

**Before the
FEDERAL ELECTIONS COMMISSION
Washington, D.C. 20463**

In the Matter of:)
) Notice 2002-13
Notice of Proposed Rulemaking Re:)
Electioneering Communications)

To: The Commission

**COMMENTS OF
THE RADIO-TELEVISION NEWS DIRECTORS ASSOCIATION**

I. Introduction and Background.

The Radio-Television News Directors Association ("RTNDA"), by its attorney, hereby submits these comments in response to the Federal Election Commission's *Notice of Proposed Rulemaking* to implement certain provisions of the Bipartisan Campaign Reform Act of 2002 ("BCRA").¹ RTNDA is the world's largest professional association devoted to electronic journalism. Its more than 3,200 members include local and network news executives, educators, students, and others in the radio, television, cable and other electronic media worldwide.

The Federal Election Commission ("FEC" or "Commission")'s *Notice* specifically seeks comment on proposed rules to define and to implement the prohibition on certain entities making "electioneering communications." RTNDA submits these

¹ Federal Election Commission, *Notice of Proposed Rulemaking*, 2002-13 Electioneering Communications, 67 Fed. Reg. 51131 (Aug. 7, 2002) ("*Notice*").

comments to underscore the need to exclude news programming from the definition of an "electioneering communication." In that regard, RTNDA supports the position of the National Association of Broadcasters ("NAB") advanced in its comments filed in this proceeding, specifically, that the FEC should not exacerbate the significant constitutional issues raised by the legislation by interpreting the term electioneering communications so broadly as to encompass communications beyond paid advertisements.

II. Electioneering Communications Should Encompass Only Paid Advertising, Which By Definition Specifically Excludes News Programming.

The *Notice* requests comment on whether the definition of an electioneering communication should "be limited to paid advertisements." *Notice* at 51136. The answer is unequivocally yes.

Outside of realm of the paid advertisement, campaign coverage and political discourse are largely the province of broadcast newsrooms. Of particular concern to RTNDA, therefore, is the potential for any interpretation of the proposed rules to interfere with broadcasters' journalistic discretion in covering the political arena.

Presumably recognizing the danger of treading on journalists' First Amendment rights and the critical importance of the role journalists play in the democratic process, Congress expressly exempted communications that appear in a "news story, commentary, or editorial," as well as candidate debates conducted pursuant to regulations adopted by the FEC, from BCRA's definition of an electioneering communication. *See* 2 U.S.C. § 434(f)(3)(B)(i). Indeed, RTNDA believes that these exemptions make plain that it was not the intent of Congress in passing this legislation to in any way limit the First Amendment freedoms of the press.

RTNDA believes that "News story, commentary or editorial" should be construed broadly, at least encompassing debates, editorials, and the types of programming exempt from the Federal Communications Commission's ("FCC") equal opportunities requirements, specifically,

(1) bona fide newscasts,

(2) bona fide news interviews,

(3) bona fide news documentaries (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), and

(4) on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto).

While RTNDA supports the FEC's specific exemption of news programming, limiting the definition of electioneering communications to paid advertisements would serve the purpose of making clear that such political coverage and commentary is not subject to the BCRA's prohibitions and is entirely consistent with Congressional intent. Neither the BCRA nor its legislative history mention candidate appearances, political communications or issue advertisements for which no money is expended by candidates or their supporters. The core principle underlying the BCRA has always been a purported 'ban' on soft *money*.² Thus, if no money is exchanged, be it soft or hard,

² Bipartisan Campaign Reform Act of 2002, House Report No. 107-131(I), July 10, 2001, Cong. Record Vol. 148 (2002) at 1 (emphasis added). *See also* Statement of Senator John McCain, *Campaign Finance Reform*, March 20, 2002: "With the stroke of the

BCRA and its provisions are not invoked. As the NAB states, by definition, a candidate's appearance on a news program, a news interview, a talk show or a debate does not constitute a campaign expenditure under Title II of BCRA if no consideration is paid to a broadcast station or a cable or satellite system for that appearance.³ RTNDA believes, therefore, that news programming is fully outside the scope of both BCRA and the Commission's statutory authority to regulate electioneering communications.

RTNDA respectfully submits that the FEC should craft its rules to assure the unfettered right of electronic journalists to cover and comment on political campaigns by

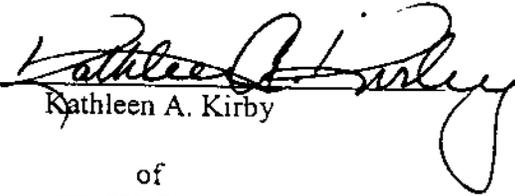
President's pen, we will eliminate hundreds of millions of dollars of unregulated soft money"

³ As the FEC has recognized, RTNDA, along with a number of broadcasters, has already petitioned the Commission to amend its regulations to make clear that the sponsorship of a debate between political candidates by a news organization (or a related trade association) does not constitute an illegal corporate campaign contribution or expenditure in violation of the Federal Election Campaign Act. See *CBS Broadcasting, Inc., et al., Petition for Rule Making Re: Sponsorship of Candidate Debates by News Organizations* (Apr. 10, 2002). The same principle should apply here, and the Commission should exclude from the definition of an electioneering communication any candidate debates selected by a broadcaster for airing. We therefore urge the Commission to address the pending request for rulemaking expeditiously.

making clear that news programming is not subject to the BCRA.

Respectfully submitted,

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