



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Memorandum

AGENDA ITEM
For Meeting of: 9-2-98

TO: The Commission

From: David M. Mason *DM*
Commissioner

SUBMITTED LATE

Date: September 2, 1998

Subject: Additional comments on AO 1998-17

I called the office of FCC Commissioner Furchgott-Roth to seek additional comments on Communications Act issues related to AO 1998-17 (Daniels Cable). In Commissioner's absence, a member of his legal staff responded to several questions I had about the Communications Act and FCC General Counsel Wright's comment letter.

While I understand that comments provided by another government agency in response to my request do not constitute *ex parte* communications, I did want to share the substance of these comments with my fellow commissioners, and for the record of our considerations. As with the Wright letter, these comments do not represent the views of FCC commissioners, including Commissioner Furchgott-Roth, who was out of town when I sought and received these comments.

1. Nothing in the Communications Act *requires* broadcasters to provide free time to candidates. Broadcasters *may* do so, but in so doing, they are going above and beyond their statutory call of duty.
2. Therefore, there would be no square conflict between an FEC ruling that Daniels' plan to grant free time violated FECA and the FCC's ability to implement the Communications Act.
3. Vis-à-vis my proposed amendment on page six, the FCC has not "specifically allowed" stations to discount their usual rates to as low as zero to satisfy the lowest unit charge requirement (Section 315(b) of the Communications Act). The FCC has authorized the sale of a specially discounted class of time under the lowest unit charge provisions. The FCC and Courts have determined that free time satisfies other requirements of the Communications Act (such as section 312(a)(7)). Thus, it is true, as the Wright letter states, that the FCC's regulations "contemplate" free time for certain purposes, but it is not the case that they have specifically authorized free time under the lowest unit charge provision.

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