



FEDERAL ELECTION COMMISSION  
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## AGENDA ITEM

For Meeting of: 9-26-02

### SUBMITTED LATE

#### MEMORANDUM

**DATE:** September 25, 2002

**TO:** The Commission

**FROM:** Commissioner Michael E. Toner *MT*

**RE:** Proposed Amendments to Agenda Document 02-68 Final Rule, Interim Final Rule, and Explanation and Justification for Electioneering Communications

Attached please find amendments that I am considering offering on September 26, 2002 to amend Agenda Document 02-68 Final Rule, Interim Final Rule, and Explanation and Justification for Electioneering Communications.

**11 CFR 100.29(b)(3) Definition of "Publicly distributed"**

Page 12, line 15 insert:

Mindful of the limitation of "broadcast, cable, or satellite communication" to television and radio, and in an effort to prevent such an application, the Commission has added "widely" to modify "disseminated" in the definition of publicly distributed, so that communications directed to particular individuals that might be transmitted through the listed facilities will not be included in the definition.

Page 83, line 9 insert "widely" before "disseminated"

Page 15, line 3 "proving" should be "providing"

Page 15, lines 4-10: strike sentence beginning with "As a preliminary matter" through "normal cost."

Page 15, line 10 strike "also"

Page 15, lines 14-20 and footnote: strike sentence beginning with "Thus, if a" through "electioneering communication" and strike footnote.

Page 15, line 14 insert: "Thus, a broadcaster's decision to provide free airtime for communications will not create liability for the person that produced the communication."

**11 CFR 100.29(c)(3) Exemption for expenditures and independent expenditures**

Page 35, line 4 insert:

Under this regulation, the campaign committees of federal candidates and the national party committees will be totally exempt from the electioneering communication provisions.

**§ 100.29(b)(6) Electioneering communication.**

Information on the number of persons in the congressional district or state that can receive a communication publicly distributed by a television station, radio station, cable television system, or satellite system, is available on the Federal Communications Commission's website, [www.fcc.gov](http://www.fcc.gov). A link to that site is available on the Federal Election Commission's website, [www.fec.gov](http://www.fec.gov). If the website of the FCC indicates that a communication cannot be received by 50,000 or more persons in the specified Congressional district or State, then such information shall be a complete defense against any charge that such communication constitutes an electioneering communication, so long as such information is posted on the FCC's website on or before the date the communication is publicly distributed.

If the Federal Communications Commission website does not indicate whether a communication can be received by 50,000 or more persons in the specified Congressional district or State, it shall be a complete defense against any charge that a communication reached 50,000 or more persons when the maker of an electioneering communication:

- (i) obtains written documentation from the broadcast station, radio station, cable system, or satellite system that states that the communication cannot be received by 50,000 or more persons in the specified Congressional district (for U.S. House candidates) or State (for U.S. Senate candidates);
- (ii) does not air the communication on a broadcast station, radio station, cable system, or satellite system in any Metropolitan Area (MA) in the specified Congressional district (for U.S. House candidates) or State (for U.S. Senate candidates); or
- (iii) reasonably believes that the communication cannot be received by 50,000 or more persons in the specified Congressional district (for U.S. House candidates) or State (for U.S. Senate candidates).