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03/22/2006 06:34 PM

To <coordination@fec.gov>

cc

bcc

Subject National Republican Senatorial Committee

Please find attached the National Republican Senatorial Committee's comments on the Supplemental Notice of Proposed Rulemaking on Coordinated Communications. Please do not hesitate to contact me with any questions.

William J. McGinley
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(202) 675-6000 [NRSC Coordination NPRM Supp Comments.pdf](#)

National Republican Senatorial Committee

William J. McGinley
General Counsel

March 22, 2006

By Electronic Mail: coordination@fec.gov

Mr. Brad C. Deutsch
Assistant General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Comments on the Supplemental Notice of Proposed Rulemaking on Coordinated Communications: Re-opening Comment Period

Dear Mr. Deutsch:

The National Republican Senatorial Committee ("NRSC"), through counsel, submits the following comments to the Federal Election Commission ("Commission") on the Supplemental Notice of Proposed Rulemaking ("SNPRM") listed above. 71 Fed. Reg. 13306 (March 15, 2006).

In the SNPRM, the Commission invites comment on data regarding television advertisements sponsored by Presidential, Senate and House candidates aired during the 2004 election cycle. The Commission also seeks additional comments on the issues and questions raised in the original Notice of Proposed Rulemaking on Coordinated Communications ("NPRM"). 70 Fed. Reg. 73946 (Dec. 14, 2006). The NRSC submitted comments on the NPRM and hereby incorporates the comments by reference. See comment from William J. McGinley, General Counsel, National Republican Senatorial Committee, to Brad C. Deutsch, Assistant General Counsel, Federal Election Commission (Jan. 12, 2006) (on file with the Federal Election Commission).

As stated in the comments to the NPRM, the NRSC urges the Commission to adopt a different time frame for determining which communications are subject to the coordination regulations under the fourth content prong. Specifically, the NRSC believes the electioneering communication time frame -- 60 days before the general election, and 30 days before a primary election -- is the appropriate time frame for the fourth content prong. The 60/30 day period will ensure that the regulations are narrowly tailored to cover the time period when the overwhelming majority of election-related communications are distributed to voters while leaving other non-election related political communications free from burdensome regulation. As discussed below, the Commission's data pertaining to Senate candidate television advertisements and the NRSC's 2004 FEC reports of coordinated

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communication expenditures and independent expenditures supports the adoption of the 60 day general election and 30 day primary election time period for the fourth content prong.

Senate Candidate Data

The data supplied by the Commission in the SNPRM contains the total number and estimated costs of television advertisements sponsored by Senate campaign committees.¹ The Commission's data does not include information related to television advertisements referencing Senatorial candidates sponsored by political party committees or other political actors. Since the first prong of the Commission's current coordination rules asks whether a communication is sponsored by someone other than the federal candidate or political party referenced in the communication, the candidate advertisements discussed below would not be subject to examination under the coordination rules. Therefore, the data speaks only to when 2004 Senate candidates determined that it was necessary to promote their own candidacies and not when other political actors – including political party committees – determined when to expend their resources to sponsor election or issue advertisements in connection with a Senate campaign. Nonetheless, listed below are some comments on the Commission's Senate election data.

Primary Election Data. The primary election data reveals that a super-majority (69.01%) of the total number of candidate television advertisements aired within 30 days of the primary election and that over 90% of the estimated costs of such were spent within 60 days of the primary election. The data also reveals that over 75% of the total costs of Senate candidate television advertisements were incurred within 30 days of the primary election and that over 90% of the total costs of such advertisements were incurred within 60 days of the primary election.

General Election Data. The general election data reveals that a super-majority (69.87%) of the total number of candidate television advertisements aired within 30 days of the general election and that almost 95% of the estimated costs of such advertisements were spent within 60 days of the general election. The data also reveals that almost 75% of the total costs of Senate candidate television advertisements were incurred within 30 days of the general election and that over 97% of the total costs of such advertisements was incurred within 60 days of the general election.

NRSC Communications Data from 2004 Election Cycle

In response to the Commission's request for additional comments in the SNPRM, the NRSC conducted a brief review – given the compressed comment period -- of its periodic disclosure reports for the 2004 election cycle. This review focused on when the NRSC reported the disbursement of monies for coordinated communication expenditures and

¹ The SNPRM also supplied data pertaining to the total number and estimated costs of advertisements sponsored by Presidential and House candidates. Since the NRSC is an unincorporated association comprised of sitting Republican members of the United States Senate, these comments will focus exclusively on the information pertaining to advertisements aired in connection with Senate campaigns during the 2004 election cycle.

independent expenditures. Please note that the information discussed below is currently in the Commission's possession.

Coordinated Expenditures. During the 2004 election cycle, the NRSC made coordinated communication expenditures in connection with one primary election and in a variety of states for the general election. Specifically, the NRSC reported a total of six disbursements in connection with a primary election and all were reported within 30 days of the primary date. The NRSC's general election data reveals that over 98% of the total number of coordinated communication expenditures was reported within 60 days of the general election and that over 99% of the total estimated costs were spent within 60 days of the general election.

Independent Expenditures. During the 2004 election cycle, the NRSC made independent expenditures in connection with only the general election. All of the NRSC disbursements for independent expenditures were made within 60 days of the general election.

Conclusion

For all the foregoing reasons, the NRSC urges the Commission to adopt the 60 day general election and 30 day primary election time period for the fourth content prong of the Commission's coordination regulations. The data discussed above supports the contention that adopting the 60/30 day time period will ensure that the Commission's regulations are narrowly tailored to cover the time period when the overwhelming majority of election-related communications are distributed to voters while leaving other non-election related political communications free from burdensome regulation.

The NRSC also supports the adoption of a Promote, Attack, Support or Oppose standard in addition to the 60/30 day time period to ensure that the coordination regulations apply only to election-related communications.

The NRSC appreciates the opportunity to submit these written comments on this important matter.

Respectfully submitted,

/s/ William J. McGinley

William J. McGinley