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To "coordinationshays3@fec.gov"  
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cc  
bcc  
Subject Utrecht & Phillips on Coordinated Communications NPRM

Hello:

Please find a comment from Utrecht & Phillips on the Coordinated Communications NPRM attached.

Thanks,  
Jessica McBroom

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Utrecht & Phillips Coordination Comment 3 17 10.pdf

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March 17, 2010

Amy L. Rothstein  
Assistant General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Dear Ms. Rothstein:

These brief comments are in response to the Commission's extended comment period to its Supplemental Notice of Proposed Rulemaking ("NPRM") on Coordinated Communications (Notice 2010-01). They are submitted by our law firm as election law practitioners and not on behalf of any of our firm's clients and are intended to supplement our earlier submitted comments of January 19, 2010, and February 24, 2010.

**A clarification to Part 114 is necessary in this rulemaking after the *Citizens United* decision.**

Part 114 contains several references to coordinated activity by corporations and labor unions, and specifically, to certain communications such as voter registration and get-out-the-vote materials, made by such entities. See, e.g., 11 CFR 114.2(c), 114.4(c)(2) and (d). We have not previously commented on the interconnection of coordination in Parts 114 and 109, however, given the new role that corporations and others could possibly take in making independent expenditures in connection with federal elections, the concept of coordination within the context of Part 114 will become more critical to the regulated community, and a clear understanding of that concept is required.

Currently, Part 114 contains no separate definition of coordination or coordinated activity.<sup>1</sup> The Commission should clarify whether the definition and rules contained in Part 109 are applicable, and, in particular, the rules on coordinated communications of 109.21.

If the Commission should determine that the Part 109 rules on coordinated activity are applicable to Part 114 activity, then the Commission has an obligation to ensure that the Part 114 speakers, i.e., corporations and unions, are treated identically to any other speakers who come under the Part 109 analysis. In other words, for example, should a corporation wish to publicly distribute a non-partisan GOTV registration that fails to meet one of the three prongs of the coordinated communication test of 109.21, then that corporation should be treated as any other

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<sup>1</sup> Part 100 defines "independent expenditure" but does not define "coordination" or "coordinated communication".

entity found to have engaged in permissible non-coordinated activity. The Commission should explicitly clarify this. By doing so, the Commission will lend structure and understanding to the interconnection between Parts 114 and 109, and will guide the entities who wish to engage in non-coordinated activity with a better understanding of how to comply with the rules.

We again appreciate the Commission's thoughtful consideration of this matter and for the opportunity to provide the foregoing comments.

Respectfully submitted,



Lyn Utrecht  
Eric Kleinfeld  
Patricia Fiori  
Margaret McCormick  
Karen Zeglis