



Federal Communications Commission
Washington, D.C. 20554

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August 29, 2002

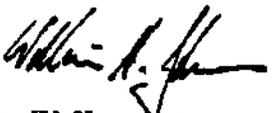
Mai T. Dinh
Acting Assistant General Counsel
Federal Elections Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Notice 2002-13
Electioneering Communications

Dear Ms. Dinh:

Enclosed please find Comments of the Federal Communications Commission, Media Bureau, to the *Notice of Proposed Rulemaking* in the above-captioned matter. If you have any questions concerning these comments, please contact Robert Baker at 202-418-1417.

Sincerely,


W. Kenneth Ferree
Chief, Media Bureau

Enclosure

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COMMISSION
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Before the
Federal Election Commission

In the matter of

Electioneering Communications

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Notice 2002-13

COMMENTS OF THE
FEDERAL COMMUNICATIONS COMMISSION
MEDIA BUREAU

The *Notice of Proposed Rulemaking (NPRM)* in this proceeding, among other things, contains proposals regarding a database the Federal Communications Commission (FCC) will be asked to create, maintain and make available to the public on our website. We submit these comments to make clear that this undertaking could be extraordinarily complex and will require the expenditure of substantial resources in terms of time, money, and personnel. We ask the Federal Election Commission (FEC) to consider these facts and to craft rules that will simplify this task to the extent possible, so that we will be able to provide the public with information quickly and as accurately as feasible.

Section 201(b) of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), enacted in April 2002, contains the following provision:

(b) RESPONSIBILITIES OF FEDERAL COMMUNICATIONS COMMISSION.--The Federal Communications Commission shall compile and maintain any information the Federal Election Commission may require to carry out section 304(f) of the Federal Election Campaign Act of 1971 ["FECA"] (as added by subsection (a)), and shall make such information available to the public on the Federal Communication Commission's website.

In the *NPRM*, the FEC states that the FCC will be required to compile and maintain on the FCC's website information from which it can readily be determined whether any communication distributed by a broadcast station (AM, FM, or TV), cable television system, or satellite system will reach 50,000 or more persons in the particular congressional district or state in which the candidate referred to in the communication is running for office. The FEC states that such information will enable the interested parties to determine whether a communication transmitted on one of these outlets would qualify as an "electioneering communication,"¹ and ensure that proper disclosure of electioneering communications is made to the FEC.

¹ "Electioneering communication" is defined in part in Section 304(f) of the Federal Election Campaign Act of 1971, as amended by Section 201(a) of the BCRA, as "any broadcast, cable or satellite communication which ... is targeted to the relevant electorate." A communication "targeted to the relevant electorate" is defined as a communication that "can be received by 50,000 or more persons" in the district or state that a candidate, who is referred to in the communication, seeks to represent.

We anticipate that this project will require substantial resources in terms of time, money and personnel. At a minimum, it will involve the integration of population information, congressional and state boundary geographic information, and service area data for broadcast stations, cable systems, and satellite systems. It could potentially also involve more detailed information relating to the specific programming services transmitted or carried by each broadcast station, cable system, and satellite system in the country. As of June 30, 2002, the following numbers of broadcast stations are operating in the United States: 8450 FM radio stations, 4811 AM radio stations, and 1712 full-power analog television stations. As of August 27, 2002, 516 digital television stations are on the air. In addition, approximately 10,500 cable systems and several satellite providers are currently operating in the United States.

The Commission would have to acquire much of the technology and data required to create this database. Of the data we do possess, a substantial amount is either proprietary or privileged and, therefore, cannot be made available to the public on our website unless certain entities allow it. Some of the information for the database must, therefore, be purchased from outside commercial sources willing to make the data public or obtained through a mandatory collection of data from broadcasters, cable companies and satellite companies. If the FCC is required to collect data from its regulatees, we will likely have to adopt new information collection forms and enable the forms to be electronically filed. Any of these options will require spending significant funds.

One task will be to determine how many persons (as defined by the FEC) reached by a particular broadcast station's signal live within the relevant electoral district. Although this is not information we currently maintain, that exercise is relatively straightforward.² The information will nevertheless not be entirely accurate, because some people within a broadcast station's service contour cannot actually receive its signal, and some outside it can. Further complications arise when one takes into account the duplicative transmission of the same communication by multiple broadcast stations (for example, over a television network feed), retransmission by a cable system or by multiple cable systems serving part of all of the district, and retransmission by DBS operators providing local-into-local service within the district. How the database is implemented could result in undercounting the number of persons reached (for example, if we do not add the populations reached by different distribution systems) or overcounting them (for example, if we add the number of cable subscribers to the persons reached over the air, we will be double counting many of those people). In addition, these numbers will change over time; it will be impossible to provide daily updates as, for example, numbers of cable and DBS subscribers and district populations fluctuate.

All of this is not to say that we cannot achieve relatively accurate counts of how many persons a communication can reach, as required by the statute. It argues in favor, however, of adopting rules that simplify the task as much as possible. Moreover, in order that the definition of electioneering communication not be deemed unconstitutionally overbroad, the rules should not result in overcounting the number of persons reached. Where the available data is incomplete or ambiguous, the process should err on the side of permitting the communications to take place without restriction, rather than the opposite. In addition, it may be impossible in some cases to determine whether or not 50,000 or more persons can be reached within a given district or state by a broadcast station, cable system, or satellite company. In such situations, we believe that it should be presumed that a communication reaches fewer than 50,000 persons so as to avoid the possibility of overbroad enforcement of the statute and constitutional challenge to it.

² This process would also be simplified if excluded from the database were all broadcast and cable entities that serve, in total, fewer than 50,000 persons.

We also ask that the FEC give us flexibility and discretion to implement the database where appropriate. For example, the NPRM seeks comment on what signal measurement (such as a television station's Grade B contour) should be used to measure whether or not a communication reaches 50,000 or more persons. We ask that the FEC defer determinations like that to the FCC, to be made based upon our expertise and available data resources.

The creation and maintenance of a database that complies with the BCRA will be, no matter what the details, a large and difficult undertaking. We urge the FEC, in deciding the specific parameters of the database, to strive for simplicity so that we can make the database available to the public quickly, so that it will be easy to understand and use, and so that it will not result in overcounting of persons who can be reached by a particular electioneering communication.

Respectfully submitted,



W. Kenneth Ferree
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August 29, 2002