

Federal Communications Commission
Washington, D.C. 20554

In reply refer to:
EB-00-IH-0297 -KMS

March 9, 2001

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The Honorable Ron Wyden
United States Senate
516 Hart Senate Office Building
Washington, D.C. 20510-3703

The Honorable John B. Breaux
United States Senate
503 Hart Senate Office Building
Washington, D.C. 20510-1803

Dear Senators Wyden and Breaux:

This responds to your letter of September 12, 2000, in which you requested that the Commission conduct an investigation regarding the airing of a Republican National Committee advertisement allegedly containing a subliminal message.

In your letter, you stated that you are troubled by the allegations that stations aired an advertisement which contained a subliminal message—specifically, that the advertisement “displayed the word ‘RATS’ as it attacks Vice President Gore’s prescription drug proposal”--and that you believed “that it is in the best interests of both political parties, and all Americans, that the Federal Communications Commission conduct an immediate and impartial review of this matter.” In support of your request, you cited to a 1974 public notice in which the Commission stated its belief that broadcasts using subliminal messages are contrary to the public interest. In 1974, the Commission issued a public notice stating its belief that the “use of subliminal perception is inconsistent with the obligations of a licensee” and made it “clear that broadcasts employing such techniques are contrary to the public interest.” Furthermore, the Commission stated that “[w]hether effective or not, such broadcasts clearly are intended to be deceptive.”¹

In response to your letter, the Enforcement Bureau sent inquiry letters to the licensees of 217 stations specifically alleged by you to have aired this ad. In the inquiry letter, the Enforcement Bureau asked the licensees of the named stations whether they aired the advertisement. If they aired the advertisement, the letter then asked the licensees to answer the following: what dates did they broadcast the advertisement; how many times did it air; and whether the licensees or any of their officers, directors or employees knew it contained the word “RATS” prior to any of the times they broadcast the advertisement. Lastly, we asked the licensees that broadcast the advertisement even though they knew it contained the word “RATS” to

¹ *Public Notice Concerning the Broadcast of Information By Means of “Subliminal Perception” Techniques*, 44 FCC 2d 1016, 1017 (1974).

explain the facts and circumstances surrounding their decision to do so. We received a response from all of the licensees to which we sent inquiry letters.

Of the 179 stations that responded that they had aired the advertisement, 162 indicated that, when they aired the advertisement, they were not aware that the advertisement contained the word "RATS." Of those that aired the advertisement knowing the word "RATS" appeared in it, several stations stated that they did so because they were able to see the word and, therefore, they believed that it was not subliminal. Some of these stations and other stations stated that they did so because they believed that they were prohibited from censoring the advertisement by Section 315 of the Communications Act because the advertisement contained a use--a positive, identifiable appearance by a candidate.

Based on our review of the responses submitted by the stations, we conclude that no further action is warranted.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

cc: Stations