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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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MEMORANDUM

AGENDA ITEM

For Meeting of: 9-2-98

TO: The Commission

FROM: David M. Mason *DM*
Commissioner

SUBMITTED LATE

DATE: September 1, 1998

SUBJECT: Proposed Revisions To Advisory Opinion 1998-17

I submit the attached proposed revisions to AO 1998-17 for consideration at the Commission meeting of September 2, 1998.

Attachment

(1) Page 2, line 26:

strike out "its" and insert "a".

(2) Page 3:

insert the following at the beginning of footnote 4:

"The Commission notes that these comments are submitted by the General Counsel and do not necessarily reflect the views of the Federal Communications Commission."

(3) Page 6:

strike out lines 14 through 23 and insert the following:

Congress has shown a clear, statutory interest in providing Ffederal candidates with inexpensive air time. The FCC has specifically allowed stations to discount their usual rates to as low as zero to satisfy that Congressional mandate, which was imposed by the same public law enactment which included created the 1971 Act. FECA. Public Law 92-225, 86 STAT. 3. While the Federal Election Commission FEG cannot surrender jurisdiction, nor simply defer to the FCC when our statutes conflict, in this instance, the Communications Act provides important guidance in interpreting the Act FECA by illuminating the policy Congress intended to foster.

The Commission views the proposed activity as falling within the category of commentary, which includes the concept of guest commentary. In implementing its proposal, Daniels must, of course, comply with all applicable provisions of the Communications Act and FCC regulations. Absent these laws and regulations ensuring that Daniels will provide equal opportunities to all qualified candidates, the Commission might disapprove a similar request, ~~or mandate similar equal access requirements on its own.~~ This equal access guarantee takes the Daniels proposal outside the realm.

(4) Page 7:

after line 4, insert the following:

The Commission acknowledges Daniels' constitutional arguments, which might provide an additional basis for construing the media exemption at 2 U.S.C. §431(9)(B)(i) broadly so as to permit their proposal. However, the Commission need not rely on a constitutional analysis in this instance, since the relevant statutes, themselves clearly drawn with the First Amendment in mind, provide sufficient guidance.