



FEDERAL ELECTION COMMISSION
Washington, DC 20463

SENSITIVE

MEMORANDUM

TO: Commissioners
Staff Director
General Counsel

FROM: Office of the Commission Secretary *MWD*

DATE: October 9, 2003

SUBJECT: Statement of Reasons for MUR 5261
By Vice Chairman Bradley A. Smith,
Commissioners David M. Mason,
Danny L. McDonald, and Michael E. Toner

The attached document is being circulated for a 48-hour review prior to public release. Absent objection, the Office of General Counsel will include this statement in the public record file in this case.

cc: Vincent Convery

Attachment



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

In the Matter of

Clear Channel Communications, Inc.
Nick Lampson for Congress and
William S. Leonard, as treasurer

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MUR 5261

STATEMENT OF REASONS

**VICE CHAIRMAN BRADLEY A. SMITH, COMMISSIONERS DAVID M. MASON,
DANNY L. McDONALD, AND MICHAEL E. TONER**

The complainant in this matter alleges that Clear Channel Communications ("Clear Channel") made a prohibited contribution to a federal candidate by airing public service announcements ("PSAs") on Clear Channel's Beaumont, Texas, radio stations narrated by and referring to the candidate. The PSA supported the National Child Identification Program by providing listeners information about how to receive a fingerprint kit.¹ Because the Commission determined that the broadcast of the PSA was within the media exemption of the Federal Election Campaign Act of 1971, as amended ("the Act"), the Commission, by a vote of 4-0, voted to find no reason to believe that the respondents in this matter violated the Act and closed the file.²

Because the activity in this matter occurred during the 2001-2002 election cycle, before the effective date of the Bipartisan Campaign Finance Reform Act of 2002 ("BCRA"), the Act's media exemption and its prior treatment of PSAs identifying federal candidates provides the controlling standard.³ The Act provides that corporations are prohibited from making

¹ According to the responses, the text of the PSA was as follows:

In the next sixty seconds at least one child in America will be reported missing. Over 800,000 children are reported missing every year. Hi, I'm Congressman Nick Lampson. Together with Clear Channel Radio, let's lower those staggering statistics by furnishing our children an inkless ID kit through the National Child ID program. This easy-to-use fingerprint kit enables us to provide vital information to authorities if the unthinkable ever happens: the abduction or dislocation of a child. Twin City Motors, Nick Lampson and Clear Channel Radio invite you to the Soapbox Derby, part of the All American kids day. Come by the child ID booth and get your child's ID kit absolutely free. Made possible by Twin City Motors, committed to excellence, committed to you. Come see us for your next Honda, Pontiac, GMC, Buick or pre-owned car, Highway 69 and Naderland Avenue or Twin City motors.com.

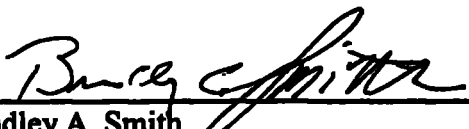
² Commissioners Mason, McDonald, Smith and Toner voted affirmatively for the decision. Chair Weintraub was recused and Commissioner Thomas was not present.

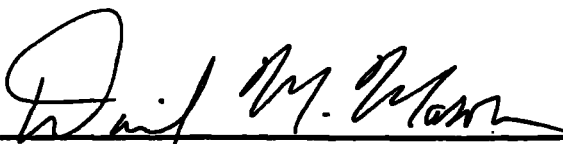
³ Under Commission regulations implementing BCRA, when broadcasters or satellite or cable system operators do not charge a fee for publicly distributing PSAs, these communications do not meet the definition of an

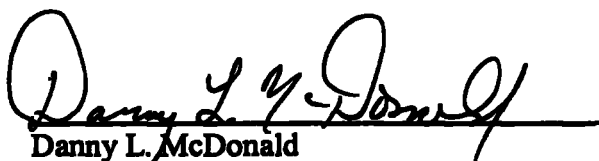
"expenditures." 2 U.S.C. § 441b(a). The term "expenditure" is defined as "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office" 2 U.S.C. § 431(9)(A)(i). An exception to this definition is for "any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate[.]" 2 U.S.C. § 431(9)(B)(i); 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2). In the enforcement and policy context, the Commission has long applied the Act's media exemption to PSAs and concluded that this activity falls within the exemption.⁴

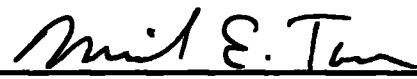
In this matter, the Office of the General Counsel recommended that under the Enforcement Prioritization System, the Commission should take no action and close the file in this matter because of its low significance relative to other matters pending before the Commission. *Heckler v. Chaney*, 470 U.S. 821 (1985). Instead, because Clear Channel Communications is not owned or controlled by a political party, committee or candidate, the Commission determined to find no reason to believe that the respondents in this matter violated the Act by airing the PSAs and closed the file.

October 9, 2003


Bradley A. Smith
Vice-Chairman


David M. Mason
Commissioner


Danny L. McDonald
Commissioner


Michael E. Toner
Commissioner

"electioneering communication" under 11 C.F.R. § 100.29(b)(3)(i)(the term "publicly distributed" means "aired, broadcast, cablecast or otherwise disseminated for a fee...)(Electioneering Communications, 67 Fed. Reg. 65,190-01, 65202 (Oct. 23, 2002)(*Explanation and Justification*)(emphasis added)).

However, broadcasters, and satellite and cable system operators do sometimes charge fees for publicly distributing other communications commonly known as PSAs and either the person who produced the PSA or some third party pays for its public distribution. Because of this fee, these PSAs would be subject to the definition of "electioneering communications," unless exempted.

Id.

⁴ See MUR 3483 (KXIC Radio)(a radio station's airing of Small Business Association PSAs featuring the voice of a Federal candidate was not a prohibited contribution because it was within the press exemption); Advisory Opinions 1978-88 (purpose of candidate appearance in PSA on behalf of diabetes foundation was not nomination or election to Federal office and thus no contribution results) and 1978-76 (under the media exemption the Commission concluded that a television station's offer to run a film akin to a PSA depicting the facilities available to constituents and the services provided by a Congressional office was not a contribution to the Federal candidate).