

Integration and Development Branch,  
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Dated at Rockville, Maryland, this 26th day  
of January, 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 96-2048 Filed 1-31-96; 8:45 am]

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## FEDERAL ELECTION COMMISSION

### 11 CFR Parts 100, 110 and 114

[Notice 1996-2]

#### Candidate Debates and News Stories

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Election Commission is seeking comments on proposed revisions to its regulations governing candidate debates and news stories produced by cable television organizations. These regulations implement the provisions of the Federal Election Campaign Act (FECA) which exempt news stories from the definition of expenditure under certain conditions. The proposed rules would indicate that cable television programmers, producers and operators may cover or stage candidate debates in the same manner as broadcast and print news media. The rules would also restate Commission policy that news organizations may not stage candidate debates if they are owned or controlled by any political party, political committee or candidate. No final decisions have been made by the Commission on any of the proposed revisions contained in this Notice. Further information is provided in the supplementary information which follows.

**DATES:** Comments must be received on or before March 4, 1996. The Commission will hold a hearing on March 20, 1996 at 10:00 a.m. Persons wishing to testify should so indicate in their written comments.

**ADDRESSES:** Comments must be made in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, N.W., Washington, D.C. 20463. The hearing will be held in the Commission's ninth floor meeting room, 999 E Street, N.W. Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan E. Propper, Assistant General Counsel, or Rosemary C. Smith, Senior Attorney (202) 219-3690 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** The FECA generally prohibits corporations from

making contributions or expenditures in connection with any election. 2 U.S.C. 441b. However, the definition of "expenditure" in section 431(9) indicates that news stories, commentaries, and editorials distributed through the facilities of any broadcast station, newspaper, magazine, or other periodical publication are not considered to be expenditures unless the facilities are owned or controlled by a political party, political committee, or candidate. 2 U.S.C. 431(9)(B)(i). This "news story" exemption forms the basis for the Commission's long-standing regulations at 11 CFR 100.7(b)(2), 100.8(b)(2), as well as the provisions of 11 CFR 110.13 and 114.4(f) which permit broadcasters and bona fide print media to stage candidate debates under certain conditions.

The Commission is now seeking comments on expanding the types of media entities that may stage candidate debates under sections 110.13 and 114.4 to include cable television operators, programmers and producers. Hence, proposed sections 110.13(a)(2) and 114.4(f) would allow these types of cable organizations to stage debates under the same terms and conditions as other media organizations such as broadcasters, and bona fide print media organizations. New language in sections 110.13, 100.7(b)(2) and 100.8(b)(2) would also permit cable organizations, acting in their capacity as news media, to cover or carry candidate debates staged by other groups. Examples of the types of programming that the Federal Communications Commission considers to be bona fide newscasts and news interview programs are provided in *The Law of Political Broadcasting and Cablecasting: A Political Primer*, 1984 ed., Federal Communications Commission, at p. 1494-99.

The proposed rules would be consistent with the intent of Congress not "to limit or burden in any way the first amendment freedom of the press. \* \* \*" H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. at 4 (1974). In *Turner Broadcasting System, Inc. v. Federal Communications Commission*, \_\_\_\_\_ U.S. \_\_\_\_, 114 S. Ct. 2445, 2456 (1994), the Supreme Court recognized that cable operators and cable programmers "engage in and transmit speech, and they are entitled to the protection of the speech and press provisions of the First Amendment."

The 1974 legislative history of the FECA also indicates that in exempting news stories from the definition of "expenditure," Congress intended to assure "the unfettered right of the newspapers, TV networks, and other media to cover and comment on

political campaigns." H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. at 4 (1974). Although the cable television industry was much less developed when Congress expressed this intent, it would be reasonable to conclude that cable operators, programmers and producers, when operating in their capacity as news producers and distributors, would be precisely the type of "other media" appropriately included within this exemption.

For these reasons, the Commission is proposing to allow cable operators, programmers and producers to act as debate sponsors. However, the Commission seeks comments on whether there are distinctions between cable operators, programmers and producers that should be considered in determining when it is appropriate for these types of organizations to stage candidate debates. In addition, are there other types of cable news organizations that should be included as debate sponsors?

The proposed rules would also be consistent with Advisory Opinion 1982-44, in which the Commission concluded that the press exemption permitted Turner Broadcasting System, Inc. to donate free cable cast time to the Republican and Democratic National Committees without making a prohibited corporate contribution. The cablecast programming on "super satellite" television station, WTBS in Atlanta, Georgia, was to be provided to a network of cable system operators. The Commission stated *inter alia* that "the distribution of free time to both political parties is within the broadcaster's legitimate broadcast function and, therefore, within the purview of the press exemption." AO 1982-44.

The courts have also examined the application of the press exemption in section 431(9)(B)(i). See, e.g., *Readers Digest Ass'n v. FEC*, 509 F. Supp. 1210 (S.D.N.Y. 1981); *FEC v. Phillips Publishing Company, Inc.*, 517 F. Supp. 1308 (D.D.C. 1981). In *Reader's Digest*, the court articulated a two part test "on which the exemption turns: whether the press entity is owned by the political party or candidate and whether the press entity was acting as a press entity in making the distribution complained of." *Readers Digest*, at p. 1215. The first prong is discussed more fully below. With regard to the second prong, the court stated that "the statute would seem to exempt only those kinds of distribution that fall broadly within the press entity's legitimate press function." *Id.* at 1214. The Commission believes a cable operator, producer or programmer could satisfy this standard if it follows

the same guidelines as other debate sponsors. For example, it would be required to invite at least two candidates and refrain from promoting or advancing one over the other(s).

The Commission is also proposing to add language to sections 100.7(a)(2) and 100.8(a)(2) to provide that the news story exception in 2 U.S.C. 431(9) allows cable operators, producers and programmers to exercise legitimate press functions by covering or carrying news stories, commentaries and editorials in accordance with the same guidelines that apply to the print or broadcast media. For example, they would be subject to the same provisions regarding ownership by candidates and political parties as are broadcasters or print media. As noted above, however, comments are sought on whether there are distinctions between cable operators, programmers and producers that should be considered in determining which of these organizations are bona fide news organizations entitled to the press exemption.

The approach taken in the proposed rules regarding cable television entities would avoid conflict with the Federal Communication Commission's application of the equal opportunity requirements under the Communications Act of 1934. Section 315(a) of the Communications Act requires that broadcast station licensees, including cable television operators, who permit any legally qualified candidate to use a broadcasting station, must afford equal opportunities to all other such candidates for that office in the use of that broadcasting station. 47 U.S.C. 315(a). However, the equal opportunity requirement is not triggered if the broadcasting station airs a bona fide newscast, bona fide news interview, bona fide news documentary or on-the-spot coverage of bona fide news events (including political conventions). 47 U.S.C. 315(a)(1)-(4). In 1975, the Federal Communications Commission decided that broadcasts of debates between political candidates would be exempt from the equal opportunities requirement as on-the-spot coverage of bona fide news events where, *inter alia*, the broadcaster exercised a reasonable, good faith, judgment that it was newsworthy, and not for the purpose of giving political advantage to any candidate. See, *The Law of Political Broadcasting and Cablecasting: A Political Primer*, 1984 ed., Federal Communications Commission, at p. 1502. This ruling was expanded in 1983 to permit broadcastersponsorship of candidate debates. *Id.* Similarly, in 1992, the Federal Communications

Commission ruled that independently produced *bona fide* news interview programs qualify for exemption from the equal opportunities requirement of the Communications Act. *In Matter of Request for Declaratory Ruling That Independently Produced Bona Fide News Interview Programs Qualify for the Equal Opportunities Exemption Provided in Section 315(a)(2) of the Communications Act*, FCC 92-288 (July 15, 1992).

The third change in the proposed rules would be the addition of language indicating that broadcast, cable and print media organizations, may not stage candidate debates if they are owned or controlled by a political party, political committee or candidate. This policy is not stated in the current candidate debate rules, although it was included in the 1979 explanation and justification for these rules. See 44 F.R. 76735 (December 27, 1979). It is based on 2 U.S.C. 431(9)(B)(i), which specifies that the news story exemption does not apply to media entities that are owned or controlled by a political party, political committee or candidate. Please note that this new language applies only to media corporations, and thus would not change the rules in 11 CFR 110.13 regarding candidate debates staged by nonprofit corporations under sections 501(c)(3) or (c)(4) of the Internal Revenue Code.

The Commission welcomes comments on the foregoing proposed amendments to 11 CFR 100.7, 100.8, 110.13 and 114.4(f) and the issues raised in this notice.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

These proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that any small entities affected are already required to comply with the requirements of the Act in these areas.

#### List of Subjects

##### 11 CFR Part 100

Elections.

##### 11 CFR Part 110

Campaign funds, Political candidates, Political committees and parties.

##### 11 CFR Part 114

Business and industry, Elections, Labor.

For the reasons set out in the preamble, it is proposed to amend Subchapter A, Chapter I of Title 11 of

the *Code of Federal Regulations* as follows:

#### PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for Part 100 would continue to read as follows:

Authority: 2 U.S.C. 431, 438(a)(8).

2. Section 100.7 would be amended by revising paragraph (b)(2) to read as follows:

##### § 100.7 Contribution (2 U.S.C. 431(8)).

\* \* \* \* \*

(b) \* \* \*

(2) Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), newspaper, magazine, or other periodical publication is not a contribution unless the facility is owned or controlled by any political party, political committee, or candidate, in which case the costs for a news story (i) which represents a bona fide news account communicated in a publication of general circulation or on a licensed broadcasting facility, and (ii) which is part of a general pattern of campaign-related news accounts which give reasonably equal coverage to all opposing candidates in the circulation or listening area, is not a contribution.

\* \* \* \* \*

3. Section 100.8 would be amended by revising paragraph (b)(2) to read as follows:

##### § 100.8 Expenditure (2 U.S.C. 431(9)).

\* \* \* \* \*

(b) \* \* \*

(2) Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), newspaper, magazine, or other periodical publication is not an expenditure unless the facility is owned or controlled by any political party, political committee, or candidate, in which case the costs for a news story (i) which represents a bona fide news account communicated in a publication of general circulation or on a licensed broadcasting facility, and (ii) which is part of a general pattern of campaign-related news accounts which give reasonably equal coverage to all opposing candidates in the circulation or listening area, is not an expenditure.

\* \* \* \* \*

## PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

4. The authority citation for Part 110 would continue to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g and 441h.

5. Section 110.13 is revised to read as follows:

### § 110.13 Candidate debates.

(a) *Staging organizations.* (1) Nonprofit organizations described in 26 U.S.C. 501(c)(3) or (c)(4) and which do not endorse, support, or oppose political candidates or political parties may stage candidate debates in accordance with this section and 11 CFR 114.4(f).

(2) Broadcasters (including a cable television operator, programmer or producer), bona fide newspapers, magazines and other periodical publications may stage candidate debates in accordance with this section and 11 CFR 114.4(f), provided that they are not owned or controlled by a political party, political committee or candidate. In addition, broadcasters (including a cable television operator, programmer or producer), bona fide newspapers, magazines and other periodical publications, acting as press entities, may also cover or carry candidate debates in accordance with 11 CFR 100.7 and 100.8.

(b) *Debate structure.* The structure of debates staged in accordance with this section and 11 CFR 114.4(f) is left to the discretion of the staging organization(s), provided that:

(1) Such debates include at least two candidates; and

(2) The staging organization(s) does not structure the debates to promote or advance one candidate over another.

(c) *Criteria for candidate selection.* For all debates, staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate. For general election debates, staging organization(s) shall not use nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate. For debates held prior to a primary election, caucus or convention, staging organizations may restrict candidate participation to candidates seeking the nomination of one party, and need not stage a debate for candidates seeking the nomination of any other political party or independent candidates.

## PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

6. The authority citation for Part 114 would continue to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 437d(a)(8), 438(a)(8), and 441b.

7. Part 114 would be amended by revising paragraph (f) of § 114.4 to read as follows:

### § 114.4 Disbursements for communications beyond the restricted class in connection with a Federal election.

\* \* \* \* \*

(f) *Candidate debates.* (1) A nonprofit organization described in 11 CFR 110.13(a)(1) may use its own funds and may accept funds donated by corporations or labor organizations under paragraph (f)(3) of this section to defray costs incurred in staging candidate debates held in accordance with 11 CFR 110.13.

(2) A broadcaster (including a cable television operator, programmer or producer), bona fide newspaper, magazine or other periodical publication may use its own funds to defray costs incurred in staging public candidate debates held in accordance with 11 CFR 110.13.

(3) A corporation or labor organization may donate funds to nonprofit organizations qualified under 11 CFR 110.13(a)(1) to stage candidate debates held in accordance with 11 CFR 110.13 and 114.4(f).

Dated: January 26, 1996.

Lee Ann Elliott,

Chairman.

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## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

#### 25 CFR Chapter VI

### Notice of Deadline for Submitting Completed Applications To Begin Participation in the Tribal Self-Governance Program in Fiscal Year 1997 or Calendar Year 1997

**AGENCY:** Office of Self-Governance, Office of the Secretary, Interior.  
**ACTION:** Notice of application deadline.

**SUMMARY:** In this notice, the Office of Self-Governance (OSG) establishes the deadline for tribes/consortia to submit completed applications to begin participation in the tribal self-governance program in fiscal year 1997 or calendar year 1997.

**DATES:** Tribes/consortia wishing to be considered for participation in the tribal self-governance program in fiscal year 1997 or calendar year 1997 must respond to this notice, except for those which are (1) currently involved with negotiations with the Department; (2) one of the 54 tribal entities with signed agreements; or (3) one of the tribal entities already included in the applicant pool as of the date of this notice. Completed application packages must be received by the Director, Office of Self-Governance by April 29, 1996.

**ADDRESSES:** Application packages for inclusion in the applicant pool should be sent to the Director, Office of Self-Governance, U.S. Department of the Interior, Mail Stop 2548, 1849 C Street NW, Washington DC 20240.

#### FOR FURTHER INFORMATION CONTACT:

Dr. Kenneth D. Reinfeld, U.S. Department of the Interior, Office of Self-Governance, 1849 C Street NW, Mail Stop 2548, Washington DC 20240, 202-219-0240.

**SUPPLEMENTARY INFORMATION:** Under the Tribal Self-Governance Act of 1994, the Director, Office of Self-Governance may select up to 20 additional participating tribes/consortia per year for the tribal self-governance program, and negotiate and enter into an annual written funding agreement with each participating tribe. The Act mandates that the Secretary submit copies of the funding agreements at least 90 days before the proposed effective date to the appropriate committees of the Congress and to each tribe that is served by the Bureau of Indian Affairs (BIA) agency that is serving the tribe that is a party to the funding agreement. Initial negotiations with a tribe/consortium located in an area and/or agency which has not previously been involved with self-governance negotiations, will take approximately two months from start to finish. Since agreements for an October 1 to September 30 fiscal year need to be signed and submitted by July 1, new participating tribes would need to be selected by May 3 to allow sufficient time for negotiations.

#### Background

The tribal self-governance program is designed to promote self determination by allowing tribes to assume more control through negotiated agreements of programs operated by the Department of the Interior. The new law allows for negotiations to be conducted for programs operated by BIA and for programs operated by other bureaus and offices within the Department that are available to Indians or when there is an