FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4100

DATE FILMED 7/31/85 CAMERA NO. 1

CAMERAMAN EES

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RICHARD E. GARDINER
Attorney at Law

Suite 404
10560 Main Street
Fairfax, Va 22030

(703) 352-7276 (Phone)
(703) 359-0938 (Fax)

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
OCT 24 9 52 AM '94

October 19, 1994

MUR4100

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

Dear Mr. Noble,

Pursuant to 2 U.S.C. § 437g(a)(1) and 11 CFR § 111.4, Ward Edmonds, 7594 Whisperwood Court, Springfield, Va., 22153-2114, by counsel, requests that you initiate an investigation to determine whether Channel 8 and the Alexandria Chamber of Commerce violated 2 U.S.C. § 441b(a). Mr Edmonds is an independent candidate for Congress from the 8th District of Virginia whose name will appear on the ballot on November 8. Based on information and belief, Channel 8 is a for-profit corporation and the Alexandria Chamber of Commerce is a non-profit corporation exempt from federal taxation under 26 U.S.C. § 501(c)(6).

During the first week of this month, Mr. Edmonds was informed that Channel 8 and the Alexandria Chamber of Commerce were staging a debate for the 8th Congressional District candidates on Sunday, October 9. When he requested that he be allowed to participate in the debate, he was told that he would not be allowed to participate, that only the Republican and Democratic candidates were being allowed to participate.

On October 7, 1994, following the denial of his request to participate in the debate, Mr. Edmonds, by counsel, communicated in writing with both Channel 8 and the Alexandria Chamber of Commerce, informing them that, by not allowing Mr. Edmonds to participate in the debate, Channel 8 and the Alexandria Chamber of Commerce, as corporate entities, were violating 2 U.S.C. § 441b(a). Copies of the letters are enclosed. Mr. Edmonds was still not invited to participate in the debate and did not participate. Based on information and belief, both Channel 8 and the Alexandria Chamber of Commerce have spent corporate treasury money to stage the debate.

2 U.S.C. § 441b(a) makes it unlawful for "any corporation whatever . . . to make a contribution or expenditure in connection with any election at which . . . a Senator or Representative in . . . Congress [is] to be voted for . . . ." § 441b(b)(2) defines "contribution or expenditure" to "include . . . any services . . .

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to any candidate . . . in connection with any election to any of the offices referred to in this section . . . ."

This prohibition plainly applies to Channel 8 and the Alexandria Chamber of Commerce as corporate entities. The only way in which they could have staged the debate lawfully, therefore, would be if the exemption created by 11 CFR § 110.13 for "Nonpartisan candidate debates" applied. As your office has explained, "the purpose of section 110.13 . . . is to provide a specific exception to permit certain types of corporations to stage debates, without being deemed to have made contributions to the candidates taking part in the debate." Memorandum to Commission of February 8, 1994, at 18. That section, however, applies only to non-profit organizations which are exempt from federal taxation under 26 U.S.C. § 501(c)(3) or (4) and to "[b]roadcasters, bona fide newspapers, magazines and other periodical publications . . . ." Thus, the provision does not apply to the debate staged by Channel 8 and the Alexandria Chamber of Commerce.[1]

That Channel 8 and the Alexandria Chamber of Commerce violated § 441b(a) is supported by the recommendations made by your office to the Commission that the Commission adopt certain clarifications to § 110.13. In its recommendations, your office has stated the proposed clarifications

> would require all staging organizations to use pre-established objective criteria to determine which candidates are allowed to participate in debates. Thus, the new rules would not allow a staging organization to bar minor party candidates or independent candidates from participating simply because they have not been nominated by a major party. Memorandum, at 19.

Among the criteria which could <u>not</u> be used to determine eligibility to participate in debates are

> (i) Subjective evaluations of whether an individual is a significant, major or important candidate; (ii) Polls or other assessments of a candidate's chances of winning the nomination or election; (iii) For general election debates, nomination by a major party . . . .

As there have been no changes to § 441b(a) necessitating a new regulation, it follows that the proposed clarifications to the regulation are not new law, but rather a more complete exposition of current law. That being the case, it is abundantly clear that Channel 8 and the Alexandria Chamber of Commerce have violated §

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[1] A state law similar to § 441b(a) was held by the U.S. Supreme Court to apply to a state chamber of commerce. <u>Austin</u> v. <u>Michigan Chamber of Commerce</u>, 110 S.Ct. 1391 (1990).

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441b(a) and should be appropriately penalized.[2]

Respectfully submitted,

Ward Edmonds

Ward Edmonds
Complainant

By: Richard E. Gardiner

Richard E. Gardiner

Counsel for Complainant

Subscribed and sworn to before me this 19th day of October, 1994.

Russelle S. Ruszczak

Notary Public

Embossed Reverse & My Commonwealth of Virginia Notary Public Seal My Commission Expires August 31, 1995 RUSSELLE S. RUSZCZAK

cc: Kathy Snyder, President
Alexandria Chamber of Commerce
801 N. Fairfax Street
Alexandria, VA 22314

Wayne Lynch, News Director
Channel 8
7600-D Boston Blvd.
Springfield, VA 22153

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[2] In view of the fact that Channel 8 and the Alexandria Chamber of Commerce were both notified in advance of the legal basis for potential violations, their violations were willful, i.e., they "voluntarily and intentionally violated a known legal duty." United States v. Davis, 583 F.2d 190, 193 (5th Cir. 1978). This construction of willfulness has been adopted by the Fourth Circuit. See United States v. Wilson, 721 F.2d 967, 971 (4th Cir. 1983).

RICHARD E. GARDINER
Attorney at Law

Suite 404
10360 Main Street
Fairfax, Va 22030

(703) 352-7276 (Phone)
(703) 359-0938 (Fax)

October 7, 1994

Kathy Snyder
President
Alexandria Chamber of Commerce
801 N. Fairfax Street
Alexandria, VA 22314

Wayne Lynch
News Director
Channel 8
7600-D Boston Blvd.
Springfield, VA 22153

VIA FACSIMILE

Re: 8th Congressional District Candidate Debate

Dear Ms. Snyder and Mr. Lynch,

I represent Ward Edmonds, an independent candidate for Congress from the 8th District.

It is my understanding that Mr. Edmonds has requested that he be allowed to participate in the 8th District congressional candidates debate scheduled for Sunday, October 9, but that Channel 8, as well as the Alexandria Chamber of Commerce, are refusing to let him participate, despite the fact that he will be on the ballot in November. It is further my understanding that both Channel 8 and the Alexandria Chamber of Commerce are corporate entities and will have spent corporate treasury money to organize and host the debate.

Please be aware that, in refusing to allow Mr. Edmonds to participate in the debate, thus promoting the Republican and Democratic candidates over Mr. Edmonds, Channel 8, as a corporate entity, is violating 2 U.S.C. § 441b(a). That section makes it unlawful for "any corporation whatever . . . to make a contribution or expenditure in connection with any election at which . . . a Senator or Representative in . . . Congress [is] to be voted for . . . ." § 441b(b)(2) defines "contribution or expenditure" to "include . . . any services . . . to any candidate . . . in connection with any election to any of the offices referred to in this section . . . ."

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That this prohibition applies to a debate hosted by Channel 8 and the Alexandria Chamber of Commerce is evident from the fact that the Federal Election Commission (FEC) has found it necessary to exempt "Nonpartisan candidate debates" from § 441b(a). 11 CFR § 110.13. That exemption, however, only applies to certain tax exempt organizations -- of which the Alexandria Chamber of Commerce, a 501(c)(6) organization, is not one -- and to "[b]roadcasters, bona fide newspapers, magazines and other periodical publications," which does not include cable stations such as Channel 8.[1]

If Mr. Edmonds is not invited to participate in the debate -- as indeed both the Republican and Democratic candidates have urged -- we will give serious consideration to filing a complaint with the FEC against both Channel 8 and the Alexandria Chamber of Commerce.

Should you decide to invite Mr. Edmonds to participate in the debate, please contact him directly.

Sincerely yours,

Richard E. Gardiner

Richard E. Gardiner

cc: Hugh D. Keogh
President, Virginia Chamber of Commerce

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[1] A state law similar to § 441b(a) was held by the U.S. Supreme Court to apply to a state chamber of commerce. Austin v. Michigan Chamber of Commerce, 110 S.Ct. 1391 (1990).

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 1, 1994

Richard E. Gardiner, Esq.
10560 Main Street, Suite 404
Fairfax, VA 22030

RE: MUR 4100

Dear Mr. Gardiner:

This letter acknowledges receipt on October 24, 1994, of the complaint you filed on behalf of your client, Ward Edmonds alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). The respondent(s) 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 4100. Please refer to this number in all future communications. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosure
Procedures

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 1, 1994

Wayne Lynch, News Director
Channel 8
7600-D Boston Blvd.
Springfield, VA 22153

RE: MUR 4100

Dear Mr. Lynch:

The Federal Election Commission received a complaint which indicates that Channel 8 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 4100. 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 Channel 8 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 authorising such counsel to receive any notifications and other communications from the Commission.

9504366441

If you have any questions, please contact Alva E. Smith at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 1, 1994

Kathy Snyder, President
Alexandria Chamber of Commerce
801 N. Fairfax Street
Alexandria, VA 22314

RE: MUR 4100

Dear Ms. Snyder:

The Federal Election Commission received a complaint which indicates that the Alexandria Chamber of Commerce 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 4100. 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 Alexandria Chamber of Commerce 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.

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If you have any questions, please contact Alva E. Smith at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

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

9504366444

MAYS & VALENTINE
110 SOUTH UNION STREET
P.O. BOX 149
ALEXANDRIA, VIRGINIA 22313-0149
(703) 519-8000
TELECOPIER (703) 519-0140

RICHMOND
NATIONSBANK CENTER
1111 EAST MAIN STREET
P.O. BOX 1122
RICHMOND, VIRGINIA 23208-1122
TELEPHONE (804) 697-1800
TELEX 322063 (MAYSVAL UD)
TELECOPIER (804) 697-1339

HAMPTON ROADS
THE EIGHTH FLOOR
TOWN POINT CENTER
NORFOLK, VIRGINIA 23510
TELEPHONE (804) 627-5500
TELECOPIER (804) 627-5200

DIRECT DIAL (703) 519-0156

November 11, 1994

FILE NO. 00073.095

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
NOV 14 2 14 PM '94

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

Re: MUR 4100 - Complaint filed by Ward Edmonds against the Alexandria Chamber of Commerce

Dear Mr. Noble:

The Alexandria Chamber of Commerce has received the complaint of Ward Edmonds filed with the Federal Election Commission, and denies having violated any provision of the Federal Election Campaign Act of 1971.

Mr. Edmonds is an independent candidate for Congress in the 8th Congressional District of Virginia. On October 9, 1994, News Channel 8 aired a debate between the Democratic and Republican candidates for the 8th District Congressional Seat. The debate was arranged by the Alexandria Chamber of Commerce. News Channel 8 aired the debate as a public service and without charge to the Alexandria Chamber. Mr. Edmonds was not invited to participate.

Mr. Edmonds erroneously contends that the Alexandria Chamber violated the Federal Election Campaign Act by expending corporate funds for services to a candidate. (2 U.S.C. § 441(b)(a)). The Chamber did not underwrite any production costs for the debate. Apart from incidental telephone calls made to the respective candidates and to News Channel 8, the only debate-related expense of the Chamber was issuance of a press release to the local media. These expenses were de minimis at best, and were not incurred for the purpose of influencing the election, but in furtherance of the Chamber's public service objectives.

The Chamber also provided notice of the debate in addition to other information of general interest to its members in a flyer and in its monthly newsletter regularly distributed to its members in the normal course of business. It is doubtful that the internal cost of producing such a flyer and newsletter qualifies as an

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expenditure as that term is defined by 11 CFR § 100.8. (Specifically *see*, 11 CFR §100.8(b)(4)).

In support of the Chamber's position, the Affidavit of Kathleen T. Snyder, President of the Chamber, accompanies this response. We would be pleased to provide any other information needed by the Federal Election Commission to resolve this matter promptly.

In our view, the Chamber did not violate Federal Election law in facilitating this event, having incurred no expense for the air time provided by Channel 8, and not otherwise having contributed anything of material value to the candidates.

The Alexandria Chamber of Commerce respectfully requests that the Federal Election Commission dismiss Mr. Edmonds' complaint without further action.

Respectfully submitted,

David C. Canfield
General Counsel to the
Alexandria Chamber of Commerce

HEH/kas
pc: Kathleen T. Snyder, President
W. Michael Holm, Esquire

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IN THE FEDERAL ELECTION COMMISSION

In re: Ward Edmonds	)	
	)	
and	)	MUR 4100
	)	
Alexandria Chamber of Commerce	)	

AFFIDAVIT OF KATHLEEN T. SNYDER

COMMONWEALTH OF VIRGINIA,
City of Alexandria, to wit:

Before me, a notary public in and for the jurisdiction aforesaid, appeared Kathleen T. Snyder, who upon being duly sworn, made oath as follows:

1. I am the President of the Alexandria Chamber of Commerce, a 503(c)(6) nonstock corporation (the "Chamber"), and have personal knowledge of the following matters.

2. Under the auspices of the Chamber, in cooperation with News Channel 8, a televised debate was held between the Democratic and Republican candidates for the 8th District Congressional seat on October 9, 1994. Ward Edmonds, who I understand to be an independent candidate for this seat, was not invited to participate in the debate.

3. The Chamber paid no expenses incidental to this event excepting its cost of telephone service in making calls to the invited candidates and News Channel 8 to coordinate their appearance, and issuance of a press release announcing the event.

4. The Chamber also publicized the debate along with information on other matters of general interest to its members in a flyer and in its regular newsletter, both of which it regularly issues and distributes to its membership to inform its membership of Chamber activities and news affecting the Alexandria business community generally. No special editions or publications were generated exclusively pertaining to the debate, nor were the flyer or the newsletter given a larger circulation than to the Chamber membership.

5. The Chamber's sponsorship of this event was in furtherance of its service to the business community by providing a forum for public debate by the principal candidates for the

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Congressional District seat serving Alexandria, and was not for the purpose of influencing the general election.

Kathleen T. Snyder

Kathleen T. Snyder

Subscribed and sworn to before me this 10th day of November, 1994.

My comm'n exp.: Jan. 31, 1995

Jennifer L. Edwards
Notary Public

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 4100

NAME OF COUNSEL: David C. Canfield

ADDRESS: MAYS & VALENTINE
110 South Union Street
Alexandria, Virginia 22314

TELEPHONE: 703/519-0160

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.

11-10-94
Date

Kathleen T. Snyder
Signature Kathleen T. Snyder, President

RESPONDENT'S NAME: Alexandria Chamber of Commerce

ADDRESS: 801 North Fairfax Street
Alexandria, Virginia 22314

HOME PHONE:

BUSINESS PHONE: 703/549-1000

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ALLBRITTON COMMUNICATIONS

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
Nov 15 10 12 AM '94

BY HAND

November 15, 1994

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

Re: MUR 4100 - Complaint Filed by Ward Edmonds against NewsChannel 8

Dear Mr. Noble:

Pursuant to notification from your office received on November 3, 1994, regarding the above-captioned complaint, attached is the response of NewsChannel 8. Also attached is a statement of designation of counsel.

Should you have any questions regarding this submission, please contact the undersigned directly.

Respectfully submitted,

Jerald N. Fritz
Vice President
Legal and Strategic Affairs

Enclosures
JNF/mpw
cc w/enc: John Hillis
Wayne Lynch
Kathleen T. Snyder
David C. Canfield, Esq.

9504366450

800 Seventeenth Street, NW Suite 301 Washington, D.C. 20006 202-789-2130 FAX 202-822-6749

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
Nov 15 10 12 AM '94

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4100

NAME OF COUNSEL: Jerald M. Fritz

ADDRESS: Allbritton Communications Company
800 17th Street, NW, Suite 301
Washington, D.C. 20006

TELEPHONE: (202) 789-2130

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.

November 15, 1994
Date

Signature John D. Hillis

RESPONDENT'S NAME: ALLNEWSCO, Inc. d/b/a NewsChannel 8

ADDRESS: 7600-D Boston Boulevard
Springfield, VA 22153

HOME PHONE:

BUSINESS PHONE: (703) 912-5501

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Before the
FEDERAL ELECTION COMMISSION

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
Nov 15 10 12 AM '94

WARD EDMONDS,	)	
Complainant,	)	MUR 4100
v.	)	
NEWSCHANNEL 8,	)	
Respondent.	)	

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RESPONSE OF NEWSCHANNEL 8

Pursuant to 11 C.F.R. §111.6, respondent NewsChannel 8 ("NC8") hereby submits this response to the complaint filed against it by Ward Edmonds, docketed by the Commission as MUR 4100.[1] As set forth below, NC8 did not violate any provision of the Federal Election Campaign Act of 1971, as amended, and the complaint should be summarily dismissed.

I. BACKGROUND

ALLNEWSCO, Inc. d/b/a/ NewsChannel 8 is a Delaware corporation operating a cable television, 24-hour, news service in the Washington, D.C. metropolitan area. The news service is provided pursuant to affiliation contracts with cable television system operators for their distribution to cable television subscribers as a basic service offering, meaning the service is contained in the primary package of channels available

[1] The complaint was submitted against both NC8 and the Alexandria Chamber of Commerce, which is expected to respond separately with its independent rationale for dismissal of the complaint.

to all subscribers with no separate fee assessed to the subscriber. The news service is provided on each cable system over channel 8 and is available to approximately 900,000 viewing households in the Washington metropolitan area.[2] At certain times during each weekday, the cable systems in Maryland, Virginia and the District each received separate "zoned" newscasts, tailored to meet the unique needs and interests of the local communities in those discrete jurisdictions. At other times, all cable systems receive simultaneous coverage of primarily local and regional news as opposed to national or international stories. NC8 has provided this service to its cable system affiliates since October, 1991.

NC8 operates as an independent, journalistic, news operation staffed by approximately 150 reporters, producers, writers, photographers, editors, technicians and support personnel. It has received numerous journalistic awards for news coverage and in-depth analysis. Similar to broadcast television news stations, NC8 provides news and analysis but does so 24-hours per day with, by far, the most extensive coverage of any electronic news gathering operation in the Washington market. The relationship of NC8 to local broadcast television stations is the same as that of Cable News Network ("CNN") to the national broadcast networks including ABC, CBS, NBC and FOX; a cable television equivalent to broadcasters in the dissemination of news and information programming.

NC8's news commitment includes in-depth coverage of local political election races and local ballot issues pending in the numerous jurisdictions in and around

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[2] The areas in which NC8 is available include: the District of Columbia, the counties of Fairfax, Arlington, Loudoun and Prince William in Virginia and the counties of Montgomery, Prince George's and Charles in Maryland.

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Washington. Teams of reporters, producers, writers and photographers report on individual issues and candidates using their editorial and journalistic discretion. Numerous debates are sponsored by NC8 in conjunction with others or independently to permit viewers to make determinations as to candidate qualifications to hold office.[3] In so doing, NC8 news managers make traditionally recognized journalistic and constitutionally protected decisions relating to that coverage.

On Sunday, October 9, 1994, NC8 provided its studio facilities for use by the Alexandria Chamber of Commerce ("Chamber") to sponsor a debate between the major candidates for the U.S. House of Representatives for the 8th District of Virginia. Invited by the Chamber to participate was the Democratic incumbent, James Moran and the Republican challenger, Kyle McSlarrow. Not invited to participate in the debate by the Chamber was an independent candidate, Ward Edmonds, the complainant. NC8 provided studio facilities and telecast transmission of the debate to each of its cable television system affiliates.

II. ARGUMENT

A. NC8 Made No Illegal Contributions to the Debate Participants. The gravamen of Mr. Edmonds' complaint is that money was expended by NC8 to host the

[3] In the seven month period between April 1, 1994 and October 31, 1994, NC8 telecast twelve separate candidate debates. Of these debates, some were sponsored by others, some were co-sponsored with NC8 and some were independently sponsored and produced by NC8. Three debates, for example, were sponsored by the Montgomery Press Association; the D.C. Mayoral debate was co-sponsored with NC8; and the Prince George's County Executive and Virginia Eleventh District Congressional debates were solely sponsored and produced by NC8.

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debate and transmit it to cable system affiliates which is unlawful under 2 U.S.C. §441b(a).

Mr. Edmonds is in error. By providing its studio facilities to the Chamber for the debate, NC8 did not provide anything of value to either of the participating candidates. The Chamber sponsored the debate as a public service to the voters of Virginia's 8th District and nothing was contributed to those candidates by NC8. NC8 simply facilitated the debate by providing the studio, staff production crew and moderator to the Chamber. The Chamber chose the participants and the panel of questioners, approved the debate format and made arrangements with the candidates.

Further, the total expense for NC8 staff personnel associated with the debate was a de minimis $284.15, far below the limits established by the Commission even if NC8 were to be deemed as a corporate contributor. 2 U.S.C. §441a(a)(1)(A).

B. NC8 As a Television News Organization May Lawfully Conduct Nonpartisan Debates as a Qualified Exception to the Commission's Rules.

While NC8 did not sponsor the debate in question and hence cannot fall in the ambit of the Commission's rules, those rules would be inapplicable to NC8 even if it were to sponsor candidate debates. Congress and this Commission have clearly exempted news organizations from the prohibitions and limitations of the Federal Election Campaign Act. 2 U.S.C. §431(9)(B)(i); 11 C.F.R. §110.13(a)(1) and §114.4(e)(2). This exemption pertains to broadcasters, bona fide newspapers, magazines and other periodical publications. There can be no credible doubt that a cable television news organization providing identical services to television viewers as provided by broadcasters are protected by these provisions. From a viewer's

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perspective it is irrelevant -- and in fact unknown -- whether the debate is transmitted via broadcasting or cable service since the medium is transparent to the viewer. The identical debate, for example, transmitted simultaneously by a broadcast television station and cable news provider would be indistinguishable to a viewer. The only way a viewer can tell whether the pool-covered State of the Union speech, for example, is being viewed on ABC or CNN is by looking for the network "bug" -- and then only if it appears. The same is true of a local broadcaster and NC8. The creation of local cable news services similar to NC8 post-dated the passage of the Federal Election Act by some 20 years. To freeze technology by artificially creating an exception for broadcasters but not applying that exception to cable television news services would be clearly against the public policy of encouraging such public service and constitutionally suspect from both "equal protection" and freedom of speech perspectives. NC8, as a bona fide news organization, constitutionally deserves the identical protections afforded to other news organizations independent of the mode of distribution.

C. The Proposed Commission Regulations Do Not Create New Liabilities.

Mr. Edmonds cites recommendations of the Commission's General Counsel to clarify the exception provisions of the rules in support of his complaint. The objective participant selection criteria recommendations are offered as arguments to hold NC8 liable as a sponsor of the debate. Again, Mr. Edmonds mistakenly argues that NC8 sponsored the debate. In reality, the Chamber was the sponsor with NC8 only providing production assistance.

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However, even if NC8 were deemed to be a sponsor, Mr. Edmonds' reliance on pending recommendations for rule changes is misplaced. Apart from the astonishing legal jump equating recommendations with law, Mr. Edmonds erroneously and selectively cites from those recommendations. In fact, in his February 8, 1994 memorandum to the Commission regarding the Massachusetts Citizens for Life rulemaking, the General Counsel stated, that §110.13(a)(2) "does not indicate whether local cable stations or cable networks may stage debates. This question was not presented in the NPRM and was not discussed in the comments." Id. at 17. NC8 is just such a local cable network. Mr. Edmonds' interpretation is completely at odds with the recommendation of the General Counsel in that Mr. Edmonds purports to show that NC8 is proscribed from conducting debates without violating the law. Since the General Counsel has found no such proscription in currently applicable law, the obvious conclusion is that until such proscription is adopted by the Commission, such sponsored debates can continue.

The currently applicable version of §110.13(b)(1) permits staging organizations to decide which candidates to include in a debate so long as debates include at least two candidates. The Explanation and Justification to that rule expressly allows restrictions to major party candidates. Id. at 19. New rules requiring the use of objective criteria for participant selection have not been adopted and are simply not the law, even if NC8 were considered a sponsor.

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III. CONCLUSION

NC8 respectfully requests that the complaint filed in this proceeding be dismissed as to NC8. The complaint relies on misunderstandings of who sponsored the debate and ignores controlling law which must be read to except news organizations like NC8. Even if the "contributions" complained of rise to the level of proscribed events, they are at best de minimis and hence not illegal.

Respectfully submitted,

Jerald N. Fritz
Vice President
Legal and Strategic Affairs

Allbritton Communications Company
800 17th Street, N.W, Suite 301
Washington, D.C. 20006
(202) 789-2130

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DECLARATION OF WAYNE LYNCH

WAYNE LYNCH declares, under penalty of perjury, as follows:

1. I am News Director for NewsChannel 8 ("NC8"), a television news service providing programming to cable television systems in the Washington, D.C. metropolitan area. I have been employed by ALLNEWSCO, Inc. d/b/a/ NC8 since July 9, 1991 in that capacity.

2. I have read the attached response of NC8 to the complaint of Ward Edmonds and, to the best of knowledge and belief, the facts stated therein are true and correct.

I declare that the foregoing statements are true and correct to the best of my knowledge and belief.

Wayne Lynch

Subscribed and sworn to before me this 14th day of November, 1994.

Notary Public

My Comm. Exp. 5/31/, 1997

FEDERAL ELECTION COMMISSION
Jan 13 3 40 PM '95

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of) Enforcement Priority
)
)

SENSITIVE

GENERAL COUNSEL'S MONTHLY REPORT

I. INTRODUCTION

This report is the General Counsel's Report to recommend that the Commission no longer pursue the identified lower priority and stale cases under the Enforcement Priority System.

II. CASES RECOMMENDED FOR CLOSING

A. Cases Not Warranting Further Pursuit Relative to Other Cases Pending Before the Commission

A critical component of the Priority System is identifying those pending cases that do not warrant the further expenditure of resources. Each incoming matter is evaluated using Commission-approved criteria and cases that, based on their rating, do not warrant pursuit relative to other pending cases are placed in this category. By closing such cases, the Commission is able to use its limited resources to focus on more important cases.

Having evaluated incoming matters, this Office has identified 10 cases which do not warrant further pursuit relative to the other pending cases.[1] A short description of each case and the factors leading to assignment of a relatively low priority and consequent recommendation not to pursue each

1. These matters are: MUR 4087; MUR 4092; MUR 4093; MUR 4096; MUR 4097; MUR 4098; MUR 4100; MUR 4103; MUR 4106; and MUR 4114.

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case is attached to this report. See Attachments 1-11. As the Commission requested, this Office has attached the responses to the complaints for the externally-generated matters and the referral for the internally-generated matter following the narrative. See Attachments 1-11.

B. Stale Cases

Investigations are severely impeded and require relatively more resources when the activity and evidence are old. Consequently, the Office of General Counsel recommends that the Commission focus its efforts on cases involving more recent activity. Such efforts will also generate more impact on the current electoral process and are a more efficient allocation of our limited resources. To this end, this Office has identified 34 cases that

do not warrant further investment of significant Commission resources.[2] Since the recommendation not to pursue the identified cases is based on staleness, this Office has not prepared separate narratives for these cases. As the Commission requested, in matters in which the Commission has made no

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2. These matters are: MUR 2582; MUR 3109; MUR 3241; MUR 3426; MUR 3857; MUR 3858; MUR 3862; MUR 3866; MUR 3876; MUR 3879; MUR 3890; MUR 3893; MUR 3895; MUR 3896; MUR 3898; MUR 3902; MUR 3903; MUR 3904; MUR 3905; MUR 3907; MUR 3908; MUR 3912; MUR 3933; MUR 3958; MUR 3962; MUR 3978; MUR 3984; RAD 93L-19; RAD 94L-05; RAD 94L-11; RAD 94L-15; RAD 94L-21; RAD 94L-23; and RAD 94L-26.

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findings, the responses to the complaints for the externally-generated matters and the referrals for the internally-generated matters are attached to the report. See Attachments 16-45. For cases in which the Commission has already made findings and for which each Commissioner's office has an existing file, this Office has attached the most recent General Counsel's Report. See Attachments 12-15.

This Office recommends that the Commission exercise its prosecutorial discretion and no longer pursue the cases listed below effective June 26, 1995. By closing the cases effective June 26, 1995, CED and the Legal Review Team will respectively have the additional time necessary for preparing the closing letters and the case files for the public record for these cases.

III. RECOMMENDATIONS

A. Decline to open a MUR and close the file effective June 26, 1995 in the following matters:

1) RAD 93L-19
2) RAD 94L-05
3) RAD 94L-11
4) RAD 94L-15
5) RAD 94L-21
6) RAD 94L-23
7) RAD 94L-26

B. Take no action, close the file effective June 26, 1995, and approve the appropriate letter in the following matters:

1) MUR 3857
2) MUR 3858
3) MUR 3862

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4) MUR 3866
5) MUR 3876
6) MUR 3879
7) MUR 3890
8) MUR 3893
9) MUR 3895
10) MUR 3896
11) MUR 3898
12) MUR 3902
13) MUR 3903
14) MUR 3904
15) MUR 3905
16) MUR 3907
17) MUR 3908
18) MUR 3912
19) MUR 3933
20) MUR 3958
21) MUR 3962
22) MUR 3978
23) MUR 3984
24) MUR 4087
25) MUR 4092
26) MUR 4093
27) MUR 4096
28) MUR 4097
29) MUR 4098
30) MUR 4100
31) MUR 4103
32) MUR 4106
33) MUR 4114

C. Take no further action, close the file effective June 26, 1995, and approve the appropriate letter in the following matters:

1) MUR 2582
2) MUR 3109
3) MUR 3241
4) MUR 3426

Jan 17, 1995
Date

Lawrence M. Noble
General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	Agenda Document
Enforcement Priority	)	#X95-52

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on June 27, 1995, do hereby certify that the Commission decided by a vote of 6-0 on each of the matters listed below to take the actions hereinafter described:

A. Decline to open a MUR and close the file effective July 5, 1995 in the following matters:

1) RAD 93L-19
2) RAD 94L-05
3) RAD 94L-11
4) RAD 94L-15
5) RAD 94L-21
6) RAD 94L-23
7) RAD 94L-26

B. Take no action, close the file effective July 5, 1995, and approve the appropriate letter in the following matters:

1) MUR 3857
2) MUR 3858
3) MUR 3862

(continued)

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4) MUR 3866
5) MUR 3876
6) MUR 3879
7) MUR 3890
8) MUR 3893
9) MUR 3895
10) MUR 3896
11) MUR 3898
12) MUR 3902
13) MUR 3903
14) MUR 3904
15) MUR 3905
16) MUR 3907
17) MUR 3908
18) MUR 3912
19) MUR 3933
20) MUR 3958
21) MUR 3962
22) MUR 3970
23) MUR 3984
24) MUR 4087
25) MUR 4092
26) MUR 4093
27) MUR 4096
28) MUR 4097
29) MUR 4098
30) MUR 4100
31) MUR 4103
32) MUR 4106
33) MUR 4114

(continued)

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C. Take no further action, close the file effective July 5, 1995, and approve the appropriate letter in the following matters:

1) MUR 2582
2) MUR 3109
3) MUR 3241
4) MUR 3426

Commissioners Aikens, Elliott, McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision with respect to each of these actions.

Attest:

6-30-95
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 6, 1995

Richard E. Gardner
10560 Main St., Suite 404
Fairfax, VA 22030

RE: MUR 4100

Dear Mr. Gardner:

On October 24, 1994, the Federal Election Commission received your complaint on behalf of Ward Edmonds, alleging certain violations of the Federal Election Campaign Act of 1971, as amended ("the Act").

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against the respondents. See attached narrative. Accordingly, the Commission closed its file in this matter on July 5, 1995. This matter will become part of the public record within 30 days.

The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

Mary L. Taksar

Mary L. Taksar
Attorney

Attachment
Narrative

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MUR 4100
NEWSCHANNEL 8

Richard E. Gardiner filed a complaint on behalf of his client Ward Edmonds, a former independent candidate for Virginia's 8th District, that alleged that NewsChannel 8 and the Alexandria Chamber of Commerce made corporate expenditures for staging a debate which included only Republican and Democratic candidates.

In response to the complaint, the Alexandria Chamber of Commerce states that NewsChannel 8 aired the debate as a public service without charge to the Chamber of Commerce. The Chamber states that it arranged the debate but did not underwrite any of the production costs for the debate and that apart from incidental telephone calls made to the respective candidates and to NewsChannel 8, the only debate-related expense for the Chamber was issuance of a press release to the local media. According to the Chamber, the expenses incurred were de minimis and were not incurred for the purpose of influencing the election, but for the furtherance of the Chamber's public service objectives.

NewsChannel 8 responds that the Alexandria Chamber of Commerce sponsored the debate as a public service to the voters of Virginia's 8th District and that no contribution was made to the candidates who participated by NewsChannel 8. According to NewsChannel 8, it facilitated the debate by providing the studio, staff production crew, and moderator to the Chamber but that the Chamber chose the participants and the panel of questioners, approved the debate format, and made arrangements with the candidates. In addition, NewsChannel 8 states that despite the fact that it did not sponsor the debate, it qualifies for the press exemption pursuant to 2 U.S.C. § 431(9).

This matter is less significant relative to other matters pending before the Commission.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 6, 1995

Jerald N. Fritz
Allbritton CLommunications Co.
800 17th St., NW
Suite 301
Washington, DC 20006

RE: MUR 4100
Channel 8

Dear Mr. Fritz:

On November 1, 1994, the Federal Election Commission notified your client of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against your client. See attached narrative. Accordingly, the Commission closed its file in this matter on July 5, 1995.

The confidentiality provisions of 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 prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

If you have any questions, please contact Alva E. Smith at (202) 219-3400.

Sincerely,

Mary L. Taksar

Mary L. Taksar
Attorney

Attachment
Narrative

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MUR 4100
NEWSCHANNEL 8

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In response to the complaint, the Alexandria Chamber of Commerce states that NewsChannel 8 aired the debate as a public service without charge to the Chamber of Commerce. The Chamber states that it arranged the debate but did not underwrite any of the production costs for the debate and that apart from incidental telephone calls made to the respective candidates and to NewsChannel 8, the only debate-related expense for the Chamber was issuance of a press release to the local media. According to the Chamber, the expenses incurred were de minimis and were not incurred for the purpose of influencing the election, but for the furtherance of the Chamber's public service objectives.

NewsChannel 8 responds that the Alexandria Chamber of Commerce sponsored the debate as a public service to the voters of Virginia's 8th District and that no contribution was made to the candidates who participated by NewsChannel 8. According to NewsChannel 8, it facilitated the debate by providing the studio, staff production crew, and moderator to the Chamber but that the Chamber chose the participants and the panel of questioners, approved the debate format, and made arrangements with the candidates. In addition, NewsChannel 8 states that despite the fact that it did not sponsor the debate, it qualifies for the press exemption pursuant to 2 U.S.C. § 431(9).

This matter is less significant relative to other matters pending before the Commission.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 6, 1995

David C. Canfield
Mays & Valentine
110 South Union St.
Alexandria, VA 22314

RE: MUR 4100

Dear Mr. Canfield:

On November 1, 1994, the Federal Election Commission notified your client, the Alexander Chamber of Commerce, of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against your client. See attached narrative. Accordingly, the Commission closed its file in this matter on July 5, 1995.

The confidentiality provisions of 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 prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

If you have any questions, please contact Alva E. Smith at (202) 219-3400.

Sincerely,

Mary L. Taksar

Mary L. Taksar
Attorney

Attachment
Narrative

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MUR 4100
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NewsChannel 8 responds that the Alexandria Chamber of Commerce sponsored the debate as a public service to the voters of Virginia's 8th District and that no contribution was made to the candidates who participated by NewsChannel 8. According to NewsChannel 8, it facilitated the debate by providing the studio, staff production crew, and moderator to the Chamber but that the Chamber chose the participants and the panel of questioners, approved the debate format, and made arrangements with the candidates. In addition, NewsChannel 8 states that despite the fact that it did not sponsor the debate, it qualifies for the press exemption pursuant to 2 U.S.C. § 431(9).

This matter is less significant relative to other matters pending before the Commission.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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