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To coordination@fec.gov  
cc lnorton@fec.gov, bsmith@law.capital.edu  
bcc  
Subject Supplemental Comments of CCP, Coordinated  
Communications

Dear Mr. Deutsch:

Please find attached Comments on the *Supplemental Notice of Proposed Rulemaking on Coordinated Communications*, 71 FR 13306 (Mar. 15, 2006), filed by the Center for Competitive Politics.

Thank you,

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Executive Director  
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Comments of CCP Coordinated Communications SUPP 032206.doc

# Center for Competitive Politics

Stephen M. Hoersting  
Executive Director

March 22, 2006

VIA ELECTRONIC MAIL

Mr. Brad C. Deutsch  
Assistant General Counsel  
FEDERAL ELECTION COMMISSION  
999 E Street, NW  
Washington, DC 20463

coordination@fec.gov

Re: Comments on *Supplemental Notice of Proposed Rulemaking on Coordinated Communications*, 71 FR 13306 (Mar. 15, 2006)

Dear Mr. Deutsch:

The undersigned submits the following supplemental comments on behalf of the Center for Competitive Politics (“CCP”) a not-for-profit, educational organization whose mission, through legal briefs, studies, analysis, and media communication, is to educate the public on the actual effects of money in politics, and the results of a more free and competitive political process. CCP’s application to the Internal Revenue Service for tax-exempt status under 26 U.S.C. §501(c)(3) is pending.

## **The Supplemental Data Makes Clear the Commission Should Follow Congress and Promulgate a Standard of 60 Days**

The Commission seeks comment in a supplemental notice “to invite comment on data ... regarding television advertising spots run by Presidential, Senate and House candidates during the 2004 cycle.” 71 FR at 13306 (Mar. 15, 2006). The Center recommends that the Commission also focus on independent expenditures made by the six national party committees in the 2004 cycle. The Commission properly noticed this data in the federal register and may have its staff review the data to pair independent expenditure airdates with the elections they attempted to influence. BCRA required that independent expenditure communications above a meaningful threshold be reported within 48 or 24 hours (depending upon the calendar), which provides the Commission

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solid data as to when the party committees were acting. *See* 11 CFR 104.4. The 2004 cycle was the first in which all dollars collected by national party committees were equally scarce, equally employable and equally valuable: all hard dollars. Unlike, previous cycles, where there were different types of dollars available to party committees to be used for different purposes, in 2004 any dollar a national party committee raised was a dollar it could spend as it wished, in the most valuable method available: full throated and unvarnished advocacy of the election of its candidate or the defeat of his opponent. Thus the timing of the national party independent expenditures is indicative of when sophisticated actors believe elections are influenced by public advertising.

But data on communications made by authorized committees are also useful, and for similar reasons. Authorized committees raise and spend hard dollars for all their activities, making each dollar equally scarce and equally valuable. Communications by authorized committees are made “in connection with the campaign for Federal office of the candidate”, 2 U.S.C. 439a, and indicate the timeframe that sophisticated political actors believe advertising persuades voters.

The CMAG data compiled for candidate spending in House races indicates that nearly 99% percent of the cost, and more than 98% of the spots, aired within 60 days of the general election. *See* TNS Media Intelligence/CMAG data, compiled for the Commission, and available at [http://www.fec.gov/law/law\\_rulemakings.shtml#coordinated](http://www.fec.gov/law/law_rulemakings.shtml#coordinated). For candidate spending in Senate contests, more than 97% of the cost, and nearly 95% of the spots, aired within 60 days of the general election. *Id.* For CMAG data on the 2004 Presidential contests, the important figure is advertising on the Democratic side once the field cleared, and John Kerry emerged as nominee of the Democratic National Committee. Though Kerry was nominated 96 days from the general election contest, and allowing for a period of historical comity during the opposing party’s convention where no advertising is run, the Kerry campaign did not really take to the airwaves until well within 60 days of the general election. *Id.* All previous Democratic spending figures are commingled with repeated primaries and party caucuses, making it difficult on short notice to pair each ad run with the likely primary contest it was designed to affect. *Id.* The data would likely show that much of that advertising was run within 30 days of each of those primary and caucus contests.

But this latest data confirms that Congress had the relevant studies before it when it passed BCRA. Specifically, Congress relied on two studies by the Brennan Center in developing “electioneering communications,” broadcast ads that mention a candidate within 60 days of a general election, or 30 days of a primary. The *McConnell* Court also relied on these studies in determining that the “electioneering communication” provisions were not overly broad. *McConnell v. FEC*, 540 U.S. 93, 207-08 (2003) (“Congress found that corporations and unions used soft money to finance a virtual torrent of television election-related ads during the periods immediately preceding federal elections ... The record amply justifies Congress’ line drawing.”).

The reformers themselves have stated that “[t]itle II of BCRA reflects Congressional judgment that communications concerning federal elected officials during the 60 day period prior to a general election and the 30 day period prior to a primary is usually campaign related.” See Comments of Senator McCain, Senator Feingold, Representative Shays, and Representative Meehan on Notice of Proposed Rulemaking on Coordinated and Independent Expenditures (Notice 2002-16) at 4, October 11, 2002. And the Brennan Center’s *Buying Time* studies make clear that there are real issue ads the Commission should consider that are deserving of protection: “Interest groups sponsored both genuine issue ads (urging action on a public policy action or legislative bill) and electioneering ads (promoting the election or defeat of a federal candidate).” Craig B. Holman and Luke P. McLoughlin, *Buying Time 2000: Television Advertising in the 2000 Federal Elections*, 56 (2002). The Brennan Center found that “[i]n the 2000 election, *genuine issue ads are rather evenly distributed throughout the year*, while group-sponsored electioneering ads make a sudden and overwhelming appearance immediately before elections.” *Id.* (Emphasis added). This last point is confirmed by the Commission’s latest data.

The studies show no substantial electoral advertising occurring outside the 60-day timeframe, and a steady stream of grassroots advertising occurring at all times of the year. The 120-day period should be replaced by the same 60-day window used by Congress in deciding when it was appropriate to presume that a public communication carried an electioneering purpose.

CCP notes that the data, and indeed the statutory framework, do not support applying more than one standard to different members of the regulated community.

CCP respects the efforts of the Commission in this area, and the opportunity to provide supplemental commentary.

Respectfully submitted,

/s/ S M Hoersting

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