

Request for additional information
AD 2004-43



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 21, 2004

Gregg P. Skall, Esq.
Womble, Carlyle, Sandridge & Rice, P.L.L.C.
Seventh Floor
1401 Eye Street, N.W.
Washington, D.C. 20005

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COMMISSION
SECRETARIAT

Dear Mr. Skall:

This refers to your request for an advisory opinion dated October 29, 2004, as supplemented by your letter of November 19, 2004, on behalf of the Missouri Broadcasting Association ("MBA") regarding whether, under the Federal Election Campaign Act of 1971, as amended, a broadcaster would be making a corporate in-kind contribution by selling advertising time at the Lowest Unit Charge ("LUC") to a candidate who fails to comply with the BCRA statement requirements¹ in one of his advertisements and, therefore, is not entitled to the LUC under the Communications Act of 1934, as amended. 47 U.S.C. 315(b).

As you know, the Commission considered a draft response to your advisory opinion request during its Open Meeting on Thursday, December 16, 2004.² However, the Commission postponed a vote on the draft and has asked this Office to request the following further information from you.³

- 1) Describe in detail how broadcasters establish advertising rates for advertisers other than political candidates. Provide details

¹ The Bipartisan Campaign Reform Act of 2002 ("BCRA"), P.L. 107-155, 116 Stat. 81 (March 27, 2002), amended section 315 of the Communications Act of 1934, 47 U.S.C. 315(b), such that a Federal candidate "shall not be entitled" to the LUC if any of his advertisements makes a direct reference to his opponent and fails to comply with certain requirements, including a statement by the candidate indicating his approval of the advertisement.

² See <http://www.fec.gov/agenda/2004/mtgdoc04-113.pdf>.

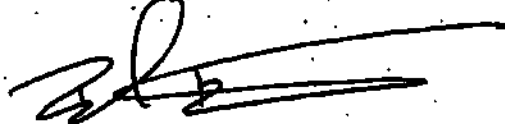
³ Under 11 CFR 112.4(a), the Commission has 60 days from the date an advisory opinion request is complete to issue either a written opinion or a response stating that the Commission was unable to approve an advisory opinion by the required affirmative vote of four members. The 60-day deadline for your request is December 28, 2004. However, on December 17, 2004, the Commission received an e-mail communication from you granting the Commission of an extension for the resolution of this matter until February 28, 2005.

regarding different classes of advertising, including classes of preemptible and non-preemptible time.

- 2) Describe in detail how broadcasters calculate the LUC offered to political candidates. Also, provide details regarding how members of MBA calculated and applied the LUC in establishing a rate to charge Missourians for Kit Bond for advertisements during the 2004 general election.
- 3) State whether there are any circumstances under which a member of MBA could offer the LUC to a Federal candidate, absent being required to do so under the Communications Act. Describe all such circumstances.
- 4) Provide a copy of the Missourians for Kit Bond radio and television advertisements referenced in your advisory opinion request.

If you have any questions regarding this letter, please call Brad Deutsch or Cheryl Hemsley at 202-694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Smith', with a long horizontal line extending to the right.

for Rosemary C. Smith
Associate General Counsel