 127,366
Plan assets at fair value, primarily listed securities	$ 425,422	$ 402,052
Projected benefit obligation for service rendered to date	(173,133)	(156,369)
Plan assets in excess of projected benefit obligation	252,289	245,683
Prior service cost not yet recognized in periodic pension cost	16,855	16,219
Less unrecognized net gain from past experience different from that assumed	(112,653)	(115,455)
Less unrecognized net asset (transition amount) being recognized over approximately 17 years	(76,599)	(84,266)
Prepaid pension cost	$ 79,892	$ 62,181

The net pension credits for the years ended January 3, 1993, December 29, 1991, and December 30, 1990, include the following components (in thousands):

	1992	1991	1990
Service cost for benefits earned during the period	$ 8,312	$ 7,200	$ 6,383
Interest cost on projected benefit obligation	11,700	10,327	8,672
Actual return on plan assets	(29,388)	(84,880)	(6,312)
Net amortization and deferral	(8,185)	50,471	(26,056)
Cost of voluntary reduction in staff	—	4,916	—
Net pension credit	$(17,561)	$(11,966)	$(17,313)

The weighted average discount rate and rate of increase in future compensation levels used for 1992, 1991 and 1990 in determining the actuarial present value of the projected benefit obligation were 7.5 percent and 4 percent, respectively. The expected long-term rate of return on assets was 9 percent in 1992, 1991 and 1990.

Contributions to multi-employer pension plans, which are generally based on hours worked, amounted to $1,500,000 in 1992, $1,300,000 in 1991 and $1,500,000 in 1990.

The costs of unfunded retirement plans are charged to expense when accrued. The company's liability for such plans, which is included in "Other Liabilities" in the Consolidated Balance Sheets, was $41,500,000 at January 3, 1993, and $31,500,000 at December 29, 1991.

1. POSTRETIREMENT BENEFITS OTHER THAN PENSIONS

The company and its subsidiaries provide health care and life insurance benefits to certain retired employees. These employees become eligible for benefits after meeting minimum age and service requirements.

In 1991 the company adopted the provisions of SFAS No. 106, "Employers' Accounting for Postretirement Benefits Other Than Pensions." As permitted by SFAS No. 106, the company elected to recognize in 1991 the accumulated benefit obligation related to prior service costs. This obligation of $78,208,000, after income taxes of $30,311,000, is shown on the Consolidated Statements of Income as the cumulative effect of a change in accounting principle. In addition, the effect of adopting SFAS No. 106 was to increase operating expense by $1,208,000 in 1992 and $7,130,000 in 1991.

The following table sets forth the amounts included in "Other Liabilities" in the Consolidated Balance Sheets at January 3, 1993, and December 29, 1991 (in thousands):

	1992	1991
Accumulated postretirement benefit obligation:		
Retirees	$46,329	$45,197
Fully eligible active plan participants	5,880	7,971
Other active plan participants	35,184	36,237
	87,393	89,405
Unrecognized prior service costs arising from plan amendments	2,571	—
Unrecognized net gain from past experience different from that assumed	739	—
Accrued postretirement benefit cost	$90,703	$89,405

Net periodic postretirement benefit cost for the years ended January 3, 1993, and December 29, 1991, includes the following components (in thousands):

	1992	1991
Service cost for benefits earned during the period	$3,029	$2,948
Interest cost on accumulated postretirement benefit obligation	6,853	6,461
Amortization of prior service costs	(61)	—
Curtailment gain	(5,963)	—
Net periodic postretirement benefit cost	$3,858	$9,352

The curtailment gain of $6,000,000 relates to the termination in December 1992 of one of the company's health care plans at The Washington Post newspaper. The terminated plan has been replaced by a deferred compensation arrangement and a related expense of $8,300,000 was recognized as a result of this change (see Note 8).

For both 1992 and 1991 the accumulated postretirement benefit obligation was determined using a discount rate of 8 percent and a health care cost trend rate of approximately 14 percent for pre-age-65 benefits, decreasing to 6.5 percent in the year 2022 and thereafter; and rates of approximately 11 to 14 percent for post-age-65 benefits, decreasing to 6.5 percent in the year 2022 and thereafter.

The company's policy is to fund the above-mentioned benefits as claims and premiums are paid.

The effect on the accumulated postretirement benefit obligation at January 1, 1992, of a 1 percent increase each year in the health care cost trend rate used would result in increases of approximately $15,000,000 in the obligation and $2,000,000 in the aggregate service and interest components of the 1992 expense.

In 1990 the cost of providing health care and life insurance benefits for retirees was not separable from the cost of providing these benefits for active employees. The total cost recognized for both active and retired employees for health care and life insurance benefits was approximately $26,500,000 in 1990. Retiree participation in these plans as a percentage of total participation approximated 9 percent in 1990 for the life insurance plan, and 16 percent for the medical plan.

J. LEASE COMMITMENTS

Total rental expense under operating leases included in operating costs and expenses was approximately $21,500,000 for 1992, $20,000,000 for 1991 and $16,800,000 for 1990. The company's commitments under operating lease agreements are primarily for real estate. As of January 3, 1993, minimum future rentals under non-cancelable leases (exclusive of minimum sublease rentals totaling $4,700,000) were as follows (in thousands):

1993	$ 16,659
1994	13,917
1995	11,496
1996	8,040
1997	5,724
Thereafter	8,570
	$ 64,406

K. ACQUISITIONS AND DISPOSITIONS

During 1992 the company expended approximately $32,000,000, including related expenses, for investments in new businesses. These included a cable system in Mississippi; Pro Am Sports Systems, Inc. (PASS), a company that provides sports programming in the Detroit area; an additional investment in The Gaithersburg Gazette, Inc. (which increased the company's ownership to 84 percent); and continued investment in personal communications systems (PCS) technology development. The company also purchased shares in ACTV, Inc., a company that is involved in interactive television.

The acquisitions, except for the investment in ACTV, Inc., were accounted for using the purchase method and, accordingly, the assets and liabilities of the companies acquired have been recorded at their estimated fair values at the date of acquisition. The excess of the cost over the fair value of net assets acquired is being amortized over periods up to 40 years. The investment in ACTV, Inc., is accounted for under the cost method of accounting.

During 1991 the company expended approximately $21,000,000, including related expenses, for investments in new businesses. These included an additional investment in the International Herald Tribune, which increased the company's ownership to 50 percent, a cable franchise in the United Kingdom, and The Gaithersburg Gazette, Inc.

The International Herald Tribune and Gaithersburg Gazette purchases are accounted for under the equity method of accounting, and amortization of the excess of the cost over the company's share of the fair value of the assets acquired is included in equity in earnings of affiliates. The cable purchase included costs of obtaining the franchise and are being amortized over the franchise life.

L. CONTINGENCIES

The company is a party to various civil lawsuits, including libel actions, arising in the ordinary course of business. In the opinion of management, the company carries adequate liability insurance against such libel actions, and the company is not presently a party to any other material litigation.

M. BUSINESS SEGMENTS

The company operates principally in four areas of the communications industry: newspaper publishing, magazine publishing, television broadcasting and cable television.

Newspaper operations involve the publication of newspapers in the Washington, D.C., area and Everett, Washington, and newsprint warehousing and recycling facilities.

Broadcast operations are conducted primarily through four VHF television stations. All stations are network-affiliated, with revenues derived primarily from sales of advertising time.

Magazine operations consist of the publication of a weekly news magazine, Newsweek, which has one domestic and three international editions. Revenues from both newspaper and magazine publishing operations are derived from advertising and, to a lesser extent, from circulation.

Cable television operations consist of over 50 cable systems offering basic cable and pay television services to more than 463,000 subscribers in 15 midwestern, western and southern states and 20,000 subscribers in the United Kingdom. The principal source of revenues is monthly subscription fees charged for services.

Other Businesses include the operations of a database publishing company, a regional sports cable system, an experimental wireless telephone system and educational centers engaged in preparing students for admissions tests and licensing examinations (including the preparation and publishing of training materials).

Income from operations is the excess of operating revenues over operating expenses including corporate expenses, which are allocated to operations of the segments. In computing income from operations by segment, the effects of equity in earnings of affiliates, interest income, interest expense, other income and expense items and income taxes are not included.

Identifiable assets by segment are those assets used in the company's operations in each business segment. Investments in affiliates are discussed in Note D. Corporate assets are principally cash and cash equivalents and marketable securities.

(IN THOUSANDS)	NEWSPAPER PUBLISHING	BROADCASTING	MAGAZINE PUBLISHING	CABLE TELEVISION	OTHER BUSINESSES	CONSOLIDATED
1992						
Operating revenues	$ 677,645	$ 162,154	$ 347,067	$ 174,098	$ 89,903	$ 1,450,867
Income (loss) from operations	$ 120,791	$ 54,568	$ 22,882	$ 38,967	$ (6,096)	$ 232,112
Equity in losses of affiliates						(11,730)
Interest expense						(6,385)
Other income, net						10,199
Income before income taxes						$ 224,196
Identifiable assets	$ 315,522	$ 143,357	$ 141,008	$ 397,504	$ 77,365	$ 1,074,756
Investments in affiliates						162,410
Corporate assets						330,955
Total assets						$ 1,568,121
Depreciation and amortization of property, plant and equipment	$ 16,721	$ 6,289	$ 6,252	$ 26,994	$ 2,963	$ 59,222
Amortization of goodwill and other intangibles	$ 715	$ 664		$ 11,574	$ 2,495	$ 15,478
Capital expenditures	$ 13,653	$ 2,844	$ 2,732	$ 36,900	$ 2,760	$ 58,889
1991						
Operating revenues	$ 642,694	$ 163,171	$ 326,475	$ 159,503	$ 88,118	$ 1,380,261
Income from operations	$ 89,488	$ 49,074	$ 9,085	$ 33,011	$ 10,208	$ 192,866
Equity in losses of affiliates						(1,856)
Interest expense						(17,559)
Other income, net						16,970
Income before income taxes						$ 190,221
Identifiable assets	$ 307,897	$ 144,232	$ 131,510	$ 386,527	$ 52,779	$ 1,022,945
Investments in affiliates						181,764
Corporate assets						282,952
Total assets						$ 1,487,661
Depreciation and amortization of property, plant and equipment	$ 18,199	$ 7,171	$ 6,588	$ 24,651	$ 2,203	$ 58,693
Amortization of goodwill and other intangibles	$ 533	$ 664		$ 11,553	$ 2,522	$ 15,272
Capital expenditures	$ 19,215	$ 3,128	$ 2,762	$ 23,363	$ 3,139	$ 55,657
1990						
Operating revenues	$ 680,992	$ 179,385	$ 390,177	$ 135,423	$ 82,608	$ 1,388,640
Income from operations	$ 113,728	$ 68,923	$ 26,065	$ 29,137	$ 13,065	$ 251,768
Equity in earnings of affiliates						6,235
Interest expense						(16,653)
Other income, net						20,076
Income before income taxes						$ 291,426
Identifiable assets	$ 299,769	$ 162,393	$ 125,320	$ 395,286	$ 51,717	$ 1,044,485
Investments in affiliates						168,512
Corporate assets						283,312
Total assets						$ 1,496,509
Depreciation and amortization of property, plant and equipment	$ 16,390	$ 7,310	$ 9,639	$ 22,889	$ 1,860	$ 58,500
Amortization of goodwill and other intangibles	$ 530	$ 664		$ 19,289	$ 2,496	$ 14,982
Capital expenditures	$ 38,989	$ 6,991	$ 2,651	$ 28,660	$ 1,705	$ 78,196

N. SUMMARY OF QUARTERLY OPERATING RESULTS (UNAUDITED)

Quarterly results of operations for the years ended January 3, 1993, and December 29, 1991, are as follows. Quarterly results for the first three quarters of 1991 have been restated to reflect the adoption in the fourth quarter of SFAS No. 106 (in thousands, except per share amounts):

	FIRST QUARTER	SECOND QUARTER	THIRD QUARTER	FOURTH QUARTER
1992				
Operating revenues				
Advertising	$ 195,668	$ 242,929	$ 203,348	$ 253,700
Circulation and subscriber	105,480	107,989	109,045	113,679
Other	27,923	26,015	38,628	26,463
	329,071	376,933	351,021	393,842
Costs and expenses				
Operating	187,115	186,461	197,675	216,995
Selling, general and administrative	85,655	90,726	84,293	96,125
Depreciation	14,709	14,850	14,711	14,952
Amortization of goodwill	3,798	3,842	3,941	3,897
	291,277	295,879	300,620	330,979
Income from operations	37,794	81,054	50,401	62,863
Other income (expense)				
Equity in (losses) earnings of affiliates	(4,848)	(1,709)	(2,411)	(2,762)
Interest income	3,030	2,820	2,944	3,060
Interest expense	(1,535)	(1,780)	(1,671)	(1,399)
Other	89	(108)	(66)	(1,570)
Income before income taxes	34,530	80,277	49,197	60,192
Provision for income taxes	14,850	34,525	21,650	25,375
Net income	$ 19,680	$ 45,752	$ 27,547	$ 34,817
Earnings per share	$ 1.66	$ 3.87	$ 2.33	$ 2.94
Average number of shares outstanding	11,835	11,835	11,835	11,816

	FIRST QUARTER	SECOND QUARTER	THIRD QUARTER	FOURTH QUARTER
1991				
Operating revenues				
Advertising	$ 186,574	$ 229,511	$ 197,933	$ 238,420
Circulation and subscriber	102,206	102,565	102,987	105,179
Other	28,352	24,541	39,039	22,954
	317,132	356,617	339,959	366,553
Costs and expenses				
Operating	195,929	192,837	187,320	199,850
Selling, general and administrative	83,269	88,410	85,923	79,890
Depreciation	14,233	14,368	14,234	15,860
Amortization of goodwill	3,785	3,851	3,814	3,822
	297,216	299,466	291,291	299,422
Income from operations	19,916	57,151	48,668	67,131
Other income (expense)				
Equity in (losses) earnings of affiliates	(576)	851	(1,674)	(457)
Interest income	4,742	4,039	4,191	4,410
Interest expense	(3,583)	(3,548)	(3,374)	(7,254)
Other	597	(380)	(23)	(606)
Income before income taxes and cumulative effect of change in accounting principle	21,096	58,113	47,788	63,224
Provision for income taxes	8,552	24,086	22,607	16,255
Income before cumulative effect of change in accounting principle	12,544	34,027	25,181	46,969
Cumulative effect of change in method of accounting for postretirement health care benefits (net of tax)	(47,897)	—	—	—
Net income	$ (35,353)	$ 34,027	$ 25,181	$ 46,969
Earnings per share:				
Before cumulative effect of change in accounting principle	$ 1.06	$ 2.86	$ 2.12	$ 3.96
Net income	$ (2.98)	$ 2.86	$ 2.12	$ 3.96
Average number of shares outstanding	11,878	11,879	11,877	11,869

TEN-YEAR SUMMARY OF SELECTED HISTORICAL FINANCIAL DATA

See Notes to Consolidated Financial Statements for the summary of significant accounting policies and additional information relative to the years 1990-1992.

(IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)	1992	1991	1990
RESULTS OF OPERATIONS			
Operating revenues	$ 1,450,867	$ 1,380,261	$ 1,438,640
Income from operations	$ 232,112	$ 192,866	$ 281,768
Income before cumulative effect of change in accounting principle	$ 127,796	$ 118,721	$ 174,576
Cumulative effect in 1991 of change in method of accounting for postretirement benefits other than pensions	—	(47,897)	—
Net income	$ 127,796	$ 70,824	$ 174,576
PER SHARE AMOUNTS			
Earnings per share			
Income before cumulative effect of change in accounting principle	$10.80	$10.00	$14.45
Cumulative effect in 1991 of change in method of accounting for postretirement benefits other than pensions	—	(4.04)	—
Net income	$10.80	$ 5.96	$14.45
Cash dividends	$ 4.20	$ 4.20	$ 4.00
Shareholders' equity	$84.17	$78.12	$76.31
AVERAGE NUMBER OF SHARES OUTSTANDING	11,830	11,876	12,081
FINANCIAL POSITION			
Current assets	$ 524,975	$ 472,219	$ 471,669
Working capital	242,627	183,959	175,807
Property, plant and equipment	390,804	390,313	394,979
Total assets	1,568,121	1,487,661	1,496,509
Long-term debt	51,842	51,915	126,988
Shareholders' equity	903,005	924,285	905,112

1989	1988	1987	1986	1985	1984	1983
$ 1,444,094	$ 1,367,613	$ 1,315,422	$ 1,215,064	$ 1,078,650	$ 984,303	$ 877,714
$ 313,691	$ 233,290	$ 257,073	$ 228,986	$ 204,186	$ 166,295	$ 132,415
$ 197,893	$ 269,117	$ 186,743	$ 100,173	$ 114,261	$ 85,886	$ 68,394
—	—	—	—	—	—	—
$ 197,893	$ 269,117	$ 186,743	$ 100,173	$ 114,261	$ 85,886	$ 68,394
$15.50	$20.91	$14.52	$ 7.80	$ 8.66	$ 6.11	$ 4.82
—	—	—	—	—	—	—
$15.50	$20.91	$14.52	$ 7.80	$ 8.66	$ 6.11	$ 4.82
$ 1.84	$ 1.56	$ 1.28	$ 1.12	$ .96	$ .80	$ .66
$75.40	$67.50	$47.80	$34.04	$27.26	$27.17	$22.50
12,768	12,873	12,861	12,842	13,194	14,050	14,195
$ 553,188	$ 493,736	$ 226,523	$ 219,422	$ 359,174	$ 218,559	$ 190,616
283,118	235,698	(50,290)	(22,647)	150,397	56,859	31,104
370,597	352,113	371,080	343,702	219,310	191,072	181,333
1,532,211	1,422,267	1,194,196	1,145,227	883,079	645,800	570,676
152,061	154,751	155,791	336,140	222,392	6,250	8,500
941,322	868,240	614,000	136,500	349,548	380,127	318,800

THE WASHINGTON POST COMPANY IN BRIEF

NEWSPAPER DIVISION

THE WASHINGTON POST— a morning daily and Sunday newspaper published in Washington, D.C. For the 12 months ending September 30, 1992, The Post's unaudited estimated average circulation was 824,000 daily and 1,159,000 Sunday. The Post maintains 18 foreign, 5 national and 11 metropolitan news bureaus. It is printed at sites in Northwest and Southeast Washington and nearby Springfield, Virginia.

THE WASHINGTON POST NATIONAL WEEKLY EDITION— a tabloid publication of selected Post articles on politics and government, edited for a national audience, with a circulation of 113,000.

THE HERALD— a morning daily and Sunday newspaper published in Everett, Washington, 30 miles north of Seattle. The Herald's unaudited average circulation for the 12-month period ending September 30, 1992, was 52,219 daily and 64,048 Sunday.

THE WASHINGTON POST WRITERS GROUP— a syndicator of 32 features to newspapers throughout the country.

ROBINSON TERMINAL WAREHOUSE CORPORATION— a newsprint handling and storage facility with operations in Alexandria and Springfield, Virginia.

CAPITOL FIBER INC.— a handler and seller to recycling industries of old newspaper and other waste paper collected in the Washington-Baltimore area.

THE GAITHERSBURG GAZETTE, INC.— a publisher of one paid circulation and 13 controlled circulation weekly newspapers in Montgomery, Frederick and Carroll Counties, Maryland. During 1992 The Gazette Newspapers had an aggregate average weekly circulation of more than 182,000 copies.

POST-NEWSWEEK STATIONS

POST-NEWSWEEK STATIONS— the owner and operator of four network-affiliated VHF television stations and the PNS Washington News Bureau.

WDIV-4— an NBC affiliate in Detroit, Michigan, the 9th largest broadcasting market in the United States, with 1,723,160 television households.

WPLG-10— an ABC affiliate in Miami, Florida, the 15th largest broadcasting market in the United States, with 1,291,940 television households.

WTSB-3— a CBS affiliate in Hartford, Connecticut, the 24th largest broadcasting market in the United States, with 930,870 television households.

WJXT-4— a CBS affiliate in Jacksonville, Florida, the 54th largest broadcasting market in the United States, with 473,030 television households.

POST-NEWSWEEK CABLE

POST-NEWSWEEK CABLE— Headquartered in Phoenix, Arizona, Post-Newsweek Cable systems currently serve 463,000 subscribers in 15 midwestern, western and southern states. Post-Newsweek Cable has acquired franchises in several areas in Scotland. States served and the number of basic subscribers in each as of December 31, 1992, were:

Arizona	31,154	New Mexico	20,259
California	115,026	North Dakota	18,783
Illinois	18,361	Ohio	13,911
Indiana	10,690	Oklahoma	53,231
Iowa	21,822	Tennessee	8,925
Kansas	8,762	Texas	76,761
Mississippi	28,386		
Missouri	25,474	TOTAL	463,015
Nebraska	11,470		

NEWSWEEK

NEWSWEEK— a weekly news magazine published in New York City, with a 1993 rate base of 3.1 million and a 12-month average circulation for 1992 of 3.2 million. Newsweek maintains 10 U.S. offices and 16 foreign news bureaus and has 9 domestic advertising sales offices. The magazine is printed at 5 U.S. sites.

NEWSWEEK INTERNATIONAL— a weekly English-language news magazine published in New York City and circulated throughout the world. For 1993 Newsweek International's combined circulation rate base for its three editions is 745,000: Atlantic, 340,000; Pacific, 335,000 (including 210,000 for The Bulletin with Newsweek, Australia's largest news magazine); and Latin America, 70,000. Newsweek International maintains 13 sales offices, one in the U.S. and 10 overseas. The magazine is printed in Australia, England, Hong Kong, Japan, Korea, Singapore, Switzerland and the United States.

NEWSWEEK JAPAN (NEWSWEEK NIHON BAN)— a Japanese-language newsweekly with a circulation rate base of 160,000. It is produced with TBS-Britannica, which translates and publishes the magazine.

NEWSWEEK KOREA (NEWSWEEK HANKUK PAN)— a Korean-language newsweekly with a circulation rate base of 70,000. It is produced with Joong-ang Ilbo of Korea, a division of the Samsung Group, which translates and publishes the magazine. Newsweek Hankuk Pan is the first international Korean-language newsweekly.

OTHER BUSINESSES

STANLEY H. KAPLAN EDUCATIONAL CENTER — Headquartered in New York City, Kaplan offers courses at 131 permanent centers throughout the United States and in Canada and Puerto Rico, and at another 600 satellite classrooms on a seasonal basis. The company has prepared more than 2 million students for over 30 standardized high school, college and graduate school admissions tests as well as professional licensing examinations. Kaplan also offers an intensive English program, a speed-reading course and continuing professional education courses for CPA's. Enrollments in 1992 exceeded 146,000.

LEGI-SLATE, INC.— Headquartered in Washington, D.C., Legi-Slate is the original and leading online service covering congressional legislation and voting records, federal regulatory activity and other government-related matters.

AMERICAN PERSONAL COMMUNICATIONS— A limited partnership in which The Washington Post Company has a majority interest. APC has been operating personal communications services systems in Washington, D.C., northern Virginia and the Baltimore, Maryland, region since November 1991 under an experimental license from the Federal Communications Commission. APC received a tentative pioneer's preference from the FCC in October 1992.

MOFFET, LARSON & JOHNSON, INC.— Headquartered in Falls Church, Virginia, MLJ specializes in the design, development and operation of advanced mobile broadcast and common carrier radio facilities.

PRO AM SPORTS SYSTEM— Headquartered in Detroit, Michigan, PASS is a regional sports cable network that supplies sports programming to 775,000 homes in Michigan and northwest Ohio.

AFFILIATES

INTERNATIONAL HERALD TRIBUNE (50 percent of common stock) — a daily newspaper published in Paris, France. In 1992 the International Herald Tribune had an average daily paid circulation of almost 200,000 in 164 countries, served from printing sites in Paris, Zurich, London, Marseilles, The Hague, Singapore, Hong Kong, Tokyo, Rome, Frankfurt and New York.

LOS ANGELES TIMES-WASHINGTON POST NEWS SERVICE, INC. (50 percent of common stock) — a supplier of spot news and features to more than 600 newspapers, broadcast stations and magazines in 40 countries.

BOWATER MERSEY PAPER COMPANY LTD. (49 percent of common stock) — a newsprint manufacturer in Liverpool, Nova Scotia.

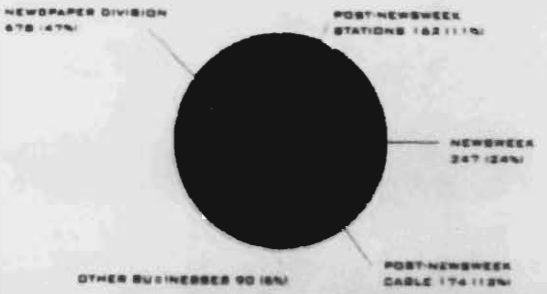
BEAR ISLAND PAPER COMPANY (one-third limited partnership interest)— a newsprint manufacturer in Doswell, Virginia.

BEAR ISLAND TIMBERLANDS COMPANY (one-third limited partnership interest)— an owner/manager of timberland.

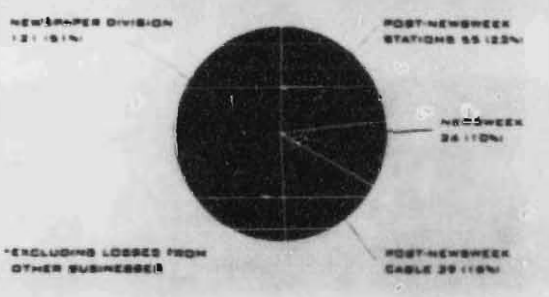
COWLES MEDIA COMPANY (28 percent of common stock)— owner of The Minneapolis Star Tribune and other smaller properties.

ACTV, INC. (15 percent of common stock) — an interactive-television company serving the entertainment and education markets. The Washington Post Company also has a 51 percent interest in ACTV Interactive Company, which markets ACTV's interactive-television programming and technology for educational applications worldwide.

1992 OPERATING REVENUES ($ IN MILLIONS)



1992 OPERATING INCOME ($ IN MILLIONS)*



*EXCLUDING LOSSES FROM OTHER BUSINESSES

CORPORATE DIRECTORY

BOARD OF DIRECTORS

Katharine Graham (3)
Chairman of the Board

Donald E. Graham (3)
President
Chief Executive Officer
Publisher, The Washington Post

Alan G. Spoon (3)
Executive Vice President
Chief Operating Officer

Benjamin C. Bradlee
Vice President at Large
The Washington Post

James E. Burke (3)
Former Chairman and Chief Executive Officer
Johnson & Johnson

Martin Cohen (3)
Vice President

George J. Gillespie III (3)
Attorney, Member of Cravath, Swaine & Moore

Ralph E. Gomory (1)
President, Alfred P. Sloan Foundation

Nicholas deB. Katzenbach (2)
Attorney

Donald R. Keough (1)
President and Chief Operating Officer
The Coca-Cola Company

Anthony J. F. O'Reilly (2)
Chairman, President and Chief Executive Officer
H.J. Heinz Company

Barbara Scott Preiskel (1)
Attorney

William J. Ruane (1,3)
Chairman of the Board, Ruane, Cunniff & Co., Inc.

Richard D. Simmons (2)
President, International Herald Tribune

George W. Wilson (2)
President, Concord (N.H.) Monitor

Committees of the Board of Directors:
(1) Audit Committee
(2) Compensation Committee
(3) Finance Committee

OTHER COMPANY OFFICERS

Diana M. Daniels
Vice President, General Counsel and Secretary

Ross F. Hamachek
Vice President-Planning and Development

Leonade D. Jones
Treasurer

Beverly R. Keil
Vice President-Human Resources

Guyon Knight
Vice President-Corporate Communications

John B. Morse, Jr.
Vice President-Finance

G. William Ryan
Vice President
President and Chief Executive Officer,
Post-Newsweek Stations

Richard M. Smith
Vice President
Editor-in-Chief and President,
Newsweek

Ralph S. Terkowitz
Vice President-Technology

Howard E. Wall
Vice President
Chairman and Chief Executive Officer,
Post-Newsweek Cable

STOCK TRADING

The Washington Post Company Class B common stock is traded on the New York Stock Exchange with the symbol WPO.

STOCK TRANSFER AGENTS AND REGISTRAR

First Chicago Trust Company of New York
Post Office Box 3981
Church Street Station
New York, New York 10008-3981

The Riggs National Bank of Washington, D.C.
Corporate Trust Division
Post Office Box 96206
Washington, D.C. 20090-6206

SHAREHOLDER INQUIRIES

Communications concerning transfer requirements, lost certificates, dividends and changes of address should be directed to either transfer agent. Inquiries may be made to First Chicago Trust Company of New York Shareholder Relations Group by telephone (212) 791-6422 or fax (212) 385-9796. Those who are hearing impaired may call the Telecommunications Device for the Deaf (TDD) at (212) 571-0022.

FORM 10-K

The company's Form 10-K annual report to the Securities and Exchange Commission will be provided to shareholders upon written request to: Treasurer, The Washington Post Company, 1150 15th Street, N.W., Washington, D.C. 20071.

ANNUAL MEETING

The annual meeting of stockholders will be held on Thursday, May 13, 1993, at 9:00 a.m., at The Washington Post Company, 9th floor, 1150 15th Street, N.W., Washington, D.C.

COMMON STOCK PRICES AND DIVIDENDS

The Class A common stock of the company is not traded publicly. The Class B common stock of the company is listed on the New York Stock Exchange. High and low sales prices during the last two years were:

	1992		1991	
QUARTER	HIGH	LOW	HIGH	LOW
January-March	$ 242	$ 193	$ 251	$ 193
April-June	246	214	229	210
July-September	244	214	236	209
October-December	241	215	212	169

During 1992 the company repurchased 33,949 outstanding shares of Class B common stock in unsolicited transactions at prices no higher than the last sale price on the New York Stock Exchange. Of the total shares repurchased in 1992, 28,300 shares were included in trading volume reported on that year's consolidated tape and accounted for less than one percent of the volume.

Both classes of common stock participate equally as to dividends. Quarterly dividends were paid at the rate of $1.05 per share in 1992. At February 18, 1993, there were 23 Class A and 1,667 Class B shareholders of record.

FEDERAL ELECTION COMMISSION,
Petitioner,

v.

PHILLIPS PUBLISHING, INC.,
Respondent.

Misc. No. 81-0079.

United States District Court,
District of Columbia.

July 16, 1981.

Federal Election Commission petitioned for court enforcement of two Commission orders that publisher and managing editor of newsletter answer written interrogatories seeking detailed information about personnel, operations and one of its biweekly newsletters. A motion to dismiss, a counterclaim, and a motion for preliminary injunction were filed in opposition, and the District Court, Flannery, J., held that press exemption to definition of expenditures under Federal Election Campaign Act applied to solicitation letter mailed by newsletter publisher and editor to regular and potential subscribers soliciting subscriptions and that Federal Election Commission's petition for enforcement of orders that publisher and managing editor answer interrogatories seeking information about staff of newsletter, their political affiliations, and publication's finances would be denied where Commission had not offered any evidence or even theory suggesting that newsletter was owned or controlled by any political party or candidate, printing and distributing of solicitation letter was in publisher's capacity as publisher of newsletter, and solicitation letter's purposes of publicizing newsletter and obtaining new subscribers were normal, legitimate press functions.

Ordered accordingly.

1. Elections ⟹317

When a party refuses to obey a subpoena or order of the Federal Election Commission, a federal court may issue order declaring compliance. Federal Election Campaign Act of 1971, § 310(b) as amended 2 U.S.C.A. § 437d(b).

2. Elections ⟹317

In context of commercial and corporate matters, subpoenas of Federal Election Commission are entitled to court enforcement if inquiry is within authority of agency, demand is not too indefinite, and information sought is reasonably relevant. Federal Election Campaign Act of 1971, § 310(b) as amended 2 U.S.C.A. § 437d(b).

3. Elections ⟹317

Where Federal Election Commission had initiated investigation of newsletter because it opposed political candidate as method to attract subscribers, in contravention to having previously recognized such pro-

motional activities as permissible. Commission did not have broad investigatory powers vested in other federal agencies, there was potential for chilling free exercise of political speech and association, and interpretation of statutory exemption provided for press activities was involved. Commission's subject-matter jurisdiction to issue interrogatories to publisher and managing editor of newsletter as part of investigation would be carefully scrutinized. Federal Election Campaign Act of 1971, §§ 301(9)(B)(i), 303, 304(c)(1), 305(b), 313(a)(2), 321, 323 as amended 2 U.S.C.A. §§ 431(9)(B)(i), 433, 434(c)(1), 435(b), 437g(a)(2), 441b, 441d.

4. Elections ⟹317

Press exemption to definition of expenditures under Federal Election Campaign Act applied to letter mailed by newsletter publisher and editor to regular and potential subscribers soliciting subscriptions and thus Federal Election Commission's petition for enforcement of orders that publisher and managing editor answer interrogatories seeking detailed information about staff of newsletter, their political affiliations, and publication's finances would be denied where Commission had not offered any evidence or theory suggesting that newsletter was owned or controlled by political party or candidate, printing and distributing of solicitation letter was in publisher's capacity as publisher of newsletter, and solicitation letter's purposes were normal, legitimate press functions. Federal Election Campaign Act of 1971, § 301(9)(B)(i) as amended 2 U.S.C.A. § 431(9)(B)(i).

Charles N. Steele, Lawrence M. Noble, Nancy B. Nathan, Washington, D. C., for petitioner.

Jack C. Landau, Clemens P. Work, Sharon P. Mahoney, Washington, D. C., for The Reporters Committee for Freedom of the Press.

Paul D. Kamenar, Washington, D. C., for respondent.

MEMORANDUM OPINION

FLANNERY, District Judge.

I. Background

This action is before the court on the petition of the Federal Election Commission (FEC) for court enforcement of two Commission orders to answer written questions. The Commission orders are addressed to Thomas Phillips and Ronald Pearson. The questions seek detailed information about the personnel and operations of Phillips Publishing, Inc. and one of its bi-weekly newsletters, *The Pink Sheet on the Left*.

Respondent Phillips Publishing, Inc. publishes ten newsletters on various topics, including satellite, telephone, radio, and video technology, retirement, travel, and real estate. *The Pink Sheet on the Left* is a conservative, anti-communist publication with an annual subscription rate of $39 and a circulation of approximately 14,000. It has been in existence for over ten years. *The Pink Sheet* and Phillips Publishing are neither owned nor controlled by any political party, political committee, or candidate. Affidavit of Thomas Phillips ¶ 5.

In early 1980 while Senator Edward Kennedy was a candidate for the Democratic Presidential nomination, Phillips Publishing sent a mailing to regular and potential subscribers soliciting subscriptions to *The Pink Sheet* and seeking donations for placing the newsletter in college libraries. The mailing included a one-page letter from Thomas Phillips, the publisher of the newsletter; a three-page letter from Ronald Pearson, managing editor; a one-page series of quotations endorsing the newsletter; and a one-page combination subscription order form and "Teddy Kennedy Opinion Poll" which could be completed and returned to the newsletter. The mailing appealed to political conservatives and strongly emphasized *The Pink Sheet*'s opposition to the campaign and philosophy of Senator Kennedy.

On March 18, 1980, the Kennedy for President Committee filed a complaint with the FEC alleging that *The Pink Sheet* promotional material which advocated the defeat

of Senator Kennedy violated four provisions of the Federal election laws. On March 24, 1980, the FEC notified Thomas Phillips, the owner and president of Phillips Publishing, that a complaint had been filed against him and requested that he respond to the Kennedy complaint within 15 days. Phillips Publishing responded to the FEC on April 11, 1980. It stated that *The Pink Sheet* was a periodical, was not controlled by any party, candidate, or committee, and therefore promotional material distributed by it was exempt from FEC regulation under 2 U.S.C. § 431(9)(B)(i).

On June 24, 1980 the FEC found "reason to believe" that the respondent had violated 2 U.S.C. §§ 433, 434(c)(1), 435(b), 441b, and 441d, and initiated an investigation pursuant to 2 U.S.C. § 437g(a)(2). Briefly, § 433 requires political committees to register with the FEC; § 434(c)(1) requires anyone other than a political committee who makes independent political expenditures in excess of $250 to file certain reports; § 435(b) was repealed January 8, 1980;[1] § 441b prohibits labor unions and corporations from making contributions to or expenditures for candidates in federal elections; and § 441d requires anyone who makes an independent expenditure or solicits political contributions to state whether or not the candidate paid for the communication.

The FEC notified respondent of its "reason to believe" finding by a letter dated June 26, 1980. The notification identified the following excerpts from *The Pink Sheet*'s promotional material as being in violation of federal election laws:

1. "We must stop Kennedy before he seizes the Presidency."
2. "You can help with this effort to stop Teddy Kennedy."
3. "You learn how you can use this valuable information to help defeat Teddy Kennedy's drive for the Presidency."
4. "Whether you are a man or woman, young or old, a businessman, teacher, student, employee, employer, union member or government worker—you can actually help combat Teddy Kennedy and advance the cause of conservatism in America."

The Commission's letter went on to explain its determination that *The Pink Sheet*'s solicitation letter is not covered by the press exemption contained in § 431(9)(B)(i):

> In your letter dated April 11, 1980, you defend your clients on the ground that the activity in which the Phillips Publishing Inc. and The Pink Sheet On The Left were engaged is exempt from the definition of "expenditures" under 2 U.S.C. § 431(9)(B)(i):
>
> "any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate."
>
> As the questioned communication is not a news story, commentary or editorial, the Commission has determined that the exemption of 2 U.S.C. § 431(9)(B)(i) is not available. Furthermore, the Commission has determined that the questioned communication was not distributed through the facilities of a periodical publication. This determination is based upon a facial comparison of the questioned communication to a copy of the periodical *The Pink Sheet On The Left* as exhibited in your letter dated April 11, 1980. Unlike the newsletter submitted by you, the title of the questioned communication is not in the same format as the title of the regular Pink Sheet publication (e. g., there is a difference in type). Furthermore, the questioned communication does not contain legends normally carried on the publication (e. g. "America's Authoritative Report on Left-Wing Activities", or the legend bearing the names of staff officers, subscription rates, copyright date etc.) In addition, the content of the Pink Sheet publication has a different format than the questioned communication. For example, the publication is normally laid out in subheadings followed by editorial comment. Finally, the questioned com-

1. Pub.L.No. 96-187, Title I, § 105(1), 93 Stat. 1354.

munication bears the salutation of "Dear Friend" as opposed to "Dear Subscriber" which is printed in the Pink Sheet Publication. In light of these considerations, the Commission has determined that your clients cannot claim the exemption afforded by 2 U.S.C. § 431(9)(B)(i).

FEC letter, June 26, 1980 at 2 n.1. Included with the FEC's notification letter were two sets of interrogatories, one directed to Thomas Phillips and one directed to Ronald Pearson.

The FEC voted on October 7, 1980 to order respondent to answer the interrogatories. On October 24 Thomas Phillips and Ronald Pearson filed a motion to quash with the FEC, which was denied on December 17, 1980. After being notified that it would receive no further responses to its questions, the FEC filed this action on April 8, 1981. Respondent has filed a motion to dismiss, a counterclaim, and a motion for preliminary injunction which seeks to enjoin the FEC from investigating or taking any other action with respect to *The Pink Sheet* and its promotional material.

II. Discussion

A. Standard of Review

[1, 2] When a party refuses to obey a subpoena or order of the FEC, a federal court may issue an order requiring compliance. 2 U.S.C. § 437d(b). In the context of commercial and corporate matters, subpoenas are entitled to court enforcement if "the inquiry is within the authority of the agency, the demand is not too indefinite, and the information sought is reasonably relevant." *United States v. Morton Salt*, 338 U.S. 632, 652, 70 S.Ct. 357, 369, 94 L.Ed. 401 (1950). While courts have generally been favorably disposed to enforcing agency subpoenas without looking closely at the agency's subject matter jurisdiction over the area being investigated, this court must "exercise particular care in assuring itself that subject matter jurisdiction does exist." *Federal Election Commission v. Machinists Non-Partisan Political League*, 655 F.2d 380 at 386 (D.C.Cir.1981) (hereinafter "*MNPL*").

In *MNPL* the FEC found "reason to believe" that MNPL violated 2 U.S.C. § 441a(a)(2) by contributing more than $5,000 to four "draft Kennedy" organizations formed to promote the acceptance of presidential candidacy by Senator Kennedy. The Commission then issued a sweeping subpoena to MNPL, which was enforced by the district court. The court of appeals vacated the enforcement order on the ground that the subpoena exceeded the FEC's subject matter jurisdiction.

[3] Four factors in *MNPL* convinced the court that the deference courts usually give to agencies' business-related subpoena enforcement requests was unwarranted and that the court should carefully scrutinize the FEC's subject matter jurisdiction. Each of the factors present in *MNPL* are present in this case. First, the *MNPL* court was concerned because the investigation at issue was a "novel extension of the Commission's investigative authority." *Id.* at 387. Here the FEC has initiated an investigation of a newsletter because it opposed a political candidate as a method to attract subscribers. While the FEC has initiated a somewhat similar investigation on at least one other occasion, see *Reader's Digest Association v. Federal Election Commission*, 509 F.Supp. 1210 (S.D.N.Y.1981) (investigation of magazine publisher to determine whether distribution of videotapes of computer reenactment of Senator Kennedy's accident at Chappaquidick constituted illegal corporate contribution), on another occasion the FEC appears to have recognized such promotional activities as permissible under the election laws.

In MUR (Matter Under Review) 296(76), the FEC dismissed an internally generated complaint against *Penthouse Magazine*. *Penthouse* paid for an advertisement which appeared in newspapers shortly before the 1976 presidential elections. The advertisement publicized the November issue of the magazine. It depicted Jimmy Carter in an unfavorable light and warned readers not to vote until they had read an article in the November issue. The FEC dismissed the

complaint upon the recommendation of the General Counsel, who noted that the "ad is most logically construed on its face as an effort, albeit suggestive, to promote a commercial venture—namely, the selling of a magazine with a controversial article regarding Mr. Carter." The General Counsel went on to mention "the overriding protection of the First Amendment in this area." *See* Respondent's Ex. 21. Thus while the investigation in this case does not constitute "an unprecedented assertion of subject matter jurisdiction for the FEC," *MNPL*, at 386, it can still be considered a novel extension of FEC authority in light of the FEC's previous reluctance to investigate similar advertising and in light of the concern expressed in *Reader's Digest* over the authority of the FEC to conduct its investigation in that case. *See Reader's Digest, supra*, 509 F.Supp. at 1214, *quoted in MNPL, supra*, at 396 n.32.

The second factor the court in *MNPL* relied upon was the "difference between the scope of investigatory authority vested in agencies such as the FTC, SEC, or the Administrator of Labor's Wage and Hour Division on the one hand, and the FEC on the other." *Id.* at 387. Judge Wald's conclusion that the FEC does not have the broad investigatory powers vested in those agencies is equally valid here. Similarly, the third and most important reason for heightened scrutiny, the "potential for chilling the free exercise of political speech and association guarded by the first amendment" is also present here. *Id.* at 388. Finally, just as in *MNPL*, this court's examination of subject matter jurisdiction rests principally upon a legal interpretation of the statute.

An additional reason the court should carefully scrutinize subject matter jurisdiction in this case is found in the statutory exemption provided for press activities. Phillips Publishing has consistently maintained that the promotional materials in question are exempt from the FEC regulation under 2 U.S.C. § 431(9)(B)(i), which exempts from the definition of expenditures

> any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate.

The legislative history of this section further indicates that Congress meant for the exemption to be a broad one:

> [I]t is not the intent of the Congress in the present legislation to limit or burden *in any way* the first amendment freedoms of the press and of association. Thus the exclusion assures the unfettered right of the media to cover and comment on political campaigns.

H.Rep.No.93-943, 93d Cong., 2d Sess. at 4 (1974) (emphasis added).

B. Subject Matter Jurisdiction

Having concluded that subject matter jurisdiction warrants careful scrutiny in this case, the court now turns to an examination of the statute as it applies to the facts in this action. *Reader's Digest, supra*, is the only case of which this court is aware where the FEC has asserted jurisdiction over a press entity. *Reader's Digest* commissioned a study of Senator Kennedy's accident at Chappaquidick as research for an article which appeared in the magazine's February 1980 issue. Part of the study included a video tape of a computer reenactment of the accident. The magazine distributed copies of the video tape and the article to television networks, local television stations, and other media outlets. The FEC found "reason to believe" that expenditures to disseminate the video tape violated 2 U.S.C. § 441b(a), which makes illegal any corporate contribution or expenditure in a federal election or primary. After refusing to answer written questions propounded by the FEC, *Reader's Digest* sued to enjoin the FEC from proceeding with an investigation.

The *Reader's Digest* court adopted a two-step procedure for dealing with allegations that a press entity has violated federal election laws. The procedure recognizes the FEC's need to conduct an inquiry in order to determine whether conduct falls within

the statute's press exemption, while at the same time strictly limiting the inquiry in order to minimize harm to First Amendment values. Under the *Reader's Digest* procedure, the initial inquiry is limited to whether the press entity is owned or controlled by any political party or candidate and whether the press entity was acting as a press entity with respect to the conduct in question. *Reader's Digest, supra*, 509 F.Supp. at 1214–1215. *See also MNPL, supra*, at 396–397 (*citing* Reader's Digest with approval). If the press entity is not owned or controlled by a political party or candidate and it is acting as a press entity, the FEC lacks subject matter jurisdiction and is barred from investigating the subject matter of the complaint. Thus in *Reader's Digest* the court allowed limited investigation to determine whether dissemination of the tape was part of *Reader's Digest's* press function as a magazine publisher. *Reader's Digest, supra*, 509 F.Supp. at 1215.

[4] The rule in this circuit is that if the court finds the FEC needs "additional factual information before a decision on the jurisdiction question can reasonably be made," it "*may* adopt a two-step procedure similar to the one used in *Reader's Digest Ass'n v. FEC.*" *MNPL, supra*, at 396 (emphasis added). There is no need for the FEC to obtain additional factual information in this case. As early as April, 1980, the FEC received responses from Phillips Publishing, through its counsel, stating that *The Pink Sheet* and its publisher "are not political committees, do not solicit or receive any political contributions, or make any contributions to any candidate," and this is confirmed by the uncontroverted affidavit of the owner of Phillips Publishing. Affidavit of Thomas Phillips ¶ 5. The FEC has not offered this court any evidence or even a theory suggesting that *The Pink Sheet* is owned or controlled by any political party or candidate, yet it seeks detailed information about the staff of *The Pink Sheet*, their political affiliations, and the publication's finances.

Similarly, it is clear that the respondent was acting in its capacity as the publisher of a newsletter in printing and distributing the solicitation letter for *The Pink Sheet*. The court takes judicial notice of the fact that newsletters and other publications solicit subscriptions, and in their advertising doing so, they publicize content and editorial positions. If there is any doubt remaining as to whether the solicitation letter was distributed as part of the normal functions of a press entity, those doubts are dispelled by an examination of the newsletter and a copy of the solicitation letter. As the court explained in *Reader's Digest*,

> [I]f RDA was acting in its magazine publishing function,—if, for example, the dissemination of the tape to television stations was to publicize the issue of the magazine containing the Chappaquiddick article, then it would seem that the exemption is applicable.

Reader's Digest, supra, 509 F.Supp. at 1215. Because the purpose of the solicitation letter was to publicize *The Pink Sheet* and obtain new subscribers, both of which are normal, legitimate press functions, the press exemption applies.

The FEC argues that *MNPL* does not apply to this case. In *MNPL* the FEC's assertion of jurisdiction rested "solely upon a legal interpretation of the statute which [did] not depend upon any facts sought to be gleaned through the subpoena." *MNPL, supra*, at 390. The Commission contends that whether the solicitation letter at issue in this case constituted a normal newsletter activity is a factual issue subject to further inquiry. The court disagrees. This case differs from *Reader's Digest*, where the court in effect treated the issue of what constituted the normal functions of the magazine as a factual issue and allowed the FEC limited inquiry. There the FEC did not have in its possession the tape; here the FEC has been provided with the solicitation letter at issue and another solicitation letter critical of Jimmy Carter, as well as back issues of the newsletter. More importantly, while circulation of a video tape to publicize a magazine article may well be a normal press function, it is certainly more unusual and thus subject to greater scrutiny than a

routine mailing soliciting new subscribers for a publication.

There must be some threshold showing of wrongdoing on the part of respondent if the press exemption is to serve the purpose for which it was intended. Here the FEC has not challenged the representation by Phillips Publishing that it is not owned or controlled by any political party or candidate, that it frequently sends material through the mail soliciting subscriptions to *The Pink Sheet*, and that the materials at issue were sent as promotional materials to seek new subscribers. *See* Affidavit of Thomas Phillips ¶ 5–9. Rather, the FEC's petition to enforce its orders to answer written questions is based solely on conjecture that a violation may have occurred. However, "mere 'official curiosity' will not suffice as the basis for FEC investigations, as it might in others," *MNPL*, *supra*, at 388, and the Supreme Court has warned that "the power of compulsory process [must] be carefully circumscribed when the investigative process tends to impinge on such highly sensitive areas of freedom of speech or press, freedom of political association, and freedom of communication of ideas." *Sweezy v. New Hampshire*, 354 U.S. 234, 245, 77 S.Ct. 1203, 1209, 1 L.Ed.2d 1311 (1957). *See also Securities and Exchange Commission v. McGoff*, D.C.Cir., 647 F.2d 185, 191 (balancing or special sensitivity required in subpoena enforcement action against press entity). Accordingly, since the FEC has made no threshold showing that a violation may have occurred and it is extremely unlikely that a violation will be found, and since there is a danger further FEC inquiry would impinge upon First Amendment freedoms, the FEC's petition must be denied.

This opinion should not be read to imply that FEC enforcement requests should always be denied where a press entity is the subject of a "reason to believe" finding and the FEC seeks further information. Clearly further investigation would be warranted if *The Pink Sheet* had not been in existence for over 10 years but rather had been established for the sole purpose of supporting or opposing a candidate, or if the FEC had some evidence linking *The Pink Sheet* with a political organization or candidate. However, *MNPL* makes clear that the district court need not permit further investigation by the FEC if additional factual information is not needed to determine whether the FEC has jurisdiction, and no further fact-finding is necessary in this case in order to hold the FEC lacks jurisdiction.

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

BEFORE THE FEDERAL ELECTION COMMISSION

81 AUG 7 PM 2: 21

July 27, 1981

In the Matter of	)	
	)	MUR 1271
Reader's Digest Association, Inc.	)	

GENERAL COUNSEL'S REPORT

I. Background

On August 6, 1980, a signed and sworn complaint was filed before the Federal Election Commission (hereinafter the "Commission") against the Reader's Digest Association, Inc. (hereinafter the "Digest"). The complaint alleged that the Digest violated the Federal Election Campaign Act of 1971, as amended, § 431 et seq. (hereinafter the "Act"), section 441b, by making corporate expenditures for the purchase of: (1) a computer study of the speed at which Senator Edward Kennedy's automobile was traveling when it crashed into the Poucha Pond, resulting in the death of Mary Jo Kopechne in 1969; (2) a study of the tides and currents in the area of the Chappaquiddick Island; and (3) the production and distribution of video tapes of a computer reenactment of the fatal accident at Chappaquiddick. On September 18, 1980, after notification by the Commission of the complaint, the Digest responded asserting that any investigation into its activities was barred by the first amendment and the statutory exemption for news stories, commentaries and editorials in 2 U.S.C. § 431(9)(B)(i).

After considering the allegations in the complaint and the response of the Digest, the Commission on November 11, 1980, found reason

8 1 0 4 0 2 9 4 0 9 3

to believe that the Digest committed a violation of 2 U.S.C. § 441b by making expenditures "to disseminate to other media the video tapes of a computer reenactment of Senator Kennedy's automobile accident at Chappequiddick Island." However, the Commission took no action regarding the allegations that violations of Section 441b arose from expenditures by the Digest for either the study of the automobile accident or the study of tidal currents. In a letter dated December 18, 1980, the Commission notified the Digest of the reason to believe finding and requested answers to a set of questions concerning the dissemination of the video tapes at issue. The Commission also requested copies of any video tape footage of the computer reenactment that the Digest might have in its possession.

The Digest filed a motion for a temporary restraining order and a preliminary injunction in the United States District Court for the Southern District of New York on January 30, 1981, in an attempt to halt the Commission investigation of the complaint. On March 19, 1981, the court denied the Digest's motion for a preliminary injunction. Following receipt of the court's order, the Commission again requested that the Digest voluntarily respond to the Commission original questions of December 15, 1980. The Digest replied in a letter dated April 13, 1981, that it read Judge Leval's order to require no answers to any Commission questions not tendered under compulsory process.

On April 23, 1981, the Commission authorized the issuance of an order to answer interrogatories and subpoena for the

8 1 0 1 0 2 9 4 8 9 4

production of documents that were prepared along the lines of inquiry suggested by Judge Leval's opinion. On May 13, 1981, the Digest submitted a letter in response to the Commission's order and subpoena and attached a press package disseminated to various media outlets to promote the Chappaquiddick article in the February edition of the Reader's Digest magazine. In addition, the Digest offered to make copies of the original video tape and clips of the television coverage of the news regarding the studies and the video tape available for viewing in New York City. Commission staff viewed the video tapes in New York City on May 30, 1981.[1/]

After analysis of all the facts available to it, the Office of General Counsel prepared a brief recommending that the Commission find no probable cause to believe that the Digest committed the violations alleged by the complainant. The brief was circulated to the Commission on July 1, 1981, and a copy was mailed to the respondent. The fifteen (15) day statutory period for a responsive brief from the Digest passed on July 23, 1981, without receipt of any communication from the Digest. The Office of General Counsel, therefore, submits this report recommending

---

1/ The Digest permitted Commission staff to view the tapes at their offices but did not "produce" them as would have been required to satisfy the letter of the Commission's subpoena. However, the video tapes viewed by Commission staff do not warrant further administrative or judicial action to obtain them for Commission viewing. The tapes make no explicit political expressions. Rather, they present factual data, in graphic form, supplementing the text of the study prepared by Research Associates, Inc., concerning the path of Senator Kennedy's automobile during his accident at Chappaquiddick Island.

8 1 0 4 0 2 9 4 0 8 9 5

that the Commission find no probable cause to believe that the Digest committed violations of 2 U.S.C. § 441b of the Act.

II. Legal Analysis (see also Brief of the General Counsel)

The Digest refused to provide a substantive response, to either the Commission's initial notification, or later, to the Commission's finding of reason to believe that the Digest committed violations. The Digest asserted that, as a publishing corporation, it was automatically exempt from Commission scrutiny. However, Judge Leval's ruling against the Digest's assertion of an absolute immunity from investigation permitted the Commission to conduct a limited inquiry into the factual question whether the dissemination of the video tapes was within the normal course of the Digest's publishing function. The results of this investigation, although admittedly incomplete on certain points,[2/] combined with the information which the Digest put on the public record in its attempt to block the Commission's investigation, permit adequate appraisal of facts at issue in this matter. To wit, there is no evidence contrary to a conclusion that the Digest's use of a video tape

---

2/ One question which remains unanswered is whether the Digest has used video tapes to advertise Reader's Digest magazine articles other than the one complained of in this matter. The investigation produced no evidence that there was a "dissemination" of the video tapes that would qualify as an event outside of the normal course of the Digest's publishing business. Thus the importance of obtaining an answer to the Commission's question on other uses of the video tape mode to advertise Reader's Digest magazine is diminished.

8 1 0 4 0 2 9 4 0 8 9 6

reenactment of the accident at Chappaquiddick to promote the sale of the February 1980 edition of Reader's Digest magazine was within the ordinary course of its publishing business. Such a use is thus exempted by 2 U.S.C. § 431(9)(B)(i) from the Act's prohibition against expenditures by a corporation in connection with a federal election.

Accordingly, while it may be true that the Digest did not fully answer every single question proposed in the Commission's investigation of this matter, there is, nevertheless, no evidence that suggests that the Commission's investigation should go any further, or that the Commission should proceed to find probable cause to believe a violation has occurred. Given the sensitivity of the first amendment concerns at issue in this matter and the failure of the Commission's investigation to turn up evidence that suggest the use of the video tape was outside the scope of the Digest's publishing business, the Office of General Counsel recommends that the Commission find no probable cause to believe that the Digest violated 2 U.S.C. § 441b by disseminating copies of a video tape reenactment of Senator Kennedy's automobile accident at Chappaquiddick Island.

III. Recommendations

The Office of General Counsel recommends that the Commission:

1. Find no probable cause to believe that the Reader's Digest Association, Inc. committed a violation of 2 U.S.C. § 441b by disseminating copies of a video tape reenactment of Senator Kennedy's automobile accident at Chappaquiddick Island.

9 7 0 4 0 3 3 9 0 2
8 1 0 1 0 2 8 9 7

2. Close the file.

3. Send the attached letters.

7 August 1981
Date

Charles A. [illegible]
General Counsel

BY: _____
Kenneth A. Gross
Associate General Counsel

Attachments
Letters to complainant and respondent

8 5 0 4 0 2 9 4 0 8 9 8

OGC 0582

PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011
(202) 628-6600 • FACSIMILE (202) 434-1690

RECEIVED
FEDERAL ELECTION COMMISSION
93 DEC -8 PM 5:18

December 8, 1993

Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

MUR 3657

Dear Commissioners:

On October 5, 1993 the Federal Election Commission ("the Commission") voted "reason to believe" that Congressman Daniel Glickman violated the Federal Election Campaign Act ("FECA") by accepting an offer of free response time mandated by the political editorial doctrine of the Federal Communications Act ("FCA").

Glickman received the response time under the FCA as a result of a complaint filed with the Federal Communications Commission ("FCC") which asserted his right to that time under the FCA and related regulations. In that complaint, Glickman asserted that Multimedia Cablevision, Inc. ("Multimedia") aired several editorials expressly advocating the defeat of Glickman, and that pursuant to the FCC's Political Editorial Doctrine, he was therefore entitled to a reasonable opportunity to respond without charge over Multimedia facilities.

Glickman now faces a proceeding initiated by the Commission under FECA challenging the lawfulness of the FCA process and the remedy afforded by that process pursuant to FCC regulations. The Commission is acting on a conclusion of its General Counsel that the receipt of free reasonable time to respond as provided under the FCA, may constitute a prohibited corporate contribution under Section 441b of the Act.

The Commission, however, is now embarking on reconsideration of its original decision as required by the decision in Federal Election Commission v. NRA Political Victory Fund 6 F.3d 821 (D.C. Cir. 1983). Glickman is taking this opportunity to present, for the first time, the reasons

[11753-0002/DA933200.024]

9704304390

why the Commission should decline to pursue an investigation directed against Glickman's exercise of his rights under the FCA and related regulations.[1]

The FEC Position Impermissibly Promotes Conflict Between Regulatory Schemes

Multimedia responded to the Complaint and the urging of the FCC by negotiating such time in direct settlement of Glickman's political editorial claims under the FCA. Glickman and Multimedia conducted their negotiations at the offices of the FCC Political Broadcast Bureau, with the encouragement of the Bureau and the active participation of the Bureau Director and Bureau counsel.

Regulations of the Federal Communications Act specifically provide that:

> [w]here a cable television operator, in an editorial, . . . opposes a legally qualified candidate or candidates, the system operator shall, within 24 hours of the editorial, transmit to . . . the candidate opposed in the editorial . . . an offer of a reasonable opportunity for a candidate or a spokesman of the candidate to respond over the system's facilities.

47 C.F.R. § 76.209(d) (1992).

---

[1] Counsel to Glickman and Multimedia recently met with the Office of General Counsel to advise of their intention to offer additional material in connection with the reconsideration provided by NRA. As noted, this response constitutes the first time that Glickman has had such an opportunity. The Commission did not notify Glickman that an investigation was even contemplated until after it was voted and a subpoena -- now invalidated by NRA -- was issued.

9704343906

The rights asserted by Glickman under the political editorial doctrine cannot support an FEC investigation, much less any finding of liability for accepting a contribution from Multimedia in violation of Section 441b.[2] On its face, the position advanced by the General Counsel represents an extraordinary and unprecedented reconstruction of Congressional intent. The FCC rules were promulgated in 1972 -- 65 years after the Congress first enacted a prohibition against corporate contributions. At no time did the Congress, the FCC or, in later years, the FEC express concern that in some fashion, unwittingly, Congress had acted to permit corporate contributions in one circumstance, under one statute, while prohibiting them in all circumstances under another.[3]

Should the Commission nonetheless persist in its position that Glickman may have violated the FECA by accepting the FCA mandated free response time, it will have promoted direct conflict with the FCC's political editorial rule and that agency's discharge of its duty to enforce that rule. The United States Court of Appeals for the District of Columbia has stated that:

> an agency faced with alternative methods of effectuating the policies of the statute it administers, (1) must engage in a careful analysis of the possible effects those alternative courses of action may have on the functioning and policies of other statutory regimes, with which a conflict is claimed; and (2) must explain why the action taken minimizes, to the extent possible, its intrusion into policies that are more properly the province of another agency or statutory regime.

---

[2] This would produce the odd result that Multimedia, which actively opposed Glickman for re-election, would by federal agency edict be treated as actively supporting him with contributions.

[3] In fact, Congress reviewed section 441b's prohibition on corporate spending in 1974 and 1976, in comprehensive amendments to the Act, without any concern reflected in the legislative history that a "conflict" between the FCA or the FEC had developed.

9/0438290/

New York Shipping Ass'n v. Federal Maritime Com'n, 854 F.2d 1338, 1370 (D.C. Cir. 1988), cert. denied, 488 U.S. 1041 (1989). The Commission has not satisfied either prong of this test in applying 441b to reach the present "reason to believe" finding against Glickman.

First, the Commission's position would effectively foreclose the access of federal candidates to the rights afforded under the political editorial rule. Whether in circumstances such as these, where a complaint with the FCC has been filed, or even where a broadcaster (or cable operator) has initiated a satisfactory offer in accordance with the rule, the federal candidate would be required to decline or risk FECA liability under Section 441b. In fact, in future cases, the candidate who exercises FCA rights and accepts the time in disregard of the FEC's position would potentially face "knowing and wilful" liability or even referral for criminal prosecution. The effect of the Commission's position on FCA rights for federal candidates under this rule is not minimal or glancing: it is direct and produces no result short of invalidating the mandate of the other agency.

Second, the Commission has offered no explanation for its remarkable position. Glickman received notification of an investigation -- after it was voted and only upon the issuance of subpoenas for documents and testimony. The General Counsel's Report sets out a position which is purely conclusory and hardly qualifies as an "explanation" for an unprecedented construction of the Act resulting in conflict with the FCA. Even at the meeting with counsel to Glickman, the General Counsel and staff declined to provide any explanation of the legal rationale behind its Report or the agency's subsequent action.

The Commission is Obligated to Accommodate Candidate Rights Under the FCA

The Commission must minimize, rather than actively promote, conflict with the FCA. In this vein, the Supreme Court has noted in a case where the presumed conflict affected the Interstate Commerce Act and the National Labor Relations Act:

> [t]he [Interstate Commerce] Commission acts in a most delicate area here, because whatever it does affirmatively . . . may have important consequences upon the collective bargaining processes between the union and the employer. The policies of the Interstate Commerce Act and the labor act necessarily must be accommodated, one to the other.

Burlington Truck Lines, Inc. v. United States, 371 U.S. 156, 172 (1962) (emphasis added).

The need for the Commission to pursue such harmonization is not novel. In fact, in several instances, the Commission has been directed by Congress to pursue such a course. Under 2 U.S.C. § 438(f), (Promulgation of rules, regulations, and forms by the Commission and Internal Revenue Service), Congress has mandated that:

> [i]n prescribing such rules, regulations, and forms under this section, the Commission and the Internal Revenue Service shall consult and work together to promulgate rules, regulations, and forms which are mutually consistent.

A similar Congressional intention to achieve consistency between the FECA and other regulatory schemes is evidenced by 2 U.S.C. § 451 which contemplates the enactment by three other agencies of regulations governing the extension of credit, without security, to a candidate for Federal office which would supplement and support the requirements of the Act.[4]

---

[4] § 451 provides:

> "The Secretary of Transportation, the Federal Communications Commission, and the Interstate Commerce Commission shall each promulgate, within ninety days after February 7, 1972, its own regulations with respect to the extension of credit, without security, by any person regulated by such Secretary or Commission to any candidate for Federal office, or to any person on behalf of such a candidate, for goods furnished or services

9704304907

In fact, until the present case, the Commission has avoided dissonant constructions of its regulations on its own volition. Under a 1977 memorandum of understanding between the Commission and the Department of Justice, both agencies agreed to enforce the FECA and the Internal Revenue Code, in such manner as to minimize any conflict between the mandates of the two agencies. Similarly, the Commission and the FCC, each separately charged with enforcing different sponsorship identification requirements, collaborated in the production of a joint Public Notice of ways in which both the Commission's and the FCC's requirements could be jointly satisfied in one, consolidated "disclaimer." See 69 F.C.C.2d 1129; 1978 FCC LEXIS 1006 (1978).[5]

The Commission should pursue such harmonization in like fashion in this case. Any concern over the interrelationship of the FCA and the FECA should be addressed through rulemaking, consultation with the FCC, or recommendations to the Congress for amendment to either, or both, acts. The only unacceptable alternative is the one adopted by the Commission, that of subpoenaing documents and initiating investigations into completely lawful activity by Glickman acting under the

---

> rendered in connection with the campaign of such candidate for nomination for election, or election, to such office."

[5] The Federal Communications Commission has supported this effort in other ways. Early in the administration of the Act, the FCC confronted suggestions that the FECA definition of candidacy should supersede that of the FCA. The FCC, pointing out that "[e]ach Act is designed to regulate different aspects of political campaigning", insisted on enforcement of its definition where no conflict would result and each agency would remain free to meet its statutory responsibilities. In re Complaint of Anthony R. Martin-Trigona 67 F.C.C.2d 33 _____; 1977 LEXIS 1253, at *4 (1977). On another occasion, the agency noted that where the statutes could be construed in tandem without promoting conflict, it would be prepared to do so: ". . . . the Commission might consider any action by a candidate taken pursuant to the [FECA] as a factor" in determining candidacy under the FCC. In re Request of National Citizens Committee for Broadcasting, 75 F.C.C.2d 650 ____; 1979 FCC LEXIS 788, at *12 (1979).

authorization of a federal statute and under the authority of another federal agency.

An Investigation Adversely and Improperly Affects Glickman's FCA Rights

It is no answer to this charge, that because the Commission is merely subpoenaing documents for its investigation, it is not adversely affecting Glickman's rights nor creating a conflict. The Commission's subpoena power does affect individuals rights, and when wielded improperly has resulted in substantial harm to parties. See e.g., Federal Election Commission v. Machinists, 655 F.2d 380, 388-389 n.17 (1981), cert. denied, 454 U.S. 897 (1981). Instead, the Commission should cease current investigative efforts, and concentrate on minimizing conflict between the FECA and the FCA.

At present, however, by its very instigation of this investigation, the Commission has forced the FECA and the FCA to conflict directly with one another. This conflict is not the inevitable result of enforcement of both statutory schemes, but instead is artificial -- created by the Commission's current actions.

While the Commission should, and in fact is mandated, to pursue its statutory responsibilities, it should not disregard the effect of its actions on the FCA. Rather, the Commission may properly address its concern through policy level inquiry, allowing both satiation of the Commission's mandate, and avoidance of a statutory conflict.

The Settlement under the FCC Also Settled Glickman's FECA Claims

Finally, as the Commission knows, this matter came to its attention when, concurrent with his filing of a complaint with the FCC, Glickman filed a complaint with the Commission. This complaint alleged that Multimedia could not claim the "news commentary" exemption for the type of editorial campaign it waged against Mr. Glickman's re-election and in favor of the election of his opponent. Glickman asked the Commission to

institute an investigation and to apply any and all penalties under FECA against Multimedia.

Glickman's FECA complaint like his FCA complaint reflected an effort by Glickman to redress in some fashion the harms caused to him and his candidacy by the Multimedia campaign over the period that Glickman and the FEC, on the one side, and Multimedia, on the other, could not agree on the application of the political editorial rule. In filing of a FECA complaint, Glickman sought to make clear to Multimedia the consequences of refusing a negotiated settlement -- that he would pursue any and all remedies against Multimedia.

As it happened, however, from both Glickman's and Multimedia's perspectives, further action became unnecessary. Under the FCC negotiated settlement, Glickman and Multimedia equitably resolved their differences -- Multimedia by preserving its rights to editorialize and Glickman by receiving what he (and the FCC Political Broadcast Bureau) could agree to be a "reasonable opportunity" to respond under the rule. Had Multimedia refused to negotiate and thus provide relief under the FCA, Glickman's complaint under the FECA would have properly stood as filed, justifying an investigation against Multimedia.[6]

Under the circumstances presented in this matter, however, the original cause for complaint has been remedied through the political editorial doctrine of the FCA. The Commission cannot ignore that this doctrine mandated the very conduct which it now seeks to penalize. As a result, Commission concern about this type of conduct should not be addressed through an investigation of Mr. Glickman, but instead through policy level analysis and accommodation to assure that the Congressional intent behind both the FECA and the FCA can be fulfilled.

---

[6] In effect, had Multimedia denied the application of the political editorial rules, it would have effectively conceded that it was not operating as press entity for FECA purposes. Glickman would not have received time, and the harms against him from these editorials would have gone unaddressed. In these circumstances, Commission enforcement action would then have been entirely appropriate.

Very truly yours,

Robert F. Bauer

cc: Lawrence Noble, General Counsel

RFB:smb

9704439913

OGC 0607

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM

Dec 14 9 06 AM '93

93 DEC 14 PM 3:49
RECEIVED
FEDERAL ELECTION COMMISSION

Seth L. Warren
P.O. Box 659
Andover, KS 67002
December 8, 1993

MUR 3657

Richard Denholm III
F.E.C.
999 "E" St. N.W.
Washington, DC 20463

Dear Richard Denholm III:

In responce to the subpoena recieved 11/12/93, I have included my recollection of the events prior to and after the action in question.

I received approximately eight letters from Multimedia Cablevision concerning a repose to an editorial that was aired on cable TV. The letters stated that pursuant to federal law, they were required to offer equal time to all candidates.

I spoke with a Ben Scortino twice on the telephone concerning these responses. I also spoke with Mr. Scortino in person reguarding this issue, at which time Mr. Scotino Phoned attorney David Fleming and requested information upon federal reqirements\regulations.

With the assurance that we were within federal regulations, we proceeded to produce a thirty second response which was aired on cable TV. I have no record of the number of times that this response was aired, I personally did not see it at all.

I feel that I was in full compliance with federal regulation and local laws in this editorial response. If there is evidence otherwise, I will be glad to assist in clearing this matter. I have very few records and due to a recent move, the records that I do have (bill for production costs, letters, ect.) are temporarily unavailable.

Please contact me if I can be of further assistance in this matter. Thank-you.

Sincerely,

Seth L. Warren

Seth L. Warren

Tara Schulte 12-8-93

TARA L. SCHULTE
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 9-3-96

9/0434391 4

OGC 0624

HARRIS, YOST & CUNNINGHAM
1416 KSB&T BUILDING
125 N. MARKET
WICHITA, KANSAS 67202

MICHAEL T. HARRIS
ERIC R. YOST
KENDALL R. CUNNINGHAM

316-268-2800
FAX 316-268-2202

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM
Dec 17 1 47 PM '93

RECEIVED
FEDERAL ELECTION COMMISSION
93 DEC 17 PM 3:40

December 13, 1993

MUR 3657

Mr. Richard M. Denholm II
FEDERAL ELECTION COMMISSION
999 East E Street N.W.
Washington, D.C. 20463

Dear Mr. Denholm:

I am in receipt of the letter from Mr. Scott E. Thomas, Chairman of the Federal Election Commission to Mr. Theron E. Fry, Treasurer of the now defunct Yost for Congress Committee.

I wanted to acknowledge receiving his letter, and let you know that we do intend to respond. I have been in communication with Mr. Jan Baran, who is attorney for Multimedia. I am informed that the FEC is in the process of reconstituting itself following a recent court opinion, and that the subpena to produce documents, order to submit written answers, and the enclosed interrogatories and document requests will possibly be reissued in the coming weeks. Rest assured that when that occurs, I will comply.

Please let me know if you have any objection to this procedure, and if I do not hear from you, I will await your next set of documents.

On another related matter, please send communications to me at this address, rather than to my treasurer. Mr. Fry was, at all times pertinent to the events that are the subject of this action, truly an innocent bystander.

Very truly yours,

Eric R. Yost

ERY/jaa
cc: Theron E. Fry
fec

9704439915

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JANUARY 19, 1994

Mr. Theron E. Fry, Treasurer
Eric R. Yost for Congress Committee
c/o Triplett, Woolf, & Garretson
Suite 800, Centre City Plaza
151 N. Main
Wichita, KS 67202-1409

RE: MUR 3657
Eric R. Yost for Congress Committee and Theron E. Fry, as treasurer

Dear Mr. Fry:

In your 1993 Mid-Year Termination Report, which was received on August 2, 1993, you requested that the Federal Election Commission permit Eric R. Yost for Congress Committee ("Committee") to terminate pursuant to 2 U.S.C. § 433(d) and Section 102.? of the Commission's Regulations. Because of the ongoing enforcement matter involving your Committee, this request has been denied. The Committee also cannot terminate because of an outstanding obligation. The Committee's 1993 Mid-Year Termination Report, 1992 October Quarterly Report, and Amended 1992 October Quarterly Report indicate $1,500 in outstanding debts owed to Kansans for Life PAC. See 11 C.F.R. § 102.3(a).

Based on the foregoing, you are reminded that the Committee must continue to file all the required reports with the Commission until such time as the enforcement matter has been closed as to the Committee and all conditions of 11 C.F.R. § 102.3(a) have been fully satisfied. If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Richard M. Denholm II
Attorney

cc: Reports Analysis Division
Mr. Eric R. Yost

9704384391 6

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

MAY 25 12 27 PM '94

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Multimedia Cablevision Company,	)	MUR 3657
A Division of Multimedia, Inc.	)	
et al.	)	
	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter was generated by a complaint submitted on behalf of Congressman Dan Glickman and the Glickman for Congress Committee ("Glickman Committee").[1] The complaint alleges that Multimedia Cablevision Company and its Executive Vice President, Michael C. Burrus, ("Multimedia Cablevision") and the Eric R. Yost for Congress Committee and Theron E. Fry, as treasurer, ("Yost Committee") violated provisions of the Federal Election Campaign Act of 1971, as amended ("the Act" or "FECA").

On October 5, 1993, the Federal Election Commission ("Commission") found reason to believe that Multimedia Cablevision, Michael C. Burrus, and the Yost Committee violated 2 U.S.C. § 441b(a). The Commission also found reason to believe that the complainant, Glickman for Congress Committee, and its treasurer, as well as a third-party candidate, Seth Warren, violated 2 U.S.C. § 441b(a). In addition, the Commission approved the issuance of subpoenas for the production of documents and answers to interrogatories to all respondents and authorized

1. After the receipt of this complaint, on November 25, 1993, the Commission received a referral from the Department of Justice involving the same transactions.

9704384917

subpoenas for deposition to Multimedia Cablevision and the Yost Committee.

Soon thereafter, the Court of Appeals issued its decision in FEC v. NRA Political Victory Fund, et al., No. 91-5360 (D.C. Cir. Oct. 22, 1993) ("NRA"). At the request of counsels for Multimedia Cablevision and the Glickman Committee, this Office, including the General Counsel and the Associate General Counsel for Enforcement, met with them to discuss this MUR and the Commission's subpoenas in light of the recent NRA decision. Subsequent to our meeting, Multimedia Cablevision submitted additional information in response to the complaint (Attachment 1), and Glickman for Congress Committee submitted its response to the reason to believe finding. (Attachment 2.) The Yost Committee submitted a letter stating that it would respond after the Commission reissued its subpoena and order, and Respondent Seth Warren responded to the subpoena and order, regardless of NRA. (Attachments 3 and 4.)

This report contains recommendations to assure that this matter conforms to the court's opinion in NRA. This report also examines the additional information provided by Respondents and, based upon that information, recommends that the Commission revote its findings of reason to believe against Multimedia Cablevision and Michael Burrus and recommends finding no reason to believe against the other Respondents.

9/0 4 3 0 4 3 9 1 0

II. RECOMMENDED ACTIONS IN LIGHT OF FEC V. NRA

Based upon the complaint, responses, and the referral from the Department of Justice and consistent with the Commission's November 9, 1993, decisions concerning compliance with the NRA opinion, this Office recommends that the Commission revote the determinations to: 1) find reason to believe that Multimedia Cablevision violated 2 U.S.C. § 441b(a); 2) find reason to believe that Michael C. Burrus violated 2 U.S.C. § 441b(a); and 3) authorize deposition subpoenas to Multimedia Cablevision. For the convenience of the Commission, this Office has attached the certification in this matter dated October 8, 1993. (Attachment 5.) This Office further recommends that the Commission approve the attached Subpoena and Order and Factual and Legal Analysis, which were revised in light of the additional information provided by Respondents. (Attachments 6 and 7.)

III. FACTS

This matter involves anti-Glickman editorials televised by Multimedia Cablevision and an anti-Glickman flier it distributed to 95,000 cable customers during the 1992 election for U.S. Representative for the Fourth Congressional District in Kansas. The TV editorials expressly advocated the election of Eric R. Yost and attacked Congressman Dan Glickman. Between October 12 and October 23, 1992, Multimedia Cablevision aired the anti-Glickman/pro-Yost editorials 1,155 times on ten cable stations. The flier, entitled "It's Time For A Change" and printed on Multimedia Cablevision stationery, also attacked

Glickman and urged support for Yost. Multimedia Cablevision distributed this flier to 95,000 households with its monthly cable billings.

The complaint alleges that the costs of these anti-Glickman messages were corporate contributions to the Yost Committee and fall outside the protection of the press exemption provided by 2 U.S.C. § 431(9)(B). Complainant also claims "that never has this particular company --Multimedia-- broadcast an editorial on any subject with the frequency of these attacking the re-election campaign of Mr. Glickman." Complainant further alleges that Multimedia Cablevision "acknowledges . . . that it produced these ads in collaboration and consultation with the Yost Committee."

In addition to the instant complaint, the Glickman Committee also filed a complaint with the Federal Communications Commission ("FCC"). (See Attachment 2.) The FCC complaint asserted that Congressman Glickman was entitled to free air-time to respond to Multimedia Cablevision's anti-Glickman editorials. (Id.) With the assistance of the FCC, the parties negotiated a settlement. Pursuant to their agreement, Multimedia Cablevision provided Congressman Glickman and the Libertarian candidate, Seth Warren, with free air-time to respond to the editorials. (Id.) Congressmen Glickman's response aired 700 times on 13 cable channels between October 27 and November 2, 1992. Seth Warren's response aired 119 times.

IV. LAW

This matter presents the issue of whether the expenditures and activities alleged by the complainant fall within the protection of the press exemption. As a threshold issue, there is first the question of whether Multimedia Cablevision, a cable systems operator, is a press entity within the meaning of that term under 2 U.S.C. § 431(9)(B). If it is determined that Multimedia Cablevision is a press entity, the two-prong analysis articulated by the court in Reader's Digest Ass'n v. FEC, 509 F. Supp. 1210 (S.D.N.Y. 1981) ("Reader's Digest") must be applied to determine whether these activities are entitled to the protection of the exemption.

The Act generally prohibits corporations from making contributions or expenditures in connection with a federal election. 2 U.S.C. § 441b(a). For purposes of 2 U.S.C. § 441b(a), the term "contribution or expenditure" includes any direct payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value to any candidate, campaign committee, or political party organization, in connection with any election. 2 U.S.C. § 441b(b)(2). Further, candidates and their authorized committees are prohibited from knowingly accepting corporate contributions. 2 U.S.C. § 441b(a).

The Act generally defines an independent expenditure as an expenditure expressly advocating the election or defeat of a clearly identified candidate and made without cooperation or consultation with any candidate, or any authorized committee or

9/0430439921

agent of such candidate. 2 U.S.C. § 431(17). Although a corporation may make partisan communications to its stockholders and executive or administrative personnel and their families, corporations may not pay for communications to the general public that expressly advocate the election or defeat of a federal candidate. 11 C.F.R. § 114.3(a)(1).

Some media entities may be exempt from the general corporate prohibition under certain circumstances. Specifically, section 431(9)(B)(i) identifies "broadcasting station[s], newspaper[s], magazine[s], or other periodical publication[s]" as press entities which may be entitled to the exemption.[2] Under the so-called press or media exemption, the production or dissemination of news stories, commentaries or editorials by such press entities that are not owned or controlled by any political party, committee or candidate are explicitly excluded from the Act's definitions of "contribution" and "expenditure." 2 U.S.C. § 431(9)(B)(i); 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2).

The Commission has interpreted the media exemption broadly, consistent with Congress's admonition that the Act was not intended "to limit or burden in any way the first amendment

---

2. The Act does not define "broadcasting station." However, within the context of sponsorship of candidate debates by news organizations, the Commission has stated "the term broadcaster is meant to include broadcasting facilities licensed by the Federal Communications Commission ("FCC"), as well as networks." See Explanation and Justification of 11 C.F.R. § 114.4(e), 44 Fed. Reg. 76,734 and 76,735 (1979).

9704384922

freedom of the press." H.R. Rep. No. 93-1239, 93rd Cong., 2d Sess., at 4. For instance, although Section 431(9)(B)(i) speaks only of "news stor[ies], commentar[ies], or editorial[s]," the Commission's regulations have extended the protection to "costs incurred in covering or carrying" exempt material. 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2).

The courts have also examined the application of the press exemption. See, e.g., Reader's Digest Ass'n v. FEC, supra; FEC v. Phillips Publishing Company, Inc., 517 F. Supp. 1308 (D.D.C. 1981). In Reader's Digest, the magazine distributed a videotape of a computer re-enactment of Senator Kennedy's accident at Chappaquiddick to promote the sale of an issue of its magazine that contained an article on the accident. In considering whether "Reader's Digest's"[3] distribution of the videotape was protected by the press exemption, the Court articulated a two-part test "on which the exemption turns: whether the press entity is owned by the political party or candidate and whether the press entity was acting as a press entity in making the distribution complained of." 509 F. Supp. at 1215. Applying this two-part test,[4] the Court opined that "if RDA [Reader's Digest Association] was acting

9704384923

---

3. For the sake of clarity, the magazine's name, "Reader's Digest," will be set off in quotation marks, as opposed to the case name, Reader's Digest, which is underlined.

4. It was assumed that "Reader's Digest," a magazine publisher, was a press entity within the meaning of the Act because magazines are specifically identified in the exclusion. 2 U.S.C. § 431(9)(B)(i). In addition, the issue of ownership and control by a party or candidate was not a question in this case; "Reader's Digest" is independently owned. 509 F. Supp. at 1215.

in its magazine publishing function, - if, for example, the dissemination of the tape to television stations was to publicize the issue of the magazine containing the Chappaquiddick article, then it would seem that the exemption is applicable ...." Id.[5]

In Phillips Publishing, the questioned activity involved the mailing of a solicitation for subscriptions to a biweekly newsletter, The Pink Sheet on the Left. The Court described the mailing as including: "a one-page letter from Thomas Phillips, the publisher of the newsletter; a three-page letter from Ronald Pearson, managing editor; a one-page series of quotations endorsing the newsletter; and a one-page combination subscription order form and 'Teddy Kennedy Opinion Poll' which could be completed and returned to the newsletter." 517 F. Supp. at 1309. The mailing was further described as appealing "to political conservatives and strongly emphasized The Pink Sheet's opposition to the campaign and philosophy of Senator Kennedy." Id. Citing to Reader's Digest, inter alia, the Court found that "[b]ecause the purpose of the solicitation letter was to publicize The Pink Sheet and obtain new subscribers, both of which are normal, legitimate press functions, the press exemption applies." Id. at 1313.

5. Following the Court's Order, the Commission found no probable cause to believe that "Reader's Digest" violated the Act in MUR 1271. The General Counsel's Report reasoned that the distribution of the videotape was within the ordinary course of "Reader's Digest's" publishing business because it was promoting the sale of the magazine. (See General Counsel's Report dated August 7, 1981 at 4-5.)

9704384924

The Commission has also considered the press exemption within the context of Advisory Opinions. For example, in AO 1982-44 [¶ 5691], the Democratic National Committee ("DNC") and Republican National Committee ("RNC") requested an opinion as to whether they could accept an offer of free cablecast time on WTBS, which is owned by Turner Broadcasting System, Inc. ("TBS"). "The Commission conclude[d] that the donation of free cablecast time by Turner, Inc. to both the DNC and RNC would not constitute a prohibited corporate contribution." Id. In reaching this conclusion, the Commission applied Reader's Digest's two-part test as follows: "Turner, Inc. facilities are not owned or controlled by either political party and the Commission concludes that the distribution of free time to both political parties is within the broadcaster's legitimate broadcast function and, therefore, within the purview of the press exemption." Id.

V. RESPONSES

A. Multimedia Cablevision

1. Original Response

In its first response, Multimedia Cablevision denies that the anti-Glickman editorials and flier were contributions, claiming that both of these activities fall within the purview of the press exemption. In its response, Multimedia Cablevision relies heavily on the affidavit of its Executive Vice President, Michael Burrus.

9704384392 5

In his affidavit,[6] Mr. Burrus states that "Multimedia operates a 40 channel cable system in Wichita and vicinity on which it carries the programming of 20 national cable networks such as CNN and ESPN, as well as the programming of broadcast stations such as NBC and ABC and Multimedia's own locally-originated programming." Burrus Aff. at ¶ 3. Mr. Burrus states that through agreements with the nationally delivered cable networks, Multimedia Cablevision reserves several minutes of each hour on the national cable networks to use for its own purposes. Id. Mr. Burrus further declares:

> It is a standard cable industry practice for cable system affiliates of the national cable networks to use this time to broadcast public service announcements, editorials, local advertising, or for promotional purposes. Multimedia, like its industry counterparts, uses time allocated to its system in the cable networks for these same purposes.

Id. Mr. Burrus declares that "[l]ike a television broadcasting station, Multimedia ... regularly produces and airs editorials regarding matters of importance to the community. For instance, Multimedia aired three editorials regarding the cable television legislation then pending in Congress .... Furthermore, Multimedia included an editorial insert in its billing statements regarding the cable legislation." Id. at ¶ 5. Mr. Burrus adds that, "over the course of the past several years, Multimedia has broadcast numerous editorials." Id.

---

6. The affidavit is included in the First General Counsel's Report dated September 24, 1993, at Attachment 2.

9704384592 6

However, he cites to only three examples, which were described as discussing "the ability of Wichita voters to elect their own mayor and city council, Kansas highways, and exercising the right to vote." Id.

According to Mr. Burrus, five separate anti-Glickman editorials aired from October 12 through October 23, 1992. Id. at ¶ 6. Mr. Burrus avers:

> With regard to the preparation and content of these editorials, they constitute the view of Multimedia Cablevision, Inc. Neither Mr. Yost, Congressman Glickman's opponent, nor the Yost Committee participated in the preparation of these editorials as alleged in the Complaint. Thus, Multimedia did not produce the editorials "in collaboration and consultation with the Yost committee."

Id. at ¶ 10. Mr. Burrus also states that pursuant to FCC regulations, Multimedia Cablevision first notified Congressman Glickman of the airing of the editorials on October 12, 1992. Id. at ¶ 9. According to Mr. Burrus, Congressman Glickman's response aired between October 27 and November 2, 1992. Id. at ¶ 11. Mr. Burrus adds that Multimedia Cablevision also aired the response of Seth Warren, the Libertarian Party candidate. Id.

Regarding the 95,000 cable bill inserts, Mr. Burrus declares that Multimedia Cablevision "regularly incorporates public service and editorial inserts into its billing statements" as part of its normal business operations. Id. at

9704384927

¶ 4. Mr. Burrus notes that Multimedia Cablevision produced and distributed an editorial billing insert opposing the then-pending cable legislation. Id. at ¶ 5. Although Multimedia Cablevision contends that it "regularly" produced editorial billing inserts, it submitted only four examples of such inserts. The first promoted Multimedia Cablevision's public service activities in the community. The second advertised the operating hours of the local public library along with an announcement of Multimedia Cablevision's donation to the library. The third and fourth inserts opposed the then-pending cable legislation and included statements such as "[l]egislation in Washington, D.C. may increase your monthly cable bill" and "[t]he TV Networks ... want to tax you 20% when you watch it on cable." (See First General Counsel's Report dated September 24, 1993 at Attachment 2.)

2. Supplemental Response

In its supplemental response, Multimedia Cablevision makes the broad argument that because its parent corporation, Multimedia, Inc., is presumably a press entity, the four wholly-owned divisions of the corporation -- including Multimedia Cablevision -- are also press entities. (Attachment 1 at 7.) Multimedia Cablevision analogizes that its parent corporation is "a multifaceted news media communication and entertainment company virtually identical to the Washington Post Company." (Id. at 5.) Multimedia Cablevision further argues that its broadcast of the anti-Glickman editorials and mailing

97043039920

of the anti-Glickman billing inserts were legitimate press functions. (Attachment 1.)

In support, Multimedia Cablevision submits, among other things, its parent corporation's 1992 Annual Report and Securities and Exchange Commission Form 10-K. (Id.) According to these reports, Multimedia, Inc. is divided into four divisions: Multimedia Newspaper Company, Multimedia Broadcasting Company, Multimedia Entertainment Company, and Multimedia Cablevision Company, which includes Multimedia Security Service.

These reports also specifically describe the Respondent -- Multimedia Cablevision. According to the SEC Form 10-K, Multimedia Cablevision "operates cable television systems serving subscribers in Kansas, Oklahoma, Illinois, Indiana, and North Carolina." Form 10-K at 5. (Attachment 1.) This report describes cable television as "the distribution of television signals and special information programs to subscribers within the community by means of a coaxial cable system." Id. at 6. Multimedia Cablevision operates a wireless cable system in the area at issue in this matter, Wichita, Kansas. Id. Wireless cable "combines standard broadcast television reception equipment with microwave reception equipment and uses a combination downconverter and channel selector to provide a composite of broadcast and non-broadcast signals to subscribers." Id.

Of note, Multimedia Cablevision also owns a home security alarm business, Multimedia Security Service. According to the SEC

9704384929

Form 10-K, this company "sells or leases and installs residential and commercial alarm equipment, and provides monitoring services for the alarm owner. These accounts are monitored through a central computer located in Wichita, Kansas." Form 10-K at 7. Both Multimedia Cablevision and Multimedia Security Service are under common management (Annual Report at 12), and presumably, under Respondents' argument, the home alarm business is also a press entity.

Assuming that Multimedia Cablevision is a press entity within the meaning of FECA, Respondents next argue that the anti-Glickman editorials and the anti-Glickman billing inserts were legitimate press functions. First, concerning the aired editorials, the Respondents argue that "editorializing" is recognized as a legitimate press function "and [n]either the number of times the editorial is aired nor the content of the editorial is relevant to the inquiry ...." (Attachment 1 at 10.) Concerning the anti-Glickman fliers, Respondents rely on Phillips Publishing and argue "if, as a matter of law, a publisher of a newsletter can distribute a mass mail solicitation to the general public that contains partisan statements in an effort to obtain subscribers, then a press entity such as Multimedia may include editorial opinions in its regular billings to existing subscribers." (Attachment 1 at 13.) Respondents further argue that the General Counsel's Report in MUR 1271 "acknowledged that 'Reader's Digest's' distribution of a video tape was within its legitimate

9704384933

press function even though the videotape was not the same medium 'Reader's Digest' regularly employed, i.e. -- print medium." (Id.)

B. Glickman for Congress Committee

In its response, the Glickman for Congress Committee explains that it filed a complaint with the Commission claiming violations of the Act and also simultaneously filed a complaint with the FCC claiming the right to reasonable, free cable-time to respond to the anti-Glickman editorials. See 47 C.F.R. § 76.209(d).[7] (Attachment 2.) The parties negotiated a settlement of the FCC complaint, in which Congressman Glickman was given free cable-time to respond to Multimedia Cablevision's editorials. (Attachment 2 at 2.) The Committee argues:

> Glickman now faces a proceeding initiated by the Commission under FECA challenging the lawfulness of the FCA [Federal Communications Act] process and the remedy afforded by that process pursuant to FCC regulations. The Commission is acting on a conclusion of its General Counsel that the receipt of free reasonable time to respond as provided under the FCA, may constitute a prohibited corporate contribution under Section 441b of the Act.

---

7. The regulation, 47 C.F.R. § 76.209(d) (1992), provides:

> [w]here a cable television operator, in an editorial, . . . opposes a legally qualified candidate or candidates, the system operator shall, within 24 hours of the editorial, transmit to . . . the candidate opposed in the editorial . . . an offer of a reasonable opportunity for a candidate or a spokesman of the candidate to respond over the system's facilities.

9/04 5 8 4 3 9 3 1

(Attachment 2 at 1.) The Glickman Committee opines that "[t]his would produce the odd result that Multimedia, which actively opposed Glickman for re-election, would by federal agency edict be treated as actively supporting him with contributions." (Id. at 3.) Further, the Glickman Committee contends that the settlement under the FCC also settled its claims under the Act. (Id. at 7.) "Under the circumstances presented in this matter, however, the original cause for complaint has been remedied through the political editorial doctrine of the FCA. The Commission cannot ignore that this doctrine mandated the very conduct which it now seeks to penalize." (Attachment 2 at 8.)

C. Eric R. Yost for Congress Committee and Theron E. Fry, as treasurer

Mr. Fry responded to the complaint on behalf of the Yost Committee. He argues that the complaint alleges violations only against Multimedia Cablevision and that its activities were editorial and an exercise of its first amendment rights. (See First General Counsel's Report dated September 24, 1993 at Attachment 3.) Mr. Fry also avers that he "was neither asked to consent to, or notified of, the actions of Multimedia in advance." (Id.) After the NRA decision, Mr. Yost submitted a second response concerning the subpoena, but made no substantive arguments. (Attachment 3.)

D. Seth Warren

Mr. Warren responded to the Commission's Subpoena and Order. (Attachment 4.) He explains that Multimedia offered him

9/0430492 32

equal time to respond to the anti-Glickman editorials. Consequently, with the understanding that he was acting in accordance with federal law, he produced a 30 second response.[8] He states that he did not see the response when it aired, and he does not have a record of the number of times that it was aired.

VI. ANALYSIS

A. Is Multimedia Cablevision the type of entity contemplated by the Act's press exemption?

Respondents argue that because of the purported status of the parent corporation, Multimedia, Inc., as a press entity like the Washington Post Company, Multimedia Cablevision is also entitled to claim the press exemption.[9] This argument is too far reaching. The issue in this matter is whether Multimedia Cablevision -- not Multimedia, Inc. -- is the type of entity entitled to the press exemption of 2 U.S.C. § 431(9)(B)(i).

---

8. Mr. Warren states that he spoke to a Mr. Ben Scortino and attorney David Fleming regarding the airing of his response, but he does not further explain who these gentleman are, or their specific involvement in this matter.

9. Multimedia Cablevision asserts that Multimedia, Inc. is a "multifaceted news media and communication company virtually identical to the Washington Post Company." Respondents' argument mistakenly presumes that all divisions of the Washington Post Company are press entities which, based upon the information provided by Respondents, would not be true. The Washington Post Company includes a newspaper division, broadcast division, cable division, magazine division, and "other businesses." These "other businesses" include the Stanley H. Kaplan Educational Center, Legi-Slate, and American Personal Communications. (Attachment 1 at 105-125.) It does not appear that, for example, the Stanley H. Kaplan Educational Center is a press entity within the meaning of FECA.

9 7 0 4 3 0 4 3 9 3 5 3

The precise issue presented, which Respondents attempt to avoid with their broadsweeping argument, is whether Multimedia Cablevision is a press entity within the meaning of FECA because 2 U.S.C. § 431(9)(B)(i) specifically identifies "broadcasting" as exempt, but not cablecasting. Based upon the Commission's broad approach to the press function; the Commission's decision concerning TBS's original cablecasting in AO 1982-44; the FCC's treatment of original cablecasting under its political speech doctrine; and the Supreme Court's recognition that cable operators can serve a press function, this Office concludes that the press exemption extends to original cablecasting, such as we have in this matter.

Under 2 U.S.C. § 431(9)(B)(i), commentaries or editorials that are "distributed through the facilities of any broadcasting station," inter alia, fall under the protection of the so-called press exemption. According to Multimedia, Inc.'s Form 10-K, Multimedia Cablevision in Wichita, Kansas is a wireless cable system which provides "a composite of broadcast and non-broadcast systems." Mr. Burrus's affidavit declares that in addition to the national cable and broadcast station programs, Multimedia Cablevision provides its "own locally-originated programming." Burrus Aff. at ¶ 3. Mr. Burrus further explains that Multimedia Cablevision reserves "several minutes of time each hour to use for their own purposes." Id. In fact, the aired editorials in this matter were such original cablecasts.[10]

---

10. The FCC regulations define origination cablecasting as programming (exclusive of broadcast signals) carried on a cable television system over one or more channels and subject to the exclusive control of the cable operator. 47 C.F.R. § 76.5(p).

9/0438934

In AO 1982-44, the Commission reviewed a request concerning TBS's offer to make two hours of program time on one of its cable channels available to the DNC and RNC. The specific question considered was: "[w]hether the donation of such free cablecast time by Turner, Inc. would constitute a prohibited corporate contribution under 2 U.S.C. § 441b." Id. at p. 10,917. (emphasis supplied.) Applying Reader's Digest, the Commission found that Turner, Inc. facilities are not owned or controlled by a political party and the distribution of free cablecast time to both parties is within the broadcaster's legitimate media function.

In AO 1982-44, a broadcasting facility, which specifically falls within 2 U.S.C. § 431(9)(B)(i), was providing original cablecasting. In this matter, a facility which provides "a composite of broadcast and non-broadcast systems" was providing original cablecasting. It appears that in this changing age of communications, Multimedia Cablevision's wireless cable system is a hybrid of cable and broadcasting not specifically identified within 2 U.S.C. § 431(9)(B)(i). However, for purposes of determining whether Multimedia Cablevision is a facility within the spirit of the press exemption, there does not appear to be any legal significance or any legal basis upon which to distinguish between a broadcasting facility providing original cablecasting and a cable system providing original cablecasting. The apparent significance is that each facility is producing original cablecast programs. Consequently, it

9/0458439 3

appears that Multimedia Cablevision falls within the ambit of the type of entity contemplated by the press exemption.

Turning to the regulation of original cablecasting,[11] the FCC applies standards to non-broadcast cable origination programming that are the same or similar to the standards imposed on broadcast programs. As noted in Multimedia, Inc.'s Form 10-K, "[t]he FCC requires that non-broadcast cable origination programming comply with FCC standards similar to those imposed on broadcasters. These standards include regulations governing political advertising and programming, advertising during children's programming, prohibition of lottery information and sponsorship identification requirements." Id. at 13. In fact, the political editorial doctrine, as applied to cable operators under 47 C.F.R. § 76.209(d) 1992, was the operative regulation imposed on Multimedia Cablevision by which Glickman and Yost were given free air-time to respond. (Attachment 2 at 2.) This provision governing political editorials by cable systems operators is similar to the one governing broadcast stations. See 47 C.F.R. § 73.1930.

Additionally, the United States Supreme Court has also acknowledged that cable operators can serve a press function. In the context of addressing First Amendment questions, the Court has acknowledged that "cable television provides to its subscribers news, information and entertainment. It is engaged in 'speech'

11. The Commission has previously acknowledged that cable systems operators are regulated by the FCC. AO 1982-44.

under the First Amendment, and is, in much of its operation, part of the press." Leathers v. Medlock, 111 S. Ct. 1438, 1442 (1991) (reviewing First Amendment challenge to an Arkansas statute taxing cable systems differently from print media). The Court has also opined that "[c]able television partakes of some of the aspects of speech and the communication of ideas as do the traditional enterprises of newspaper and book publishers, public speakers, and pamphleteers." Los Angeles v. Preferred Communications, Inc., 476 U.S. 488, 494 (1986) (reviewing First Amendment challenge to city ordinance providing franchises to cable operators through an auction process). Of note, the Supreme Court also recognized the distinction between original cablecasting and the "retransmit[tal]" of programming. Id.

> Thus, through original programming or by exercising editorial discretion over which stations or programs to include in its repertoire, respondent seeks to communicate messages on a wide variety of formats. We recently noted that cable operators exercise a "significant amount of editorial discretion regarding what their programming will include." FCC v. Midwest Video Corp., 440 U.S. 689, 707 (1979). Cable television partakes of some of the aspects of speech and the communication of ideas as do the traditional enterprises of newspaper and book publishers, public speakers, and pamphleteers. Respondent's proposed activities would seem to implicate First Amendment interests as do the activities of wireless broadcasters, which were found to fall within the ambit of the First Amendment in Red Lion Broadcasting Co. v. FCC, [395 U.S. 367, 386 (1969)] ....

Id.

For the foregoing reasons, it appears that Multimedia Cablevision is a facility within the ambit of the press exemption.

B. Assuming Multimedia Cablevision is a press entity, are both the aired editorials and fliers legitimate press functions?

Assuming Multimedia Cablevision is a press entity, it is still necessary to apply the Reader's Digest two-prong test: (1) whether Multimedia Cablevision is owned by the political party or candidate; and (2) whether Multimedia Cablevision was acting as a press entity when it aired the anti-Glickman editorials and distributed anti-Glickman fliers to customers with their monthly bills.

It is uncontested that Multimedia Cablevision is not owned or controlled by a candidate or political party. Burrus Aff. at ¶ 13. Consequently, the first prong of the test is easily met. At issue are the two separate activities.

1. Cablecast Editorials

The press exemption specifically excludes editorials from the definition of "expenditures." 2 U.S.C. § 431(9)(B)(i). As the Commission has commented, the term "editorial" "applies specifically to the [cable]caster's point of view." AO 1982-44 [¶ 5691 at p. 10,917].

The complaint characterizes the airings as "anti-Glickman ads" that are "devoted explicitly to the Company's position that the voters in Mr. Glickman's congressional district should reject his candidacy ...." (Complaint at 2.) Thus, on the face

of the complaint, it appears that the cablecast editorials were within Multimedia Cablevision's legitimate press function.[12]

A review of the on-the-air editorials provided with the complaint confirms that Multimedia Cablevision was giving its point of view about the two major candidates. Its vehicle for doing so was by using the time it reserves for its original cablecasting. For these reasons, it appears that Multimedia Cablevision was acting in its cablecasting press function when it aired the anti-Glickman editorials. Accordingly, the aired editorials are protected under the press exemption.

2. Anti-Glickman Fliers

In Reader's Digest, the court opined that if the magazine "was acting in its magazine publishing function, if, for example, the dissemination of the tape to television stations was to publicize the issue of the magazine containing the Chappaquiddick article, then it would seem that the exemption is applicable ...." 509 F. Supp. at 1215. Similarly, the court in Phillips Publishing found that "[b]ecause the purpose of the solicitation letter was to publicize The Pink Sheet and obtain new subscribers, both of which are normal, legitimate press functions, the press exemption applies." 517 F. Supp. at 1313. Accordingly, if Multimedia Cablevision was acting in its cablecasting function in producing and distributing the

---

12. The Complainant's response to the reason to believe finding later characterized their settlement as preserving Multimedia's "rights to editorialize," among other things. (Attachment 2 at 8.)

anti-Glickman flier to its customers with their monthly bills, then such activity was within its legitimate press function. As discussed below, the production and distribution of the anti-Glickman flier does not appear to be part of Multimedia Cablevision's normal cablecasting function.

Multimedia Cablevision produced and distributed 95,000 anti-Glickman fliers which were sent with its monthly cable bills to cable subscribers. The flier criticizes Congressman Glickman's congressional record by highlighting, among other things, his vote for the cable bill and the purported consequent harm to cable subscribers; his vote for a special tax on aircraft that allegedly led to the loss of 400 jobs; his vote to increase taxes on the middle class; and his alleged problems with the House Bank. (See First General Counsel's Report dated September 24, 1993 at Attachment 1 at 4.) It proclaims at the bottom: "WE SUPPORT ERIC YOST FOR CONGRESS." (Id.)

In contrast to Reader's Digest and Phillips Publishing, Multimedia Cablevision's 95,000 anti-Glickman billing inserts were not promoting cable programs or soliciting cable subscriptions. To the contrary, Multimedia Cablevision was acting in a manner unrelated to its cablecasting function when it produced and distributed 95,000 anti-Glickman fliers with its cable bills. Multimedia Cablevision's press facility is through cablecasting. See 2 U.S.C. § 431(9)(B)(i). This anti-Glickman

flier was not an editorial distributed through its press facility -- or any other identified by the statute, such as a newspaper, magazine, or other periodical publication. Distribution of anti-candidate campaign fliers is not the kind of distribution that falls within Multimedia Cablevision's legitimate cablecasting function. See Reader's Digest, 509 F. Supp. at 1214. Further, it is not saved merely because Multimedia Cablevision distributed the flier with its monthly bills. As the court noted in Reader's Digest: "the statute would seem to exempt only those kinds of distribution that fall broadly within the press entity's legitimate press function. It would not seem to exempt any dissemination or distribution using the press entity's personnel or equipment, no matter how unrelated to its press function."[13] Id. at 1214. Thus, the press exemption does not apply to the production and distribution of the flier expressly advocating the defeat of Congressman Glickman because these activities are unrelated to its cablecasting function. Reader's Digest, 509 F. Supp. at 1214-15.

Furthermore, the four examples of fliers submitted by Respondents do not overcome this conclusion. None of the fliers contain pro or anti-candidate advocacy. Instead, these fliers

---

13. As an extreme example, although the companies share the same management, it is clear that Multimedia Cablevision could not distribute campaign fliers through its security business and then claim that this was within its legitimate press function as a cable operator.

97043049941

contain information concerning Multimedia Cablevision's community activities, the hours of the public library, and opposition to the then-pending cable bill. Based upon Multimedia Cablevision's response, it appears that the only flier distributed for the purpose of influencing an election was the anti-Glickman flier. Further, Multimedia Cablevision does not appear to "regularly" distribute fliers with its cable billings because it discussed and produced only four such documents. Multimedia Cablevision has been in business since 1968. (Multimedia, Inc.'s 1992 Annual Report.)

Absent the safe harbor of the press exemption, the general corporate prohibition applies against making communications to the general public expressly advocating the election or defeat of a federal candidate. The anti-Glickman fliers were mailed to 95,000 households. The communications were made to Multimedia Cablevision's subscribers, not to the class of persons permitted by Commission regulations, i.e., stockholders and executive or administrative personnel. 2 U.S.C. § 431(9)(B)(iii) and 11 C.F.R. § 100.8(b)(4); see also MUR 2889 (Wyoming Rural Electric Association) (costs associated with a rural electric cooperative trade association's newsletter containing express advocacy that was sent to the cooperatives' customers, constituted a corporate contribution). Thus, there is reason to believe that Multimedia Cablevision violated 2 U.S.C. § 441b(a) by making communications to the general public expressly advocating the election of Mr. Yost and the defeat of

9/04/03 8:39 AM

Congressman Glickman, a federal candidate. Also, the name of Michael C. Burrus, Executive Vice President of Multimedia Cablevision, appears on the printed fliers sent to Multimedia's customers. Thus, Mr. Burrus, a corporate officer, may have consented to such corporate contributions, in violation of 2 U.S.C. § 441b(a).

Turning to the Yost Committee, no specific evidence was offered to support the allegation that Multimedia Cablevision collaborated with the Yost Committee in producing the editorials. In fact, the evidence in the record is to the contrary. Both Multimedia Cablevision and Michael Burrus deny that there was consultation with the Yost Committee. (See Original Response at 5 and Burrus Aff. at ¶ 10.) Further, the treasurer of the Yost Committee states that "I was neither asked to consent to, or notified of, the actions of Multimedia in advance." (Letter from Fry to Lerner dated November 10, 1992.) The uncontroverted record indicates that Multimedia Cablevision acted independently of the Yost Committee. Accordingly, there is reason to believe that Multimedia Cablevision made independent expenditures on behalf of the Yost Committee by producing and mailing 95,000 anti-Glickman/pro-Yost campaign fliers.

C. Conclusion

Based on the foregoing, this Office recommends that the Commission find reason to believe Multimedia Cablevision Company, a division of Multimedia, Inc., and Michael C. Burrus

9/04/3 6 4 3 9 4 3

violated 2 U.S.C. § 441b(a) by producing and distributing 95,000 fliers to the general public that advocated the defeat of Congressman Glickman and the election of Eric Yost. Although the complaint specifically alleges knowing and willful violations, there is insufficient evidence at this time to recommend knowing and willful findings.

The evidence in this matter also indicates that the Yost Committee was not involved in the production or distribution of the 95,000 fliers. Accordingly, because the record shows that Multimedia Cablevision did not consult or cooperate with the Yost Committee regarding the anti-Glickman fliers, this Office recommends that the Commission find no reason to believe that the Eric R. Yost for Congress Committee and Theron E. Fry, as treasurer, violated 2 U.S.C. § 441b(a).

Finally, based on the foregoing, this Office also recommends that the Commission find no reason to believe that the Glickman for Congress Committee and L.D. Klenda, as treasurer, and Seth Warren violated 2 U.S.C. § 441b(a).

VII. DISCOVERY

Further investigation regarding the anti-Glickman fliers is warranted in this matter. The investigation will inquire into the nature and circumstances surrounding the production and distribution of the 95,000 fliers. This will include an inquiry into the individuals who authorized the production and distribution of the fliers; the individuals who produced and distributed the fliers; the precise number of fliers distributed;

9/U4 3 6 4 3 9 4 4

and the costs of producing and mailing the fliers. The investigation will similarly inquire into the nature and circumstances of any other fliers relating to federal candidates or political committees. To expedite the investigation, this Office recommends that the Commission approve the attached Subpoena for the Production of Documents and Order to Answer Interrogatories to Multimedia Cablevision. This Office also recommends that the Commission authorize in advance deposition subpoenas to Multimedia Cablevision to produce for deposition Michael C. Burrus and any other employees of Multimedia who may have knowledge of the relevant transactions.

VIII. RECOMMENDATIONS

1. Find reason to believe that Multimedia Cablevision Company, a division of Multimedia, Inc., violated 2 U.S.C. § 441b(a).

2. Find reason to believe that Michael C. Burrus violated 2 U.S.C. § 441b(a).

3. Find no reason to believe that the Eric R. Yost for Congress Committee and Theron E. Fry, as treasurer, violated 2 U.S.C. § 441b(a) and close the file as to these respondents.

4. Find no reason to believe that the Glickman for Congress Committee and L.D. Klenda, as treasurer, violated 2 U.S.C. § 441b(a) and close the file as to these respondents.

5. Find no reason to believe that Seth Warren violated 2 U.S.C. § 441b(a) and close the file as to this respondent.

6. Approve the appropriate letters and attached Factual and Legal Analysis.

9/0430394

7. Approve the attached Subpoena for the Production of Documents and Answers to Interrogatories to Multimedia Cablevision Company, a division of Multimedia, Inc.

8. Authorize deposition subpoenas to Multimedia Cablevision Company, a division of Multimedia, Inc.

5/25/94
Date

Lawrence M. Noble
General Counsel

Attachments
1. Multimedia Response dated December 3, 1993.
2. Glickman Response dated December 8, 1993.
3. Yost Committee Response December 13, 1993.
4. Warren Response dated December 8, 1993.
5. Commission Certification dated October 8, 1993.
6. Factual and Legal Analysis to Multimedia Cablevision, Inc.
7. Subpoena.

Attorney assigned: Richard Denholm

9/0435649946

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS /MICHAEL C. KENNEY M.C.K.
COMMISSION SECRETARY

DATE: JUNE 1, 1994

SUBJECT: MUR 3657 - GENERAL COUNSEL'S REPORT DATED MAY 25, 1994

The above-captioned document was circulated to the Commission on THURSDAY, MAY 26, 1994 AT 11:00 A.M. .

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	XXX
Commissioner Elliott	XXX
Commissioner McDonald	
Commissioner McGarry	
Commissioner Potter	XXX
Commissioner Thomas	XXX

This matter will be placed on the meeting agenda for TUESDAY, JUNE 7, 1994 .

Please notify us who will represent your Division before the Commission on this matter.

9704439947

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 3657
Multimedia Cablevision Company,	)	
A Division of Multimedia, Inc.,	)	
et al.	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on June 7, 1994, do hereby certify that the Commission decided by a vote of 4-2 to take the following actions in MUR 3657:

1. Find reason to believe that Multimedia Cablevision Company, a division of Multimedia, Inc., violated 2 U.S.C. § 441b(a).

2. Find reason to believe that Michael C. Burrus violated 2 U.S.C. § 441b(a).

3. Find no reason to believe that the Eric R. Yost for Congress Committee and Theron E. Fry, as treasurer, violated 2 U.S.C. § 441b(a) and close the file as to these respondents.

4. Find no reason to believe that the Glickman for Congress Committee and L.D. Klenda, as treasurer, violated 2 U.S.C. § 441b(a) and close the file as to these respondents.

(continued)

9/0943039430

5. Find no reason to believe that Seth Warren violated 2 U.S.C. § 441b(a) and close the file as to this respondent.

6. Approve the appropriate letters and Factual and Legal Analysis as recommended in the General Counsel's report dated May 25, 1994.

7. Approve the Subpoena for the Production of Documents and Answers to Interrogatories to Multimedia Cablevision Company, a division of Multimedia, Inc., as recommended in the General Counsel's report dated May 25, 1994.

8. Authorize deposition subpoenas to Multimedia Cablevision Company, a division of Multimedia, Inc.

Commissioners McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision; Commissioners Aikens and Elliott dissented.

Attest:

6-8-94
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

9 / 0 4 3 0 4 3 9 4 4 6

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 23, 1994

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Theron E. Fry, Esquire
Triplett, Woolf & Garretson
151 N. Main Street
Centre City Plaza, Suite 800
Wichita, KS 67202

RE: MUR 3657
Eric R. Yost for
Congress Committee and
Theron E. Fry, as
treasurer

Dear Mr. Fry:

On October 5, 1993, the Federal Election Commission found that there was reason to believe the Eric R. Yost for Congress Committee and you, as treasurer, violated 2 U.S.C. § 441b(a). The Commission also issued a Subpoena and Order in this matter at that time.

As you may be aware, on October 22, 1993, the D.C. Circuit declared the Commission unconstitutional on separation of powers grounds due to the presence of the Clerk of the House of Representatives and the Secretary of the Senate or their designees as members of the Commission. FEC v. NRA Political Victory Fund, 6 F.3d 821 (D.C. Cir. 1993), petition for cert. filed, 62 U.S.L.W. 3511 (U.S. Jan. 18, 1994) (No. 93-1151). Since the decision was handed down, the Commission has taken several actions to comply with the court's decision. While the Commission petitions the Supreme Court for a writ of certiorari, the Commission, consistent with that opinion, has remedied any possible constitutional defect identified by the Court of Appeals by reconstituting itself as a six member body without the Clerk of the House and the Secretary of the Senate or their designees. In addition, the Commission has adopted specific procedures for revoting or ratifying decisions pertaining to open enforcement matters.

After considering additional information submitted in this matter, on June 7, 1994, the Commission revoted to find no reason to believe that Eric R. Yost for Congress Committee and you, as treasurer, violated 2 U.S.C. § 441b(a) and closed the file as to you and the Committee.

This matter will become a part of the public record within 30 days after the file has been closed with respect to all other respondents involved. The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed. If you have any questions, please contact Richard M. Denholm II, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report (redacted)

cc: Mr. Eric R. Yost (w/o enclosure)

97044384951

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 23, 1994

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert F. Bauer
Perkins Coie
607 14th Street, N.W.
Washington, D.C. 20005

RE: MUR 3657
Glickman for Congress
Committee and L.D.
Klenda, as treasurer

Dear Mr. Bauer:

On October 5, 1993, the Federal Election Commission found that there was reason to believe the Glickman for Congress Committee and L.D. Klenda, as treasurer, violated 2 U.S.C. § 441b(a). The Commission also issued a Subpoena and Order in this matter at that time.

As you may be aware, on October 22, 1993, the D.C. Circuit declared the Commission unconstitutional on separation of powers grounds due to the presence of the Clerk of the House of Representatives and the Secretary of the Senate or their designees as members of the Commission. FEC v. NRA Political Victory Fund, 6 F.3d 821 (D.C. Cir. 1993), petition for cert. filed, 62 U.S.L.W. 3511 (U.S. Jan. 18, 1994) (No. 93-1151). Since the decision was handed down, the Commission has taken several actions to comply with the court's decision. While the Commission petitions the Supreme Court for a writ of certiorari, the Commission, consistent with that opinion, has remedied any possible constitutional defect identified by the Court of Appeals by reconstituting itself as a six member body without the Clerk of the House and the Secretary of the Senate or their designees. In addition, the Commission has adopted specific procedures for revoting or ratifying decisions pertaining to open enforcement matters.

After considering additional information submitted in this matter, on June 7, 1994, the Commission revoted to find no reason to believe that the Glickman for Congress Committee and L.D. Klenda, as treasurer, violated 2 U.S.C. § 441b(a) and closed the file as to these Respondents.

9704383952

This matter will become a part of the public record within 30 days after the file has been closed with respect to all other respondents involved. The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed. If you have any questions, please contact Richard M. Denholm II, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report (redacted)

9704383953

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 23, 1994

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Seth Warren
P.O. Box 659
Andover, KS 67002

RE: MUR 3657
Seth Warren

Dear Mr. Warren:

On October 5, 1993, the Federal Election Commission found that there was reason to believe you violated 2 U.S.C. § 441b(a). The Commission also issued a Subpoena and Order in this matter at that time.

As you may be aware, on October 22, 1993, the D.C. Circuit declared the Commission unconstitutional on separation of powers grounds due to the presence of the Clerk of the House of Representatives and the Secretary of the Senate or their designees as members of the Commission. FEC v. NRA Political Victory Fund, 6 F.3d 821 (D.C. Cir. 1993), petition for cert. filed, 62 U.S.L.W. 3511 (U.S. Jan. 18, 1994) (No. 93-1151). Since the decision was handed down, the Commission has taken several actions to comply with the court's decision. While the Commission petitions the Supreme Court for a writ of certiorari, the Commission, consistent with that opinion, has remedied any possible constitutional defect identified by the Court of Appeals by reconstituting itself as a six member body without the Clerk of the House and the Secretary of the Senate or their designees. In addition, the Commission has adopted specific procedures for revoting or ratifying decisions pertaining to open enforcement matters.

After considering additional information submitted in this matter, on June 7, 1994, the Commission revoted to find no reason to believe that you violated 2 U.S.C. § 441b(a) and closed the file as to you.

9704384954

This matter will become a part of the public record within 30 days after the file has been closed with respect to all other respondents involved. The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed. If you have any questions, please contact Richard M. Denholm II, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report (redacted)

9/U4383955

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 23, 1994

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jan W. Baran, Esquire
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

RE: MUR 3657
Multimedia Cablevision Company and Michael C. Burrus

Dear Mr. Baran:

On October 5, 1993, the Federal Election Commission found that there was reason to believe Multimedia Cablevision Company, a division of Multimedia, Inc., and Michael C. Burrus ("Respondents") violated 2 U.S.C. § 441b(a). The Commission also issued a Subpoena and Order in this matter at that time.

As you may be aware, on October 22, 1993, the D.C. Circuit declared the Commission unconstitutional on separation of powers grounds due to the presence of the Clerk of the House of Representatives and the Secretary of the Senate or their designees as members of the Commission. FEC v. NRA Political Victory Fund, 6 F.3d 821 (D.C. Cir. 1993), petition for cert. filed, 62 U.S.L.W. 3511 (U.S. Jan. 18, 1994) (No. 93-1151). Since the decision was handed down, the Commission has taken several actions to comply with the court's decision. While the Commission petitions the Supreme Court for a writ of certiorari, the Commission, consistent with that opinion, has remedied any possible constitutional defect identified by the Court of Appeals by reconstituting itself as a six member body without the Clerk of the House and the Secretary of the Senate or their designees. In addition, the Commission has adopted specific procedures for revoting or ratifying decisions pertaining to open enforcement matters.

After considering the additional information submitted by Respondents in this matter, on June 7, 1994, the Commission revoted to find reason to believe that Multimedia Cablevision Company and Michael C. Burrus violated 2 U.S.C. § 441b(a) and to approve the enclosed Factual and Legal Analysis. In addition, the Commission authorized the enclosed Subpoena and Order.

9704353956

All responses to the enclosed Subpoena and Order must be submitted to the General Counsel's Office within 30 days of your receipt of this Subpoena and Order. Documents and responses previously submitted do not have to be re-submitted. Any additional factual and legal materials or statements you wish to submit should accompany the response to the Subpoena and Order.

If you have any questions, please contact Richard M. Denholm II, the attorney assigned to this matter, at (202) 219-3690.

For the Commission,

Trevor Potter
Chairman

Enclosure
Factual and Legal Analysis
Subpoena and Order

9/0436395/

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MUR 3657
)

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Multimedia Cablevision Company
c/o Jan W. Baran, Esquire
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested in the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within 30 days of receipt of this Order and Subpoena.

9/0430429530

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 23rd day of June, 1994.

For the Commission,

Trevor Potter
Chairman

ATTEST:

Marjorie W. Emmons
Secretary to the Commission

Attachment
Questions and Document Requests

9704364959

INSTRUCTIONS

Each answer shall be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

Each answer shall be preceded by the question or interrogatory to which the answer pertains.

In answering these interrogatories and requests for production of documents, furnish all documents and all information, however obtained, that is in your possession, or known by or otherwise available to you, or in the possession of or known by or otherwise available to your attorneys, agents, employees, or other representatives of you and/or your attorneys.

The response to each interrogatory shall set forth separately the identification of each person capable of furnishing testimony concerning the response given. In addition, the response shall identify every individual who provided information, documentation, or other input relating to the response, and those who assisted in drafting the interrogatory response.

If you cannot answer any of the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder. In addition, state what information or knowledge you have concerning the unanswered portion and describe the specific efforts made by you or anyone on your behalf to ascertain the information. Also, state as definitively as possible when you anticipate obtaining the information and supplementing your response.

If you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

The following interrogatories and requests for production of documents are continuing in nature, requiring you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information subsequent to your original answers. Include in any supplemental answers the date and manner in which such further or different information came to your attention.

9704350436 96C

DEFINITIONS

For purposes of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" or "your" shall mean the named respondents in this action to whom these discovery requests are addressed, including all persons who act in any capacity for respondents or in any relationship to respondents, including officers, employees, agents or attorneys and/or others who act on their behalf.

"Person" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Identify" with respect to a person shall mean to state the full name, the most recent business and residence addresses, the most recent business and home telephone numbers, the person's position and job description at the time in question with respect to the interrogatory, the present occupation or position of such person, and the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean to state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, and the number of pages comprising the document.

9/0436981

"And" as well as "or" shall be construed either disjunctively or conjunctively, as necessary to bring within the scope of these interrogatories and requests for the production of documents any information and documents which may otherwise be construed to be outside their scope.

9/04389982

BEFORE THE FEDERAL ELECTION COMMISSION

INTERROGATORIES AND REQUESTS FOR DOCUMENTS

MUR 3657
Multimedia Cablevision, Inc.

1. Regarding the October 1992 billing insert mailed by Multimedia Cablevision, which referred to Congressman Dan Glickman ("Glickman flier"), please provide the following information:

a. Identify all persons whose idea it was to produce and/or distribute the Glickman flier.

b. Identify all persons who gathered information used in creating the Glickman flier.

c. Identify the source(s) of the information used in the Glickman flier.

d. Identify all persons who authorized or approved the distribution of the Glickman flier.

e. Identify all persons who authorized and/or approved the language of the Glickman flier.

f. Identify all persons involved in creating, producing and distributing the Glickman flier, and specify each person's role.

g. Identify all persons involved in supervising the creation, production, and distribution of the Glickman flier.

h. State the total number of Glickman fliers mailed.

i. State all costs associated with creating, producing and distributing the Glickman fliers, including the separate costs for writing, preparing, and printing the Glickman fliers as well as costs for stationery and postage. Identify each cost separately.

j. Identify and produce all documents relating to creating, producing and distributing the Glickman fliers, including all receipts, invoices, checks, and check register entries.

k. Identify and produce a copy of the Glickman flier and all documents that accompanied the Glickman flier in the October 1992 billing.

l. State whether Multimedia Cablevision produced and distributed more than one version of the Glickman flier. If so, identify and produce a copy of each.

m. Identify and produce a copy of all documents that accompanied Multimedia Cablevision's August 1992 billing.

2. State whether Multimedia Cablevision has ever produced and/or distributed any other billing inserts or fliers that refer to candidates for Federal office and/or Federal political committees. Please provide the following information for each billing insert or flier:

a. Identify all persons whose idea it was to produce and/or distribute the flier or billing insert.

b. Identify all persons who gathered information used in creating the flier or billing insert.

c. Identify the source(s) of the information used in the flier or billing insert.

d. Identify all persons who authorized or approved the distribution of the flier or billing insert.

e. Identify all persons who authorized and/or approved the language of the flier or billing insert.

f. Identify all persons involved in creating, producing and distributing the flier or billing insert, and specify each person's role.

g. Identify all persons involved in supervising the creation, production, and distribution of the flier or billing insert.

h. State the total number of fliers or billing inserts mailed.

i. State all costs associated with creating, producing and distributing the fliers or billing inserts, including the separate costs for writing, preparing, and printing the fliers or billing inserts as well as costs for stationery and postage. Identify each cost separately.

j. Identify and produce all documents relating to creating, producing and distributing the fliers or billing inserts, including all receipts, invoices, checks, and check register entries.

k. Identify and produce a copy of each flier or billing insert and a copy of all documents that accompanied the flier or billing insert.

9/04343969

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Multimedia Cablevision Company, A Division of Multimedia, Inc., and Michael C. Burrus, Executive Vice President — MUR 3657

I. GENERATION OF MATTER

This matter was generated by a complaint submitted on behalf of Congressman Dan Glickman and the Glickman for Congress Committee ("Glickman Committee") and information ascertained by the Federal Election Commission ("Commission") in the normal course of carrying out its supervisory responsibilities pursuant to 2 U.S.C. § 437g(a)(2). The complaint alleges that Multimedia Cablevision Company and its Executive Vice President, Michael C. Burrus, ("Multimedia Cablevision") violated provisions of the Federal Election Campaign Act of 1971, as amended ("the Act" or "FECA").

II. FACTS

This matter involves anti-Glickman editorials televised by Multimedia Cablevision and an anti-Glickman flier it distributed to 95,000 cable customers during the 1992 election for U.S. Representative for the Fourth Congressional District in Kansas. The TV editorials expressly advocated the election of Eric R. Yost and attacked Congressman Dan Glickman. Between October 12 and October 23, 1992, Multimedia Cablevision aired the anti-Glickman/pro-Yost editorials 1,155 times on ten cable stations. The flier, entitled "It's Time For A Change" and

9704503966

printed on Multimedia Cablevision stationery, also attacked Glickman and urged support for Yost. Multimedia Cablevision distributed this flier to 95,000 households with its monthly cable billings.

The complaint alleges that the costs of these anti-Glickman messages were corporate contributions to the Yost Committee and fall outside the protection of the press exemption provided by 2 U.S.C. § 431(9)(B). Complainant also claims "that never has this particular company --Multimedia-- broadcast an editorial on any subject with the frequency of these attacking the re-election campaign of Mr. Glickman." Complainant further alleges that Multimedia Cablevision "acknowledges . . . that it produced these ads in collaboration and consultation with the Yost Committee."

In addition to the instant complaint, the Glickman Committee also filed a complaint with the Federal Communications Commission ("FCC"). The FCC complaint asserted that Congressman Glickman was entitled to free air-time to respond to Multimedia Cablevision's anti-Glickman editorials. With the assistance of the FCC, the parties negotiated a settlement. Pursuant to their agreement, Multimedia Cablevision provided Congressman Glickman and the Libertarian candidate, Seth Warren, with free air-time to respond to the editorials. Congressmen Glickman's response aired 700 times on 13 cable channels between October 27 and November 2, 1992. Seth Warren's response aired 119 times.

III. LAW

This matter presents the issue of whether the expenditures and activities alleged by the complainant fall within the

protection of the press exemption. As a threshold issue, there is first the question of whether Multimedia Cablevision, a cable systems operator, is a press entity within the meaning of that term under 2 U.S.C. § 431(9)(B). If it is determined that Multimedia Cablevision is a press entity, the two-prong analysis articulated by the court in Reader's Digest Ass'n v. FEC, 509 F. Supp. 1210 (S.D.N.Y. 1981) ("Reader's Digest") must be applied to determine whether these activities are entitled to the protection of the exemption.

The Act generally prohibits corporations from making contributions or expenditures in connection with a federal election. 2 U.S.C. § 441b(a). For purposes of 2 U.S.C. § 441b(a), the term "contribution or expenditure" includes any direct payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value to any candidate, campaign committee, or political party organization, in connection with any election. 2 U.S.C. § 441b(b)(2). Further, candidates and their authorized committees are prohibited from knowingly accepting corporate contributions. 2 U.S.C. § 441b(a).

The Act generally defines an independent expenditure as an expenditure expressly advocating the election or defeat of a clearly identified candidate and made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate. 2 U.S.C. § 431(17). Although a corporation may make partisan communications to its stockholders and executive or administrative personnel and their families, corporations may not pay for communications to the general public

9/0435960

that expressly advocate the election or defeat of a federal candidate. 11 C.F.R. § 114.3(a)(1).

Some media entities may be exempt from the general corporate prohibition under certain circumstances. Specifically, section 431(9)(B)(i) identifies "broadcasting station[s], newspaper[s], magazine[s], or other periodical publication[s]" as press entities which may be entitled to the exemption.[1] Under the so-called press or media exemption, the production or dissemination of news stories, commentaries or editorials by such press entities that are not owned or controlled by any political party, committee, or candidate are explicitly excluded from the Act's definitions of "contribution" and "expenditure." 2 U.S.C. § 431(9)(B)(i); 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2).

The Commission has interpreted the media exemption broadly, consistent with Congress's admonition that the Act was not intended "to limit or burden in any way the first amendment freedom of the press." H.R. Rep. No. 93-1239, 93rd Cong., 2d Sess., at 4. For instance, although Section 431(9)(B)(i) speaks only of "news stor[ies], commentar[ies], or editorial[s]," the Commission's regulations have extended the protection to "costs

---

1. The Act does not define "broadcasting station." However, within the context of sponsorship of candidate debates by news organizations, the Commission has stated "the term broadcaster is meant to include broadcasting facilities licensed by the Federal Communications Commission ("FCC"), as well as networks." See Explanation and Justification of 11 C.F.R. § 114.4(e), 44 Fed. Reg. 76,734 and 76,735 (1979).

incurred in covering or carrying" exempt material. 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2).

The courts have also examined the application of the press exemption. See, e.g., Reader's Digest Ass'n v. FEC, supra; FEC v. Phillips Publishing Company, Inc., 517 F. Supp. 1308 (D.D.C. 1981). In Reader's Digest, the magazine distributed a videotape of a computer re-enactment of Senator Kennedy's accident at Chappaquiddick to promote the sale of an issue of its magazine that contained an article on the accident. In considering whether "Reader's Digest's"[2] distribution of the videotape was protected by the press exemption, the Court articulated a two-part test "on which the exemption turns: whether the press entity is owned by the political party or candidate and whether the press entity was acting as a press entity in making the distribution complained of." 509 F. Supp. at 1215. Applying this two-part test,[3] the Court opined that "if RDA [Reader's Digest Association] was acting in its magazine publishing function, - if, for example, the

2. For the sake of clarity, the magazine's name, "Reader's Digest," will be set off in quotation marks, as opposed to the case name, Reader's Digest, which is underlined.

3. It was assumed that "Reader's Digest," a magazine publisher, was a press entity within the meaning of the Act because magazines are specifically identified in the exclusion. 2 U.S.C. § 431(9)(B)(i). In addition, the issue of ownership and control by a party or candidate was not a question in this case; "Reader's Digest" is independently owned. 509 F. Supp. at 1215.

dissemination of the tape to television stations was to publicize the issue of the magazine containing the Chappaquiddick article, then it would seem that the exemption is applicable ...." Id.[4]

In Phillips Publishing, the questioned activity involved the mailing of a solicitation for subscriptions to a biweekly newsletter, The Pink Sheet on the Left. The Court described the mailing as including: "a one-page letter from Thomas Phillips, the publisher of the newsletter; a three-page letter from Ronald Pearson, managing editor; a one-page series of quotations endorsing the newsletter; and a one-page combination subscription order form and 'Teddy Kennedy Opinion Poll' which could be completed and returned to the newsletter." 517 F. Supp. at 1309. The mailing was further described as appealing "to political conservatives and strongly emphasized The Pink Sheet's opposition to the campaign and philosophy of Senator Kennedy." Id. Citing to Reader's Digest, inter alia, the Court found that "[b]ecause the purpose of the solicitation letter was to publicize The Pink Sheet and obtain new subscribers, both of which are normal, legitimate press functions, the press exemption applies." Id. at 1313.

---

4. Following the Court's Order, the Commission found no probable cause to believe that "Reader's Digest" violated the Act in MUR 1271. The General Counsel's Report reasoned that the distribution of the videotape was within the ordinary course of "Reader's Digest's" publishing business because it was promoting the sale of the magazine. (See General Counsel's Report dated August 7, 1981 at 4-5.)

The Commission has also considered the press exemption within the context of Advisory Opinions. For example, in AO 1982-44 [¶ 5691], the Democratic National Committee ("DNC") and Republican National Committee ("RNC") requested an opinion as to whether they could accept an offer of free cablecast time on WTBS, which is owned by Turner Broadcasting System, Inc. ("TBS"). "The Commission conclude[d] that the donation of free cablecast time by Turner, Inc. to both the DNC and RNC would not constitute a prohibited corporate contribution." Id. In reaching this conclusion, the Commission applied Reader's Digest's two-part test as follows: "Turner, Inc. facilities are not owned or controlled by either political party and the Commission concludes that the distribution of free time to both political parties is within the broadcaster's legitimate broadcast function and, therefore, within the purview of the press exemption." Id.

IV. MULTIMEDIA CABLEVISION RESPONSE

A. Original Response

In its first response, Multimedia Cablevision denies that the anti-Glickman editorials and flier were contributions, claiming that both of these activities fall within the purview of the press exemption. In its response, Multimedia Cablevision relies heavily on the affidavit of its Executive Vice President, Michael Burrus.

In his affidavit, Mr. Burrus states that "Multimedia operates a 40 channel cable system in Wichita and vicinity on which it carries the programming of 20 national cable networks

9/0430397/2

such as CNN and ESPN, as well as the programming of broadcast stations such as NBC and ABC and Multimedia's own locally-originated programming." Burrus Aff. at ¶ 3. Mr. Burrus states that through agreements with the nationally delivered cable networks, Multimedia Cablevision reserves several minutes of each hour on the national cable networks to use for its own purposes. Id. Mr. Burrus further declares:

> It is a standard cable industry practice for cable system affiliates of the national cable networks to use this time to broadcast public service announcements, editorials, local advertising, or for promotional purposes. Multimedia, like its industry counterparts, uses time allocated to its system in the cable networks for these same purposes.

Id. Mr. Burrus declares that "[l]ike a television broadcasting station, Multimedia ... regularly produces and airs editorials regarding matters of importance to the community. For instance, Multimedia aired three editorials regarding the cable television legislation then pending in Congress .... Furthermore, Multimedia included an editorial insert in its billing statements regarding the cable legislation." Id. at ¶ 5. Mr. Burrus adds that, "over the course of the past several years, Multimedia has broadcast numerous editorials." Id. However, he cites to only three examples, which were described as discussing "the ability of Wichita voters to elect their own mayor and city council, Kansas highways, and exercising the right to vote." Id.

According to Mr. Burrus, five separate anti-Glickman editorials aired from October 12 through October 23, 1992. Id. at ¶ 6. Mr. Burrus avers:

> With regard to the preparation and content of these editorials, they constitute the view of Multimedia Cablevision, Inc. Neither Mr. Yost, Congressman Glickman's opponent, nor the Yost Committee participated in the preparation of these editorials as alleged in the Complaint. Thus, Multimedia did not produce the editorials "in collaboration and consultation with the Yost committee."

Id. at ¶ 10. Mr. Burrus also states that pursuant to FCC regulations, Multimedia Cablevision first notified Congressman Glickman of the airing of the editorials on October 12, 1992. Id. at ¶ 9. According to Mr. Burrus, Congressman Glickman's response aired between October 27 and November 2, 1992. Id. at ¶ 11. Mr. Burrus adds that Multimedia Cablevision also aired the response of Seth Warren, the Libertarian Party candidate. Id.

Regarding the 95,000 cable bill inserts, Mr. Burrus declares that Multimedia Cablevision "regularly incorporates public service and editorial inserts into its billing statements" as part of its normal business operations. Id. at ¶ 4. Mr. Burrus notes that Multimedia Cablevision produced and distributed an editorial billing insert opposing the then-pending cable legislation. Id. at ¶ 5. Although Multimedia Cablevision contends that it "regularly" produced

9/0435397/4

editorial billing inserts, it submitted only four examples of such inserts. The first promoted Multimedia Cablevision's public service activities in the community. The second advertised the operating hours of the local public library along with an announcement of Multimedia Cablevision's donation to the library. The third and fourth inserts opposed the then-pending cable legislation and included statements such as "[l]egislation in Washington, D.C. may increase your monthly cable bill" and "[t]he TV Networks ... want to tax you 20% when you watch it on cable."

B. Supplemental Response

In its supplemental response, Multimedia Cablevision makes the broad argument that because its parent corporation, Multimedia, Inc., is presumably a press entity, the four wholly-owned divisions of the corporation -- including Multimedia Cablevision -- are also press entities. Multimedia Cablevision analogizes that its parent corporation is "a multifaceted news media communication and entertainment company virtually identical to the Washington Post Company." Multimedia Cablevision further argues that its broadcast of the anti-Glickman editorials and mailing of the anti-Glickman billing inserts were legitimate press functions.

In support, Multimedia Cablevision submits, among other things, its parent corporation's 1992 Annual Report and Securities and Exchange Commission Form 10-K. According to these reports, Multimedia, Inc. is divided into four divisions:

Multimedia Newspaper Company, Multimedia Broadcasting Company, Multimedia Entertainment Company, and Multimedia Cablevision Company, which includes Multimedia Security Service.

These reports also specifically describe the Respondent -- Multimedia Cablevision. According to the SEC Form 10-K, Multimedia Cablevision "operates cable television systems serving subscribers in Kansas, Oklahoma, Illinois, Indiana, and North Carolina." Form 10-K at 5. This report describes cable television as "the distribution of television signals and special information programs to subscribers within the community by means of a coaxial cable system." Id. at 6. Multimedia Cablevision operates a wireless cable system in the area at issue in this matter, Wichita, Kansas. Id. Wireless cable "combines standard broadcast television reception equipment with microwave reception equipment and uses a combination downconverter and channel selector to provide a composite of broadcast and non-broadcast signals to subscribers." Id.

Of note, Multimedia Cablevision also owns a home security alarm business, Multimedia Security Service. According to the SEC Form 10-K, this company "sells or leases and installs residential and commercial alarm equipment, and provides monitoring services for the alarm owner. These accounts are monitored through a central computer located in Wichita, Kansas." Form 10-K at 7. Both Multimedia Cablevision and Multimedia Security Service are under

common management (Annual Report at 12), and presumably, under Respondents' argument, the home alarm business is also a press entity.

Assuming that Multimedia Cablevision is a press entity within the meaning of FECA, Respondents next argue that the anti-Glickman editorials and the anti-Glickman billing inserts were legitimate press functions. First, concerning the aired editorials, the Respondents argue that "editorializing" is recognized as a legitimate press function "and [n]either the number of times the editorial is aired nor the content of the editorial is relevant to the inquiry ...." Concerning the anti-Glickman fliers, Respondents rely on Phillips Publishing and argue "if, as a matter of law, a publisher of a newsletter can distribute a mass mail solicitation to the general public that contains partisan statements in an effort to obtain subscribers, then a press entity such as Multimedia may include editorial opinions in its regular billings to existing subscribers." Respondents further argue that the General Counsel's Report in MUR 1271 "acknowledged that 'Reader's Digest's' distribution of a videotape was within its legitimate press function even though the video tape was not the same medium 'Reader's Digest' regularly employed, i.e. -- print medium."

V. ANALYSIS

A. Is Multimedia Cablevision Company the type of entity contemplated by the Act's press exemption?

Respondents argue that because of the purported status of the parent corporation, Multimedia, Inc., as a press entity like

the Washington Post Company, Multimedia Cablevision is also entitled to claim the press exemption.[5] This argument is too far reaching. The issue in this matter is whether Multimedia Cablevision -- not Multimedia, Inc. -- is the type of entity entitled to the press exemption of 2 U.S.C. § 431(9)(B)(i).

The precise issue presented, which Respondents attempt to avoid with their broadsweeping argument, is whether Multimedia Cablevision is a press entity within the meaning of FECA because 2 U.S.C. § 431(9)(B)(i) specifically identifies "broadcasting" as exempt, but not cablecasting. Based upon the Commission's broad approach to the press function; the Commission's decision concerning TBS's original cablecasting in AO 1982-44; the FCC's treatment of original cablecasting under its political speech doctrine; and the Supreme Court's recognition that cable operators can serve a press function, this Office concludes that the press exemption extends to original cablecasting, such as we have in this matter.

Under 2 U.S.C. § 431(9)(B)(i), commentaries or editorials that are "distributed through the facilities of any broadcasting

---

5. Multimedia Cablevision asserts that Multimedia, Inc. is a "multifaceted news media and communication company virtually identical to the Washington Post Company." Respondents' argument mistakenly presumes that all divisions of the Washington Post Company are press entities which, based upon the information provided by Respondents, would not be true. The Washington Post Company includes a newspaper division, broadcast division, cable division, magazine division, and "other businesses." These "other businesses" include the Stanley H. Kaplan Educational Center, Legi-Slate, and American Personal Communications. It does not appear that, for example, the Stanley H. Kaplan Educational Center is a press entity within the meaning of FECA.

station," inter alia, fall under the protection of the so-called press exemption. According to Multimedia, Inc.'s Form 10-K, Multimedia Cablevision in Wichita, Kansas is a wireless cable system which provides "a composite of broadcast and non-broadcast systems." Mr. Burrus's affidavit declares that in addition to the national cable and broadcast station programs, Multimedia Cablevision provides its "own locally-originated programming." Burrus Aff. at ¶ 3. Mr. Burrus further explains that Multimedia Cablevision reserves "several minutes of time each hour to use for their own purposes." Id. In fact, the aired editorials in this matter were such original cablecasts.[6]

In AO 1982-44, the Commission reviewed a request concerning TBS's offer to make two hours of program time on one of its cable channels available to the DNC and RNC. The specific question considered was: "[w]hether the donation of such free cablecast time by Turner, Inc. would constitute a prohibited corporate contribution under 2 U.S.C. § 441b." Id. at p. 10,917. (emphasis supplied.) Applying Reader's Digest, the Commission found that Turner, Inc. facilities are not owned or controlled by a political party and the distribution of free cablecast time is within the broadcaster's legitimate media function.

---

6. The FCC regulations define origination cablecasting as programming (exclusive of broadcast signals) carried on a cable television system over one or more channels and subject to the exclusive control of the cable operator. 47 C.F.R. § 76.5(p).

In AO 1982-44, a broadcasting facility, which specifically falls within 2 U.S.C. § 431(9)(B)(i), was providing original cablecasting. In this matter, a facility which provides "a composite of broadcast and non-broadcast systems" was providing original cablecasting. It appears that in this changing age of communications, Multimedia Cablevision's wireless cable system is a hybrid of cable and broadcasting not specifically identified within 2 U.S.C. § 431(9)(B)(i). However, for purposes of determining whether Multimedia Cablevision is a facility within the spirit of the press exemption, there does not appear to be any legal significance or any legal basis upon which to distinguish between a broadcasting facility providing original cablecasting and a cable system providing original cablecasting. The apparent significance is that each facility is producing original cablecast programs. Consequently, it appears that Multimedia Cablevision falls within the ambit of the type of entity contemplated by the press exemption.

Turning to the regulation of original cablecasting,[7] the FCC applies standards to non-broadcast cable origination programming that are the same or similar to the standards imposed on broadcast programs. As noted in Multimedia, Inc.'s Form 10-K, "[t]he FCC requires that non-broadcast cable origination programming comply with FCC standards similar to those imposed on broadcasters. These standards include

7. The Commission has previously acknowledged that cable systems operators are regulated by the FCC. AO 1982-44.

9/0438398C

regulations governing political advertising and programming, advertising during children's programming, prohibition of lottery information and sponsorship identification requirements." Id. at 13. In fact, the political editorial doctrine, as applied to cable operators under 47 C.F.R. § 76.209(d) 1992, was the operative regulation imposed on Multimedia Cablevision by which Glickman and Yost were given free air-time to respond. This provision governing political editorials by cable systems operators is similar to the one governing broadcast stations. See 47 C.F.R. § 73.1930.

Additionally, the United States Supreme Court has also acknowledged that cable operators can serve a press function. In the context of addressing First Amendment questions, the Court has acknowledged that "cable television provides to its subscribers news, information and entertainment. It is engaged in 'speech' under the First Amendment, and is, in much of its operation, part of the press." Leathers v. Medlock, 111 S. Ct. 1438, 1442 (1991) (reviewing First Amendment challenge to an Arkansas statute taxing cable systems differently from print media). The Court has also opined that "[c]able television partakes of some of the aspects of speech and the communication of ideas as do the traditional enterprises of newspaper and book publishers, public speakers, and pamphleteers." Los Angeles v. Preferred Communications, Inc., 476 U.S. 488, 494 (1986) (reviewing First Amendment challenge to city ordinance providing franchises to cable operators through an auction process). Of note, the Supreme Court also recognized the

97043843981

distinction between original cablecasting and the "retransmit[tal]" of programming. Id.

> Thus, through original programming or by exercising editorial discretion over which stations or programs to include in its repertoire, respondent seeks to communicate messages on a wide variety of formats. We recently noted that cable operators exercise a "significant amount of editorial discretion regarding what their programming will include." FCC v. Midwest Video Corp., 440 U.S. 689, 707 (1979). Cable television partakes of some of the aspects of speech and the communication of ideas as do the traditional enterprises of newspaper and book publishers, public speakers, and pamphleteers. Respondent's proposed activities would seem to implicate First Amendment interests as do the activities of wireless broadcasters, which were found to fall within the ambit of the First Amendment in Red Lion Broadcasting Co. v. FCC, [395 U.S. 367, 386 (1969)] ....

Id.

For the foregoing reasons, it appears that Multimedia Cablevision is a facility within the ambit of the press exemption.

B. Assuming Multimedia Cablevision is a press entity, are both the aired editorials and fliers legitimate press functions?

Assuming Multimedia Cablevision is a press entity, it is still necessary to apply the Reader's Digest two-prong test: (1) whether Multimedia Cablevision is owned by the political party or candidate; and (2) whether Multimedia Cablevision was acting as a press entity when it aired the anti-Glickman editorials and distributed anti-Glickman fliers to customers with their monthly bills.

It is uncontested that Multimedia Cablevision is not owned or controlled by a candidate or political party. Burrus Aff. at ¶ 13. Consequently, the first prong of the test is easily met. At issue are the two separate activities.

1. Cablecast Editorials

The press exemption specifically excludes editorials from the definition of "expenditures." 2 U.S.C. § 431(9)(B)(i). As the Commission has commented, the term "editorial" "applies specifically to the [cable]caster's point of view." AO 1982-44 [¶ 5691 at p. 10,917].

The complaint characterizes the airings as "anti-Glickman ads" that are "devoted explicitly to the Company's position that the voters in Mr. Glickman's congressional district should reject his candidacy ...." (Complaint at 2.) Thus, on the face of the complaint, it appears that the cablecast editorials were within Multimedia Cablevision's legitimate press function.

A review of the on-the-air editorials provided with the complaint confirms that Multimedia Cablevision was giving its point of view about the two major candidates. Its vehicle for doing so was by using the time it reserves for its original cablecasting. For these reasons, it appears that Multimedia Cablevision was acting in its cablecasting press function when it aired the anti-Glickman editorials. Accordingly, the aired editorials are protected under the press exemption.

9/0430293

2. Anti-Glickman Fliers

In Reader's Digest, the court opined that if the magazine "was acting in its magazine publishing function, if, for example, the dissemination of the tape to television stations was to publicize the issue of the magazine containing the Chappaquiddick article, then it would seem that the exemption is applicable ...." 509 F. Supp. at 1215. Similarly, the court in Phillips Publishing found that "[b]ecause the purpose of the solicitation letter was to publicize The Pink Sheet and obtain new subscribers, both of which are normal, legitimate press functions, the press exemption applies." 517 F. Supp. at 1313. Accordingly, if Multimedia Cablevision was acting in its cablecasting function in producing and distributing the anti-Glickman flier to its customers with their monthly bills, then such activity was within its legitimate press function. As discussed below, the production and distribution of the anti-Glickman flier does not appear to be part of Multimedia Cablevision's normal cablecasting function.

Multimedia Cablevision produced and distributed 95,000 anti-Glickman fliers which were sent with its monthly cable bills to cable subscribers. The flier criticizes Congressman Glickman's congressional record by highlighting, among other things, his vote for the cable bill and the purported consequent harm to cable subscribers; his vote for a special tax on aircraft that allegedly led to the loss of 400 jobs; his vote to

increase taxes on the middle class; and his alleged problems with the House Bank. It proclaims at the bottom: "WE SUPPORT ERIC YOST FOR CONGRESS."

In contrast to Reader's Digest and Phillips Publishing, Multimedia Cablevision's 95,000 anti-Glickman billing inserts were not promoting cable programs or soliciting cable subscriptions. To the contrary, Multimedia Cablevision was acting in a manner unrelated to its cablecasting function when it produced and distributed 95,000 anti-Glickman fliers with its cable bills. Multimedia Cablevision's press facility is through cablecasting. See 2 U.S.C. § 431(9)(B)(i). This anti-Glickman flier was not an editorial distributed through its press facility -- or any other identified by the statute, such as a newspaper, magazine, or other periodical publication. Distribution of anti-candidate campaign fliers is not the kind of distribution that falls within Multimedia Cablevision's legitimate cablecasting function. See Reader's Digest, 509 F. Supp. at 1214. Further, it is not saved merely because Multimedia Cablevision distributed the flier with its monthly bills. As the court noted in Reader's Digest: "the statute would seem to exempt only those kinds of distribution that fall broadly within the press entity's legitimate press function. It would not seem to exempt any dissemination or distribution using the press entity's personnel or equipment, no matter how

unrelated to its press function."[8] Id. at 1214. Thus, the press exemption does not apply to the production and distribution of the flier expressly advocating the defeat of Congressman Glickman because these activities are unrelated to its cablecasting function. Reader's Digest 509 F. Supp. at 1214-15.

Furthermore, the four examples of fliers submitted by Respondents do not overcome this conclusion. None of the fliers contain pro or anti-candidate advocacy. Instead, these fliers contain information concerning Multimedia Cablevision's community activities, the hours of the public library, and opposition to the then-pending cable bill. Based upon Multimedia Cablevision's response, it appears that the only flier distributed for the purpose of influencing an election was the anti-Glickman flier. Further, Multimedia Cablevision does not appear to "regularly" distribute fliers with its cable billings because it discussed and produced only four such documents. Multimedia Cablevision has been in business since 1968. (Multimedia, Inc.'s 1992 Annual Report.)

Absent the safe harbor of the press exemption, the general corporate prohibition applies against making communications to the general public expressly advocating the election or defeat

---

8. As an extreme example, although the companies share the same management, it is clear that Multimedia Cablevision could not distribute campaign fliers through its security business and then claim that this was within its legitimate press function as a cable operator.

of a federal candidate. The anti-Glickman fliers were mailed to 95,000 households. The communications were made to Multimedia Cablevision's subscribers, not to the class of persons permitted by Commission regulations, i.e., stockholders and executive or administrative personnel. 2 U.S.C. § 431(9)(B)(iii) and 11 C.F.R. § 100.8(b)(4); see also MUR 2889 (Wyoming Rural Electric Association) (costs associated with a rural electric cooperative trade association's newsletter containing express advocacy that was sent to the cooperatives' customers, constituted a corporate contribution). Thus, there is reason to believe that Multimedia Cablevision violated 2 U.S.C. § 441b(a) by making communications to the general public expressly advocating the election of Mr. Yost and the defeat of Congressman Glickman, a federal candidate. Also, the name of Michael C. Burrus, Executive Vice President of Multimedia Cablevision, appears on the printed fliers sent to Multimedia's customers. Thus, Mr. Burrus, a corporate officer, may have consented to such corporate contributions, in violation of 2 U.S.C. § 441b(a).

No specific evidence was offered to support the allegation that Multimedia Cablevision collaborated with the Yost Committee in producing the editorials. In fact, the evidence in the record is to the contrary. Both Multimedia Cablevision and Michael Burrus deny that there was consultation with the Yost Committee. (Original Response at 5 and Burrus Aff. at ¶ 10.) The uncontroverted record indicates that Multimedia Cablevision

acted independently of the Yost Committee. Accordingly, there is reason to believe that Multimedia Cablevision made independent expenditures on behalf of the Yost Committee by producing and mailing 95,000 anti-Glickman/pro-Yost campaign fliers.

C. Conclusion

Based on the foregoing, there is reason to believe Multimedia Cablevision Company, a division of Multimedia, Inc., violated 2 U.S.C. § 441b(a) by producing and distributing 95,000 fliers to the general public that advocated the defeat of Congressman Glickman and the election of Eric Yost. Further, there is reason to believe that Michael C. Burrus, Executive Vice President of Multimedia Cablevision Company, consented to such corporate contributions, in violation of 2 U.S.C. § 441b(a).

WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 429-7000

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

JUL 5 4 57 PM '94

JAN WITOLD BARAN
(202) 429-7330

July 5, 1994

FACSIMILE
(202) 429-7049
TELEX 248349 WYRN UR

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

ATTN: Richard Denholm, II

Re: MUR 3657 (Multimedia Cablevision, Inc. and Michael C. Burrus)

Dear Mr. Noble:

Pursuant to 11 C.F.R. § 111.15(a), I hereby submit an original and three (3) copies of the Motion to Quash Subpoena and Order in the above-captioned matter.

Sincerely,

Jan Witold Baran

Counsel for Multimedia Cablevision, Inc. and Michael C. Burrus

9 / 0 4 5 0 4 4 4 7 1 1

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

BEFORE THE FEDERAL ELECTION COMMISSION

JUL 5 4 58 PM '94

In the Matter of	)	
	)	
Multimedia Cablevision, Inc.	)	MUR 3657
and Michael J. Burrus	)	
	)	

MOTION TO QUASH SUBPOENA AND ORDER

Pursuant to 11 C.F.R. § 111.15, Multimedia Cablevision, Inc. and Michael J. Burrus ("Multimedia") hereby move to quash the subpoena and order ("Subpoena") issued to Multimedia on June 23, 1994, approved by the Commission on June 7, and received June 27, in the above matter. The Subpoena, which delves into the editorial process of a conceded press entity, is contrary to the Federal Election Campaign Act, as amended, and violates the First Amendment to the United States Constitution.

INTRODUCTION

"Multimedia Cablevision falls within the ambit of the type of entity contemplated by the press exemption [2 U.S.C. § 431(9)]." FEC Factual and Legal Analysis at 15. Thus, the Commission has established that Multimedia is a press entity. The Commission has also determined that Multimedia editorials regarding Dan Glickman and Eric Yost which were cablecasted to 95,000 households "are protected under the press exemption." Factual and Legal Analysis at 18. At the same

9 / 0 4 5 0 4 3 9 2 0

time, the Commission distinguished a printed editorial[1] distributed by Multimedia and concluded that it does not fall within the press exemption. Factual and Legal Analysis 19-23. In making this finding, the Factual and Legal Analysis erroneously asserts (apparently based on allegations in the original complaint) that 95,000 copies were disseminated.

While Multimedia contests the validity of the Subpoena it believes that the Commission should act on accurate information. Thus, this office has been authorized to inform the Commission that the total number of printed editorials distributed by Multimedia was 33,125 and the total incremental cost of those editorials to Multimedia was $951.00.

The Commission has issued a Subpoena which pries into the editorial process of a conceded press entity. In seeking information such as the identity of the individual[s] whose "idea" it was to produce the editorials, the people who gathered information for the editorials, the sources of information used in the editorials, etc., the Subpoena flies in the face of the Reader's Digest admonition that "[n]o inquiry may be addressed to sources of information, research, motivation, connection with the campaign, etc." Reader's Digest Ass'n v. FEC, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981).

---

[1] A copy of the printed editorial insert was attached to the complaint. For the Commission's convenience, another copy is attached hereto. At the top it is clearly labeled "Multimedia Editorial."

DISCUSSION

The Commission has properly determined that Multimedia is a legitimate press entity. This determination is buttressed by the Supreme Court's recent decision that cable companies are press entities entitled to all of the protections of the First Amendment. Turner Broadcasting System, Inc., et al. v. FCC, 1994 U.S. Lexis 4831 (June 27, 1994) citing Leathers v. Medlock, 499 U.S. 439, 444 (1991).

The fact that Multimedia is a press entity affects the Commission's ability to seek information from Multimedia. An agency subpoena is enforceable only "if (1) the inquiry is within the authority of the agency and is for a proper purpose; (2) the matter requested is reasonably relevant to the inquiry; and (3) the demand is not unreasonably burdensome or broad." United States v. Newport News Shipbuilding and Dry Dock Co., 837 F.2d 162, 165 (4th Cir. 1988) ("Newport News Shipbuilding") (citing United States v. Powell, 379 U.S. 48, 57-58 (1964). Here, the Commission's subpoena fails to satisfy the very first prong of this test for the Commission lacks subject matter jurisdiction over Multimedia as a press entity. Thus, the Commission's Subpoena is unenforceable and must be quashed. Further, this matter should be dismissed at this time.

Section 431(9)(B)(i) states that the term "expenditure" does not include:

> any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication . . .

Pursuant to this provision, the medium of the editorial is irrelevant to the application of the press exemption. This has been recognized by both the courts and the Commission. Indeed, the Commission has twice before tried to enforce a subpoena against a recognized press entity based on the medium of the publication and twice before was prohibited from doing so by the courts.

In Reader's Digest Ass'n v. FEC, 509 F. Supp. 1210 (S.D.N.Y. 1981) the Commission issued a subpoena regarding a videotape distributed by a magazine company. However, the court and the Commission determined that the videotape was within "Reader's Digest legitimate press function." In Federal Election Commission v. Phillips Publishing, Inc., 517 F. Supp. 1308 (D.D.C. 1981) the Commission attempted to enforce a subpoena regarding a solicitation by the publisher of a newsletter. Again, the court found that the solicitation was within the publisher's legitimate press function. Id.[2]

As in those cases, any attempt to support this subpoena based on the medium of the editorial also must fail. The distinction drawn between those cases and Multimedia in the

---

[2] For a complete discussion of Reader's Digest and Phillips Publishing see Multimedia's Supplemental Response dated December 3, 1993.

Factual and Legal Analysis is unprincipled and suggests that commercial purposes are necessary to qualify for the Act's editorial press exemption. The analysis implies (at 20) that had Multimedia been promoting cable programs or soliciting cable subscriptions its editorial inserts would have passed muster. Thus, had Multimedia distributed a solicitation which said "Watch for our editorials supporting Eric Yost" the analysis implies that such activity would have been within Multimedia's legitimate press function. But because Multimedia simply editorialized directly without the additional commercial layer of soliciting cable subscriptions or promoting its program, the editorials were not deemed to be within the press exemption. This is illogical and inconsistent with the Act.

Even under the Factual and Legal Analysis approach to "legitimate press function," Multimedia could be covered by the act's press exemption. For example, if *Reader's Digest* was "acting in its magazine publishing function" by disseminating and publicizing videotapes to promote magazine sales, and Phillips Publishing was promoting business by soliciting subscribers, then Multimedia was acting in its "legitimate press function" by promoting its editorial views among its existing subscribers through arguably the most important promotional vehicle of its cablecasting business, *i.e.*, billings. Ironically, if Multimedia had disseminated editorials in promotional mailings to non-subscribers (whose

relationship would be more attenuated) it would have been in exactly the same situation as Phillips Publishing. Clearly, Multimedia's printed editorials are more purely editorial and less commercial than Phillips or *Reader's Digest* and therefore fall more squarely within the Act's exemption.

The Factual and Legal Analysis states that the editorial insert was not distributed through Multimedia's press facility or any other identified by the Act such as a newspaper or magazine. However, this was equally true in both Reader's Digest and in Phillips Publishing -- the videotape was not distributed through *Reader's Digest* magazine facilities, and the subscription solicitation was not distributed through Phillips's Publishing's newsletter facilities. An editorial is legitimate by virtue of the fact that it is an editorial disseminated by a press entity as indisputably was the case with *Reader's Digest*, Phillips and Multimedia.

The discussion of prior editorial inserts (at 21) is also off the point. There is no import to the fact that those editorials did not contain "pro or anti-candidate advocacy." It is also not relevant whether Multimedia "regularly" editorialized in this fashion. It is only relevant that under the Act, as a press entity Multimedia is permitted to engage in editorializing without Commission interference. Moreover, none of the factors concerning past editorial practices were relevant to the Commission's correct

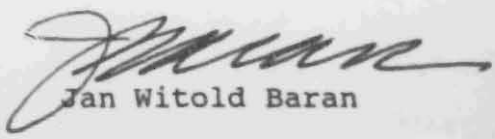
conclusion that Multimedia's cablecasted editorials were exempt from the Act.

Multimedia was acting within its legitimate press function when it distributed the editorials now subject to Subpoena, just as it was acting within its legitimate press function when it cablecast similar editorials. Accordingly, this inquiry must end upon the recognition that Multimedia, a press entity, was in fact engaging in a legitimate press function -- editorializing, which is exempt from the Act for sound public policy and constitutional reasons.[3] The Commission, therefore, has no jurisdiction to investigate further.

CONCLUSION

Based on the Act, the decisions of the courts, and the Commission's own precedent, the Subpoena must be quashed. Further, this matter should be dismissed for lack of jurisdiction.

Respectfully submitted,



Jan Witold Baran

Counsel for Multimedia
Cablevision, Inc. and
Michael C. Burrus

July 5, 1994

---

[3] The Factual and Legal Analysis cites to MUR 2889 involving the Wyoming Rural Electric Association but there is no suggestion that the Electric Association was a press entity exempted under the Act as is Multimedia. Thus, whatever the analysis in that MUR might have been, it is inapt.

Multimedia Editorial

IT'S TIME FOR A CHANGE

In 1976, Dan Glickman said, "You've had 16 years of a professional politician. Now is the time for a citizen Congressmen." *(1976 Glickman campaign literature, quoted in CQ's Washington Alert, 5/27/92)* We couldn't agree more, because Dan Glickman no longer represents the best interests of the Fourth District.

JUST WHO IS DAN GLICKMAN REPRESENTING?

* Dan Glickman voted FOR the cable bill, which will directly affect you, the cable subscriber. He ignored Department of Commerce estimates that the bill would increase YOUR cable rates $2.00 - $4.00 per month. In addition, according to the Congressional Budget Office, it will cost the Federal Government $100 million during the next 5 years, and state and local governments another $8 - $14 million per year to regulate cable companies.

* Dan Glickman voted for a special tax on aircraft that put over 400 workers at Beech out of a job. *(1990 CQ Vote #528, 10/26/90, Beechcraft memo 12/16/91)*

* Dan Glickman fought to tax unemployment compensation as income. *(1986 CQ Vote #379, [illegible])*

* Dan Glickman fought to increase taxes on middle class families. *(1989 CQ Vote #253 9/28/[illegible])*

* Dan Glickman led all Kansas Congressmen in junkets paid for by lobbyists, in special interest PAC money, and in total office expenses. *(Wichita Eagle, 9/23/91, 3/17/[illegible], 5/20/92, USA Today [illegible]/26/92)*

* Dan Glickman lied to us. He said he never bounced any checks at the House Bank, but he did. Records show that he bounced 105 checks totalling more than $20,000. *(letter to Washington Post)*

* In 1977, he told colleagues in Congress that he supported term limits and would not seek re-election after 12 years. Today, after 16 years, he's still in Congress and is one of the biggest opponents of term limits. *(Congressional Record, House of Representatives, 2/9/77)*

OUR COMMUNITY NEEDS SOMEONE WHO WILL FIGHT FOR US, NOT AGAINST US.
WE NEED SOMEONE WE CAN TRUST.

WE SUPPORT ERIC YOST FOR CONGRESS.

Multimedia Cablevision

Michael Burrus, Executive Vice President
P.O. Box 3027
Wichita, KS 67201

Multimedia Editorial

IT'S TIME FOR A CHANGE

In 1976, Dan Glickman said, "You've had 16 years of a professional politician. Now is the time for a citizen Congressmen." *(1976 Glickman campaign literature, quoted in CQ's Washington Alert, 5/27/92)* We couldn't agree more, because Dan Glickman no longer represents the best interests of the Fourth District.

JUST WHO IS DAN GLICKMAN REPRESENTING?

* Dan Glickman voted FOR the cable bill, which will directly affect you, the cable subscriber. He ignored Department of Commerce estimates that the bill would increase YOUR cable rates $2.00 - $4.00 per month. In addition, according to the Congressional Budget Office, it will cost the Federal Government $100 million during the next 5 years, and state and local governments another $8 - $14 million per year to regulate cable companies.

* Dan Glickman voted for a special tax on aircraft that put over 400 workers at Beech out of a job. *(1990 CQ Vote #528, 10/26/90, Beechcraft memo 12/16/91)*

* Dan Glickman fought to tax unemployment compensation as income. *(1986 CQ Vote #379, 9/25/86)*

* Dan Glickman fought to increase taxes on middle class families. *(1989 CQ Vote #253 9/28/89)*

* Dan Glickman led all Kansas Congressmen in junkets paid for by lobbyists, in special interest PAC money, and in total office expenses. *(Wichita Eagle, 9/13/91, 3/17/92, 5/20/92, USA Today 9/28/92)*

* Dan Glickman lied to us. He said he never bounced any checks at the House Bank, but he did. Records show that he bounced 105 checks totalling more than $20,000. *(letter to Washington Post)*

* In 1977, he told colleagues in Congress that he supported term limits and would not seek re-election after 12 years. Today, after 16 years, he's still in Congress and is one of the biggest opponents of term limits. *(Congressional Record, House of Representatives, 2/9/77)*

OUR COMMUNITY NEEDS SOMEONE WHO WILL FIGHT
FOR US, NOT AGAINST US.
WE NEED SOMEONE WE CAN TRUST.

WE SUPPORT ERIC YOST FOR CONGRESS.

Multimedia Cablevision

Michael Burrus, Executive Vice President
P.O. Box 3027
Wichita, KS 67201

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

AUG 1 12 26 PM '94

SENSITIVE

In the Matter of	)	
	)	
Multimedia Cablevision Company,	)	MUR 3657
A Division of Multimedia, Inc.,	)	
and Michael C. Burrus	)	
	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On June 7, 1994, the Federal Election Commission ("Commission") revoted to find reason to believe that Multimedia Cablevision Company, A Division of Multimedia, Inc., and its Executive Vice President, Michael C. Burrus, ("Multimedia Cablevision" or "Respondents") violated 2 U.S.C. § 441b(a) of the Federal Election Campaign Act of 1971, as amended ("the Act" or "FECA"). The Commission also reissued a Subpoena to Produce Documents and Order to Submit Written Answers ("subpoena") which inquired into Multimedia Cablevision's production and distribution of a campaign flier with its monthly cable billings.

Multimedia Cablevision received the subpoena on June 27, 1994, and, on July 5, 1994, filed a motion to quash the subpoena and requested that enforcement proceedings in this matter be terminated. Attachment 1. This report recommends that the Commission deny both the motion to quash and the request to terminate enforcement proceedings in this matter. This Office also recommends that the Commission authorize the General Counsel to institute a civil suit, if Multimedia Cablevision does not fully respond to the subpoena within thirty days of notification of the Commission's denial of the motions.

9 / 0 4 2 0 4 3 9 9 7

II. FACTUAL AND LEGAL ANALYSIS

This matter involves a campaign flier Multimedia Cablevision produced and distributed to customers with its monthly cable billings during the 1992 election for U.S. Representative for the Fourth Congressional District in Kansas. The flier, entitled "It's Time For A Change" and printed on Multimedia Cablevision stationery, attacked Congressman Daniel Glickman and urged support for his opponent, Eric Yost. In its reason to believe finding, the Commission found that Multimedia Cablevision falls within the ambit of the press exemption. Applying Reader's Digest Ass'n v. FEC, 509 F. Supp. 1210 (S.D.N.Y. 1981), inter alia, the Commission found that -- unlike the aired editorials -- the production and distribution of the anti-Glickman flier did not appear to be related to the company's cablecasting function. See General Counsel's Report dated May 25, 1994, at 23-27. The Commission determined that further investigation was warranted concerning the nature and circumstances surrounding the production and distribution of the anti-Glickman flier.

It is well established that an administrative agency subpoena will be enforced if it was issued for a proper purpose, the information sought is relevant to the purpose, and the statutory procedures were observed. United States v. Powell, 379 U.S. 48, 57-58 (1964). In general, Respondents argue that the subpoena is unenforceable because "the Commission lacks subject matter jurisdiction over Multimedia as a press entity." Attachment 1, at 4. Respondents make essentially two arguments.

First, they argue that the Commission erroneously found that the campaign flier was not protected because it was a different medium from cablecasting. Id. Alternatively, they argue that the campaign flier was a promotional piece and, therefore, a legitimate press function. Acknowledging the court's analysis in Reader's Digest, Respondents specifically assert that "Multimedia was acting in its 'legitimate press function' by promoting its editorial views among its existing subscribers through arguably the most important promotional vehicle of its cablecasting business, i.e. billings." Id. at 6. Respondents' arguments are not persuasive.

Contrary to Multimedia's broad presumption, the press exemption does not extend to all of Multimedia Cablevision's activities. Specifically, a press entity must also be acting within its legitimate "press function" in order for its activities to fall under the protection of the press exemption. Reader's Digest Ass'n v. FEC, 509 F. Supp. at 1215; FEC v. Phillips Publishing Company, Inc., 517 F. Supp. 1308, 1313 (D.D.C. 1981). As discussed below, Respondents also misconstrue Reader's Digest and the Commission's bases for determining that the production and distribution of the anti-Glickman flier were not protected by the press exemption.

A. Relevant Case Law

In Reader's Digest, the magazine distributed six copies of a videotape of a computer re-enactment of Senator Kennedy's accident at Chappaquiddick to television stations to promote the sale of an

9/0436/001

issue of its magazine that contained an article on the accident. In considering whether "Reader's Digest's"[1] distribution of the videotape was protected by the press exemption, the Court articulated a two-part test "on which the exemption turns: whether the press entity is owned by the political party or candidate and whether the press entity was acting as a press entity in making the distribution complained of." 509 F. Supp. at 1215. Applying this two-part test,[2] the Court opined that "if RDA [Reader's Digest Association] was acting in its magazine publishing function, - if, for example, the dissemination of the tape to television stations was to publicize the issue of the magazine containing the Chappaquiddick article, then it would seem that the exemption is applicable ...." Id.

In Phillips Publishing, the questioned activity involved the mailing of a solicitation for subscriptions to a biweekly newsletter, The Pink Sheet on the Left. The Court described the mailing as including: "a one-page letter from Thomas Phillips, the publisher of the newsletter; a three-page letter from Ronald Pearson, managing editor; a one-page series of quotations

---

1. For the sake of clarity, the magazine's name, "Reader's Digest," will be set off in quotation marks, as opposed to the case name, Reader's Digest, which is underlined.

2. It was assumed that "Reader's Digest," a magazine publisher, was a press entity within the meaning of the Act because magazines are specifically identified in the exclusion. 2 U.S.C. § 431(9)(B)(i). In addition, the issue of ownership and control by a party or candidate was not a question in this case; "Reader's Digest" is independently owned. 509 F. Supp. at 1215.

endorsing the newsletter; and a one-page combination subscription order form and 'Teddy Kennedy Opinion Poll' which could be completed and returned to the newsletter." 517 F. Supp. at 1309. The mailing was further described as appealing "to political conservatives and strongly emphasized The Pink Sheet's opposition to the campaign and philosophy of Senator Kennedy." Id. Citing to Reader's Digest, inter alia, the Court found that "[b]ecause the purpose of the solicitation letter was to publicize The Pink Sheet and obtain new subscribers, both of which are normal, legitimate press functions, the press exemption applies." Id. at 1313.

In contrast to Reader's Digest and Phillips Publishing, Multimedia Cablevision's anti-Glickman billing inserts were not promoting cable programs or soliciting cable subscriptions. To the contrary, Multimedia Cablevision was acting in a manner unrelated to its cablecasting function when it produced and distributed the anti-Glickman fliers with its cable bills. Multimedia Cablevision's press facility is through cablecasting. See 2 U.S.C. § 431(9)(B)(i). This anti-Glickman flier was not an editorial distributed through its press facility -- or any other identified by the statute, such as a newspaper, magazine, or other periodical publication. Distribution of anti-candidate campaign fliers is not the kind of distribution that falls within Multimedia Cablevision's legitimate cablecasting function. See Reader's Digest, 509 F. Supp. at 1214. Further,

it is not saved merely because Multimedia Cablevision distributed the flier with its monthly bills. As the court noted in Reader's Digest: "the statute would seem to exempt only those kinds of distribution that fall broadly within the press entity's legitimate press function. It would not seem to exempt any dissemination or distribution using the press entity's personnel or equipment, no matter how unrelated to its press function." Id. at 1214. Thus, the press exemption does not apply to the production and distribution of the flier expressly advocating the defeat of Congressman Glickman because these activities are unrelated to its cablecasting function. Reader's Digest, 509 F. Supp. at 1214-15.

B. Respondents' Arguments

Respondents argue that the Commission incorrectly distinguished the activities of Multimedia based solely on the "medium" employed. To the contrary, the Commission noted that the medium was not cablecasting -- its "press facility" -- but primarily focused on the fact that the campaign fliers were not promoting cable programs or soliciting cable subscriptions. Further, Respondents mischaracterize Reader's Digest to assert that the videotape -- regardless of it purpose -- was held to be within the magazine's legitimate press function. Attachment 1 at 5. In Reader's Digest, the court did not find that the magazine's distribution of a videotape to TV stations was per se within the protection of the press exemption. It found that if the magazine

"was acting in its magazine publishing function, if, for example, the dissemination of the [video]tape to television stations was to publicize the issue of the magazine containing the Chappaquiddick article, then it would seem that the exemption is applicable." 509 F. Supp. at 1215 (emphasis supplied).

In the alternative, Respondents argue that they were, in fact, promoting their cable business -- a legitimate press function -- because the flier was included with their monthly cable bills. Attachment 1, at 6. This argument, however, totally disregards the requirement that there be some connection between the activity and the press function. Under Respondents' argument, anything the company does could be said to be part of its press function just because the company is doing it. This analysis was rejected by the court in Reader's Digest. Id. at 1214. Respondent has shown nothing that connects its express advocacy of the defeat of Congressman Glickman to the promotion of its press function. Accordingly, Multimedia Cablevision's production and distribution of the anti-Glickman flier with its monthly cable bills were outside its legitimate cablecasting function, and thus, outside the protection of the press exemption. Reader's Digest, 509 F. Supp. at 1215; cf. FEC v. Mass. Citizens For Life, Inc., 479 U.S. 238, 250-251 (1986) (finding that MCFL's "Special Election Edition" was a campaign flier distinct from its "regular publications"; "[w]e cannot accept the notion that the distribution of such fliers by entities that happen to publish newsletters automatically entitles such organizations to the press exemption").

Respondents also proffer new, but unverified information in their motion to quash concerning the number of fliers distributed and their "incremental" cost. Because the Commission's legal analysis in this matter does not turn on either the cost or number of billing inserts distributed, this information is inapposite to their motion.

To investigate a possible violation of the Act, the Commission need only determine, by an affirmative vote of at least four of its members, that there is "reason to believe" a violation has occurred. 2 U.S.C. § 437g(a)(2). In this matter, the Commission found reason to believe that Respondents violated 2 U.S.C. § 441b(a) and issued the subpoena pursuant to 2 U.S.C. § 437d(a)(1) and (3). The Commission's analysis in this matter is based upon a sound construction of its prior decisions and case law. Further, it is the Commission's duty to enforce the provisions of 2 U.S.C. § 441b. Accordingly, the subpoena was issued for a proper purpose.

The questions propounded are also plainly relevant to the Commission's finding. As described above, the subpoena seeks a narrow range of information concerning Respondents' distribution of campaign-related fliers with its monthly cable bills. The subpoena seeks information directly related to the Commission's determination that Multimedia's activity was not protected by the press exemption and, thus, Multimedia Cablevision made a corporate expenditure in violation of 2 U.S.C. § 441b(a).

9/0434.000

There is no question, nor do Respondents contend otherwise, that the Commission has properly observed the Act's statutory procedures in this matter. Based on the foregoing, the subpoena and order in this matter are proper and enforceable, and this Office recommends that the Commission deny Respondents' motion to quash.

Respondents' request that the Commission terminate enforcement proceedings in this matter also must fail. First, Respondents have not demonstrated that their distribution of the anti-Glickman flier is protected by the press exemption. Second, the Commission has made a determination that there is reason to believe that Multimedia Cablevision violated the Act, and this determination is based soundly in law and fact. Accordingly, this Office also recommends that the Commission deny Respondents' request to terminate enforcement proceedings in this matter.

Finally, this Office recommends that the Commission authorize the Office of General Counsel to file a civil suit to enforce the subpoena and order absent full compliance within 30 days of receipt of notification of its decision.

III. RECOMMENDATIONS

1. Deny the motion to quash filed by Multimedia Cablevision Company, A Division of Multimedia, Inc., and Michael C. Burrus.

2. Deny the request to terminate enforcement proceedings in this matter filed by Multimedia Cablevision Company, A Division of Multimedia, Inc., and Michael C. Burrus.

9704350400

3. Authorize the Office of General Counsel to institute a civil action for subpoena enforcement in the United States District Court against Multimedia Cablevision Company, A Division of Multimedia, Inc. and Michael C. Burrus, absent full compliance with the subpoena and order within 30 days of receipt of notification of the Commission's denial of Respondents' motions.

4. Approve the appropriate letter.

7/29/94
Date

Lawrence M. Noble
General Counsel

Attachment
Motion to Quash and Request to Terminate Enforcement Proceedings

Attorney assigned: Richard M. Denholm II

9/0434.000

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. ROSS
COMMISSION SECRETARY

DATE: AUGUST 4, 1994

SUBJECT: MUR 3657 - GENERAL COUNSEL'S REPORT DATED JULY 29, 1994.

The above-captioned document was circulated to the Commission on Monday, August 1, 1994 at 4:00 p.m.

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens _____

Commissioner Elliott XXX

Commissioner McDonald _____

Commissioner McGarry _____

Commissioner Potter _____

Commissioner Thomas _____

This matter will be placed on the meeting agenda for Tuesday, August 9, 1994.

Please notify us who will represent your Division before the Commission on this matter.

9/9/94 3 3 4 4 0 0 /

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. ROSS
COMMISSION SECRETARY

DATE: AUGUST 4, 1994

SUBJECT: MUR 3657 - GENERAL COUNSEL'S REPORT DATED JULY 29, 1994.

The above-captioned document was circulated to the Commission on Monday, August 1, 1994 at 4:00 p.m.

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	XXX	FOR THE RECORD ONLY
Commissioner Elliott		
Commissioner McDonald		
Commissioner McGarry		
Commissioner Potter		
Commissioner Thomas		

9/0434001C

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 3657
Multimedia Cablevision Company,	)	
A Division of Multimedia, Inc.,	)	
and Michael C. Burrus	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on August 9, 1994, do hereby certify that the Commission decided by a vote of 4-2 to take the following actions in MUR 3657:

1. Deny the motion to quash filed by Multimedia Cablevision Company, A Division of Multimedia, Inc., and Michael C. Burrus.

2. Deny the request to terminate enforcement proceedings in this matter filed by Multimedia Cablevision Company, A Division of Multimedia, Inc. and Michael C. Burrus.

3. Authorize the Office of General Counsel to institute a civil action for subpoena enforcement in the United States District Court against Multimedia Cablevision Company, A Division of Multimedia, Inc., and Michael C. Burrus, absent full compliance with the subpoena and order within 30 days of receipt of notification of the Commission's denial of Respondents' motions.

(continued)

9/0434011

4. Approve the appropriate letter as recommended by the General Counsel.

Commissioners McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision; Commissioners Aikens and Elliott dissented.

Attest:

8-10-94
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

9704304017

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUGUST 11, 1994

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jan W. Baran, Esquire
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

RE: MUR 3657
Multimedia Cablevision
Company and Michael C.
Burrus

Dear Mr. Baran:

On July 5, 1994, the Federal Election Commission received your Motion to Quash the Subpoena and Order and Request to Terminate Enforcement Proceedings in this matter. After considering your arguments in support of both, the Commission, on August 9, 1994, denied your Motion and Request.

Accordingly, responses to the Subpoena and Order must be submitted to the General Counsel's Office within 30 days of your receipt of this letter. To assist you in preparing your responses, the Commission points out that documents previously submitted do not have to be re-submitted and that the "sources" requested in questions 1(c) and 2(c) do not include confidential press sources.

If responses to the Commission's Subpoena and Order are not received within 30 days of your receipt of this letter, the Commission has authorized the Office of General Counsel to file a civil suit in United States District Court to seek enforcement of the Subpoena and Order.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Richard M. Denholm II
Attorney

9/04/3/0/4/0/1/2

WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 429-7000

RECEIVED
FEDERAL ELECTION
COMMISSION
SEP 16 1 47 PM '94
OFFICE OF GENERAL COUNSEL

JAN WITOLD BARAN
(202) 429-7330

September 16, 1994

FACSIMILE
(202) 429-7049
TELEX 248349 WYRN UR

Richard M. Denholm, II, Esq.
Attorney
Federal Election Commission
Washington, D.C. 20463

Re: MUR 3657
Multimedia Cablevision, et al.

Dear Mr. Denholm:

This responds to your letter of August 11, 1994, received by my office on August 15, regarding the above-captioned matter. Your letter advised me that the Federal Election Commission denied Multimedia's July 5 Motion to Quash Subpoena and Order. Your letter does not state the reasons why the Commission denied this motion.

After consultations with several legal counsels, our client continues to believe that the FEC's Subpoena and Order is unwarranted and unjustified. For the reasons set forth in the Motion to Quash, the FEC's Subpoena and Order is contrary to the Federal Election Campaign Act and a gross governmental violation of the First Amendment constitutional rights of a conceded press entity. Neither the Act nor the First Amendment allow the government to snoop into the editorial activities of the press.

In light of the fact that your August 11 letter threatens my client with court action, please be advised that if such suit is filed our client will defend itself vigorously against what we deem to be a baseless, frivolous suit. We urge the Commission to reconsider. If the Commission proceeds to litigation, please be advised that this office will accept service of process on behalf of our client.

Sincerely,

Jan Witold Baran

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

SEP 15 11 49 AM '94

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 15, 1994 **SENSITIVE**

MEMORANDUM

TO: The Commission

THROUGH: Lawrence M. Noble
General Counsel

FROM: Richard B. Bader
Associate General Counsel

Stephen E. Hershkowitz
Assistant General Counsel

Denitta D. Ward
Attorney

RE: Multimedia Cablevision Company -- Subpoena Enforcement (MUR 3657)

On August 9, 1994, the Commission authorized the Office of the General Counsel to file a civil suit to enforce a Subpoena and Order against Multimedia Cablevision Company and Michael C. Burrus (respondents) absent full compliance with the Subpoena and Order within thirty (30) days of receipt of notification of the Commission's denial of respondents' motion to quash.

This is to inform the Commission that because the Subpoena and Order was issued only to Multimedia Cablevision Company, a civil action against Mr. Burrus will not be filed.

9 7 0 4 3 6 4 1 0 1 3

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT
SEP 3 1 50 PM '97

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	**SENSITIVE**
	)	
Multimedia Cablevision Company,	)	MUR 3657
A Division of Multimedia, Inc.,	)	
and Michael C. Burrus	)	
	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

Former Representative Dan Glickman filed this complaint in October 1992 regarding immediate pre-election activity then taking place. The case was active at the commencement of the Priority System in May 1993, and the Commission made reason to believe findings in September 1993. After the Commission began its investigation in October 1993, and after revote of RTB (on the narrower issue only of the billing inserts) and reissuance of the Subpoena and Order in June 1994, Multimedia Cablevision Company, A Division of Multimedia, Inc., and its Executive Vice President, Michael C. Burrus, ("Multimedia") refused to comply. The Commission authorized subpoena enforcement on August 9, 1994, should Multimedia fail to comply within 30 days. After Multimedia failed to comply with the Subpoena and Order, the Commission on November 7, 1994, filed civil suit in the United States District Court for the District of Kansas. The District Court enforced the subpoena in substantial part, but Multimedia appealed and, over the Commission's strenuous objection, the District Court stayed its order pending appeal. Multimedia's appeal (and the Commission's cross-appeal) from the District Court's decision was argued before the Tenth Circuit at the end of November 1996. The case is

9 7 0 4 3 3 4 4 0 1 6

still pending before the Court of Appeals, more than three years after the Commission's Subpoena and Order was issued on June 23, 1994.[1]

In the March 4, 1997, General Counsel's Report and in the March 11, 1997, Executive Session discussion, this Office recommended not closing the matter. However, six months later we are still awaiting a decision from the Court of Appeals, more than nine months after oral argument and barely a month before the likely expiration of the statute of limitations for filing a lawsuit seeking a civil penalty. See 28 U.S.C. § 2462.

II. ANALYSIS

Rather than continuing to hold this matter open to await the Court of Appeals' decision with the prospect of devoting the resources necessary to prosecute this case if the eventual decision is favorable, this Office recommends that the Commission exercise its prosecutorial decision and close the matter. If the Commission does so, the General Counsel would notify the Court of Appeals that this action moots the pending subpoena enforcement case.

First, the 5 year statute of limitations for filing a lawsuit seeking a civil penalty expires in early October 1997, little more than a month away.[2] Thus, it is now too late -- even if the Tenth

---

[1] Specific dates in the subpoena enforcement litigation are as follows:

Contingent Civil Suit authorized	8/9/94
Suit filed	11/7/94
Order enforcing Subp in part	8/16/95
Motion to Stay Pending Appeal	8/28/95
Defendant's Notice of Appeal	8/29/95
Stay Pending Appeal Granted	9/25/95
FEC Cross-Appeal	10/4/95
Appellate Briefing completed	4/12/96
Argued before 10th Circuit	11/21/96

[2] Assuming accrual for purposes of section 2462 runs from the date of the transactions at issue, the operative dates would be sometime in early October, 1992 when Multimedia included the campaign endorsements in its billing inserts.

Circuit immediately issued a favorable decision, no further review was sought, and Multimedia provided the information forthwith -- to decide whether there is probable cause and complete mandatory conciliation, both of which are prerequisite to filing a civil suit, before the limitation period expires.[3] As we have discussed in previous memoranda, there are substantial arguments that could be made for tolling the statute of limitations because of the delay caused by the subpoena enforcement litigation, and 28 U.S.C. § 2462 probably does not bar a suit for injunctive relief in any event, even if civil penalties are barred. See FEC v. The Christian Coalition, 965 F. Supp. 66 (D.D.C. 1997); United States v. Banks, 115 F.3d 916, 919 n.6 (11th Cir. 1997); but see FEC v. Williams, 104 F.3d 237 (9th Cir. 1996). Nonetheless, it is not certain whether a court would agree to toll the limitations period if the Commission determined to pursue this case, and since there is no indication Multimedia has sent editorial inserts to customers about elections again since 1992, we believe the expenditure of substantial resources to seek only injunctive and declaratory relief would be unwarranted in this case. Of course, taking no further action in this matter would not preclude the Commission from pursuing such issues in future cases.

Second, the Commission's revote of the matter in June 1994 significantly narrowed its scope to involve only Multimedia's billing inserts and not its cable broadcasts. While the ability of a media company to use its billing mailings to campaign for federal candidates is an important legal issue, the episode at issue here may well have been an isolated instance which may not have involved a large amount of expenditures. After the lengthy delay resulting from the protracted subpoena enforcement litigation, it does not appear that this case would still justify the

---

[3] Though Multimedia could always decide to conciliate, this appears highly unlikely given its adamant resistance to any findings of violation.

substantial resources necessary to prosecute it vigorously even if a favorable appellate decision on the subpoena is issued in the near future.

This Office is cognizant that dismissal of this matter will effectively reward Multimedia's protracted resistance to the Commission's investigation, and could encourage other respondents to try to use protracted subpoena enforcement proceedings for tactical advantage and thereby discourage expeditious conciliation resolution. However, the outcome of this case may well convince district courts in the future to refuse to stay subpoena enforcement orders pending appeal or at least to condition such a stay on the respondent's agreement to waive the running of the statute of limitations during the pendency of the litigation.[4] The Commission might also consider revising its Compliance Regulations to add specific provisions to reconcile the Commission's subpoena practice and necessary subpoena enforcement with the statute of limitations at section 2462.

---

[4] See, e.g., E.E.O.C. v. American Express Centurion Bank, 758 F. Supp. 217, 226 (D. Del. 1991) (EEOC asks for tolling when it applies for enforcement, court concludes "the Bank's refusal to comply with a valid subpoena stopped the EEOC's investigation ... in its tracks. There is thus ample basis to toll the statute of limitations .... 'To find otherwise would allow a defendant to defeat a potentially meritorious action by refusing to comply with a valid subpoena,'" citing E.E.O.C. v. Gladieux Refinery, Inc., 631 F. Supp. 927, 936 (N.D. Ind. 1986)).

III. RECOMMENDATIONS

1. Take no further action against Multimedia Cablevision Company, A Division of Multimedia, Inc., and Michael C. Burrus.

2. Close the file.

3. Approve the appropriate letters.

9/3/97
Date

Lawrence M. Noble
General Counsel

Staff assigned: Dominique Dillenseger

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 3657
Multimedia Cablevision Company, A	)	
Division of Multimedia, Inc., and	)	
Michael C. Burrus	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on September 9, 1997, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions in MUR 3657:

1. Take no further action against Multimedia Cablevision Company, A Division of Multimedia, Inc., and Michael C. Burrus.

2. Close the file.

3. Approve the appropriate letters as recommended in the General Counsel's September 3, 1997 report.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision.

Attest:

9-10-97
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 16, 1997

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert F. Bauer, Esq.
B. Holly Schadler, Esq.
Perkins Coie
607 14th Street, NW
Washington, DC 20005

RE: MUR 3657
Glickman for Congress Committee
and L.D. Klenda, as treasurer

Dear Mr. Bauer and Ms. Schadler:

This is in reference to the complaint you filed on behalf of Congressman Dan Glickman and the Glickman for Congress Committee with the Federal Election Commission on October 16, 1992, concerning possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Multimedia Cablevision, Inc., Michael Burrus, Executive Vice President and the Eric R. Yost for Congress Committee and Theron E. Fry, as treasurer..

Based on that complaint, on June 7, 1994, the Commission found that there was reason to believe Multimedia, Inc., and Michael C. Burrus, Eric R. Yost for Congress Committee and Theron E. Fry, as treasurer, violated 2 U.S.C. § 441b(a), provisions of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation of this matter. However, after considering the circumstances of this matter, the Commission determined to take no further action against respondents, and closed the file in this matter on September 9, 1997.

This matter will become part of the public record within 30 days. The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Jonathan Bernstein
Assistant General Counsel

Enclosure
General Counsel's Report

97043844023

FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 16, 1997

Craig C. Donsanto
Director, Election Crimes Branch
Public Integrity Section
Criminal Division
P.O. Box 27321
Washington, D.C. 20530

RE: MUR 3657

Dear Mr. Donsanto:

This is in reference to your letter dated on November 23, 1992, concerning possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Multimedia Cablevision, Inc., Michael Burrus, Executive Vice President and the Eric R.Yost for Congress Committee and Theron E. Fry, as treasurer.

On June 7, 1994, the Commission found that there was reason to believe Multimedia, Inc., and Michael C. Burrus, Eric R. Yost for Congress Committee and Theron E. Fry, as treasurer, violated 2 U.S.C. § 441b(a), provisions of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation of this matter. However, after considering the circumstances of this matter, the Commission determined to take no further action against respondents, and closed the file in this matter on September 9, 1997.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Lawrence M. Noble
General Counsel

Lois G. Lerner by AAS

By: Lois G. Lerner
Associate General Counsel

97044040024

FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 16, 1997

Mr. Jan W. Baran, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

RE: MUR 3657
Multimedia Cablevision Company
and Michael C. Burrus

Dear Mr. Baran:

As you were apprised via the Commission's Notice of Suggestion of Mootness dated September 10, 1997 in FEC v. Multimedia Cablevision (10th Cir. Nos. 95-3280, 95-3315), on September 9, 1997, the Commission closed the file in this matter.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Jonathan Bernstein
Assistant General Counsel

97044040025

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FEDERAL ELECTION COMMISSION,	)	
	)	
Plaintiff-Appellee,	)	Nos. 95-3280,
	)	95-3315
v.	)	
	)	CERTIFICATE
MULTIMEDIA CABLEVISION, INC.,	)	OF SERVICE
	)	
Defendant-Appellant.	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of September, 1997, I caused to be served by U.S. Mail, postage prepaid, two copies of the foregoing Notice of Suggestion of Mootness and attachments in the above-captioned case on the following counsel for appellant:

Jan Witold Baran
Thomas W. Kirby
Carol A. Laham
Jason P. Cronic
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

September 10, 1997

David Kolker
Attorney

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463
(202)219-3690

9/0430410026

FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 16, 1997

Mr. Theron E. Fry, Esq.
Triplett, Woolf & Garretson
151 N. Main Street
Centre City Plaza, Suite 800
Wichita, KS 67202

RE: MUR 3657
Eric R.Yost for Congress
Committee and Theron E. Fry, as
treasurer

Dear Mr. Fry:

This is to advise you that this matter is now closed. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Jonathan Bernstein
Assistant General Counsel

97044340027

FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 16, 1997

Seth Warren
P.O. Box 659
Andover, KS 67002

RE: MUR 3657

Dear Mr. Warren:

This is to advise you that this matter is now closed. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Jonathan Bernstein
Assistant General Counsel

97044340029

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3657

DATE FILMED 10-17-97 CAMERA NO. 1

CAMERAMAN JMH

9704404027