



FEDERAL ELECTION COMMISSION

Washington, DC 20463

MEMORANDUM

**TO: THE COMMISSION
STAFF DIRECTOR
GENERAL COUNSEL
FEC PRESS OFFICE
FEC PUBLIC DISCLOSURE**

FROM: COMMISSION SECRETARY *MWD*

DATE: February 8, 2005

SUBJECT: COMMENT: DRAFT AO 2004-43

Transmitted herewith is a timely submitted comment by the Montana Broadcasters Association and the Arizona Broadcasters Association regarding the above-captioned matter.

Proposed Advisory Opinion 2004-43 is on the agenda for Monday, February 14, 2005.

Attachment

SCIARRINO & ASSOCIATES, PLLC
BROADCAST LEGAL SERVICES, PLLC

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Dawn M. Sciarrino
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2005 FEB -8 P 2:19

February 7, 2005

VIA FEDERAL EXPRESS - STANDARD

Rosemary C. Smith, Esq.
Associate General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

2005 FEB -8 P 1:23
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Re: Comments Supporting Advisory Opinion Request - Draft AO 2004-43

Dear Ms. Smith:

The Montana Broadcasters Association and the Arizona Broadcasters Association (hereinafter "the Associations"), by their undersigned counsel, hereby submits these comments in support of the Advisory Opinion Request, originally filed by Womble Carlyle Sandridge & Rice, PLLC on behalf of the Missouri Broadcasters Association ("MBA") on October 12, 2004, as most recently supplemented on January 21, 2005.

The Associations fully support MBA's position and analysis of the issues that are raised by language in the Bipartisan Campaign Reform Act of 2002 ("BCRA") which amended Section 315 of the Communications Act of 1934 (the "Act") to provide that candidates who do not comply with the BCRA "Stand By Your Ad" provision are not entitled to the "Lowest Unit Charge" ("LUC") for the remainder of the campaign. See 47 U.S.C. §315(b)(2). Thoughtful reading of BCRA and its legislative history, not to mention commonsense, compels the conclusion that Congress did not intend to relegate broadcasters to judge and jury as to a federal candidate's compliance with BCRA, to compel broadcasters to violate the non-discrimination provision of the Section 315(a) of the Communications Act, or subject broadcasters to potential penalties for in-kind contributions to a federal candidate for good faith compliance with Section 315 of the Act.

Accordingly, the Associations hereby respectfully request that the Federal Election Commission promptly issue an advisory opinion affirming that radio and television broadcasters who do not raise their rate above LUC to a candidate who has failed to meet the requirements of the Bipartisan Campaign Reform Act of 2002 shall not be considered to have made an in-kind contributions or in any other way to have made an illegal campaign contribution to the

Rosemary C. Smith, Esq.
Associate General Counsel
Federal Election Commission
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Should any questions arise concerning this matter, please contact the undersigned counsel.

Respectfully submitted,

**MONTANA BROADCASTERS ASSOCIATION
ARIZONA BROADCASTERS ASSOCIATION**

By:



Dawn M. Sciarrino, Esq.
Sciarrino & Associates, PLLC
Their Counsel

cc: Robert Baker, Esq.
Gregg Skall, Esq.
Donald J. Simon, Esq.