

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

In the Matter of)
)
Repeal or Modification of the) MM Docket No. 83-484
Personal Attack and Political Editorial Rules)

**ORDER
(Proceeding Terminated)**

Adopted: October 26, 2000

Released: October 26, 2000

By the Commission: Chairman Kennard issuing a statement; Commissioner Powell concurring and issuing a statement.

1. Pursuant to the D.C. Circuit Court of Appeals' order in *Radio-Television News Directors Association v. FCC*, No. 98-1305, slip op. (D.C. Cir. Oct. 11, 2000) (*RTNDA*), we hereby repeal Sections 73.1920 and 73.1930 of our rules, 47 C.F.R. §§ 73.1920, 73.1930, the broadcast personal attack and political editorial rules. Further, in light of these actions, we vacate our *Order and Request to Update Record* released October 4, 2000 (FCC 00-360) and terminate this proceeding.

2. We also repeal the personal attack and political editorial rules that apply to cable television operators. 47 C.F.R. §§ 76.209(b), (c), and (d). Although these rules were not specifically cited in the proceeding before the Court of Appeals in *RTNDA*, they are identical to those rules in all material respects. The potential elimination of these rules was raised in a Notice of Proposed Rule Making in MM Docket No. 83-331, 48 Fed. Reg. 26471 (June 8, 1983), and was specifically addressed in a 1996 request for further information in the instant docket, MM Docket No. 83-484, 48 Fed. Reg. 28295 (June 21, 1983). Given the delay in concluding these proceedings and the Court of Appeals' decision, we also vacate these identical cable television rules placed at issue in MM Docket No. 83-331. We do so on the procedural grounds set forth in the Court of Appeals' decision in *RTNDA*, without expressing any conclusion as to the substantive issues underlying these rules. As the Court of Appeals noted, "[o]f course, the Commission may institute a new rule-making proceeding to determine whether, consistent with constitutional constraints, the public interest requires the personal attack and political editorial rules." *RTNDA*, slip op. at 4. With respect to the personal attack and political editorial rules, "these are issues that the court has yet to decide." *Id.*

3. Accordingly, IT IS ORDERED that Sections 73.1920, 73.1930 and 76.209(b), (c), and (d) of the Commission's rules, 47 C.F.R. §§ 73.1920, 73.1930, 76.209(b), (c), (d) ARE REPEALED upon the adoption of this *Order*.

4. IT IS FURTHER ORDERED that the Commission's rules ARE AMENDED as set forth in Appendix A.

5. IT IS FURTHER ORDERED that the *Order and Request to Update Record*, FCC 00-360 (rel. Oct. 4, 2000) IS VACATED.

6. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

7. This action is taken pursuant to Sections 4(i), 4(j) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 303.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

**APPENDIX A
Rule Changes**

Parts 73 and 76 of Chapter 1 of Title 47 of the Code of Federal Regulations are amended to read as follows:

Part 73-RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, 334 and 336.

2. Section 73.1920 is removed and reserved.
3. Section 73.1930 is removed and reserved.

Part 76-MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

4. The authority citation for Part 76 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 317, 325, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

5. Sections 76.209(b), (c), and (d) are removed and reserved.

STATEMENT OF CHAIRMAN WILLIAM E. KENNARD

In the Matter of Repeal or Modification of the Personal Attack and Political Editorial Rules, MM Docket No. 83-484

Today, we repeal the personal attack and political editorial rules as ordered by the D.C. Circuit Court of Appeals. *Radio-Television News Directors Association v. FCC*, No. 98-1305, slip op. (D.C. Cir. October 11, 2000).

While the court expressed frustration with the procedural history of this case, it did not rule on the merits. Indeed, the Court acknowledged that the Commission “may institute a new rulemaking proceeding to determine whether, consistent with the constitutional constraints, the public interest requires the personal attack and political editorial rules.”

I continue to believe that these rules deserve careful reexamination. With the clean slate that today’s action provides, I will direct the Mass Media Bureau to prepare a Notice of Proposed Rulemaking to explore these issues in the larger context of broadcasters’ obligation to serve the public interest.

CONCURRING STATEMENT OF COMMISSIONER MICHAEL K. POWELL

Re: In the Matter of Repeal or Modification of the Personal Attack and Political Editorial Rules, MM Docket No. 83-484

On October 11, 2000, the U.S. Court of Appeals for the District of Columbia Circuit issued a *writ of mandamus* ordering the "Commission immediately to repeal the personal attack and political editorial rules."¹ As a result of this extraordinary measure by the court, the Commission has finally accomplished what it should have done twenty years ago when this proceeding was commenced in 1983²—that is, the repeal of these rules. Now, finally, the proceeding is over and the rules are gone.

I write separately to briefly address two points. First, I previously voted to repeal the personal attack and political editorial rules on substantive and not procedural grounds, thus my vote today is based on the same substantive objections.³ Today's *Order* attempts to paint the court's issuance of the *writ* as simply a procedural slap at the Commission. However, taken together, the D.C. Circuit Court opinions, at a minimum, raise substantive first amendment concerns about the rules.⁴ The court stated that the rules "interfere with editorial judgment of professional journalists and entangle the government in day-to-day operations of the media," and "chill at least some speech, impose at least some burdens on activities at the heart of the First Amendment." *RTNDA*, 2000 WL 1505525, at *1 (citations omitted). The court never reached the merits of the underlying claim because the Commission's inaction over the past seventeen years never gave it a basis to do so, although it has clearly signaled its doubts as to the constitutionality of the rules.⁵ Any further proceeding the Commission may commence should be guided by the careful constraints expressed by the court.

¹ *Radio-Television News Directors Ass'n v. FCC*, No. 98-1305, 2000 WL 1505525, at *2 (D.C. Cir. Oct. 11, 2000) (hereinafter "*RTNDA*").

² *Repeal or Modification of the Personal Attack and Political Editorial Rules, Notice of Proposed Rulemaking*, 48 Fed. Reg. 28295 (June 21, 1983) ("1983 Notice").

³ See *In the Matter of Repeal or Modification of the Personal Attack and Political Editorial Rules*, MM Docket No. 83-484, *Order & Request to Update Record*, Separate Statement of Commissioner Michael K. Powell (Oct. 4, 2000) [available on the World Wide Web at <<http://www.fcc.gov/commissioners/powell>>]; see also *Public Notice*, Commission Proceeding Regarding the Personal Attack and Political Editorial Rules, FCC 98-126, 13 FCC Rcd 21901, 21929 (June 22, 1998) [available on the World Wide Web at <<http://www.fcc.gov/commissioners/powell>>].

⁴ See, e.g., *Radio-Television News Directors Ass'n v. FCC*, 184 F.3d 872 (D.C. Cir. 1999); *Radio-Television News Directors Ass'n v. FCC*, No. 98-1305, 2000 WL 1505525 (D.C. Cir. Oct. 11, 2000).

⁵ See *RTNDA*, 2000 WL 1505525, at *3 (calling into question the sufficiency of the six separate justifications given by the Commission in promulgating its rules).

Second, even though the *RTNDA* litigation sought repeal of the rules as applied to broadcasters, the Commission properly removed the cable rules as well. The cable rules are identical to the broadcast rules: they were properly noticed in two proceedings dating back to 1983.⁶ In fact, the First Amendment concerns are more applicable to cable television providers that enjoy greater protection than broadcasters.

In closing, although the *Order* is quick to note the Court's suggestions that the Commission "may institute a new rule-making proceeding,"⁷ I hope this *Order* lays the rules to rest permanently.

⁶ See 48 Fed. Reg. 26471 (June 8, 1983); see also 48 Fed. Reg. 28295 (June 21, 1983).

⁷ *Order*, ¶ 2.