

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
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Complaint and Request for Section 403)
Investigation) EB-00-IH-0438
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ORDER

Adopted: April 3, 2001

Released: April 6, 2001

By the Chief, Enforcement Bureau:

1. In this order, we deny the “Complaint and Request for Section 403 Investigation” filed on behalf of Smithwick & Belendiuk, P.C. (“Smithwick & Belendiuk”). The complaint generally alleges news distortion with respect to reports concerning the outcome of the Florida vote in the 2000 Presidential election that were broadcast on four television networks – ABC, CBS, NBC and Fox (collectively, “the Networks”). In this regard, Smithwick & Belendiuk states that the Networks, all within the same time frame and all apparently relying on information collected by the Voter News Service (“VNS”), incorrectly projected that Florida’s 25 electoral votes would go to candidate Al Gore. Smithwick & Belendiuk requests a formal Section 403 investigation before an administrative law judge. For the reasons set forth below, we decline to initiate an investigation.

2. The complaint states that the Networks broadcast erroneous reports as to the outcome of the Florida vote while polls were still open in parts of Florida and in other states outside the eastern time zone. The complaint characterizes the Networks’ reports as “critical piece(s) of news distortion” and asserts that the Commission should initiate an investigation in order to determine whether the Networks’ reports intentionally distorted available exit poll data collected by the VNS or whether the Networks’ reports exhibited a reckless disregard for the accuracy of VNS’s exit poll data. Smithwick & Belendiuk further asserts that the investigation should determine whether the Networks knowingly or recklessly made inaccurate statements as to the outcome of the Florida vote to generate ratings or to manipulate or influence voting and the outcome of the Presidential election.

3. Whether or not to begin an investigation under Section 403 of the Act is a matter within the Commission’s discretion. The mere fact that the Networks incorrectly projected that Al Gore would receive Florida’s electoral votes is not a sufficient basis to initiate such an investigation. Accordingly, we deny Smithwick & Belendiuk’s complaint and decline to initiate such an investigation.

4. Accordingly, IT IS ORDERED THAT the “Complaint and Request for Section 403 Investigation” filed on November 28, 2000 by Smithwick & Belendiuk, P.C. IS HEREBY DENIED.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau