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January 22, 2008

MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan *JPD*
General Counsel

Rosemary C. Smith *RCS*
Associate General Counsel

Amy L. Rothstein *AR*
Assistant General Counsel

Eric C. Hallstrom *ECH*
Attorney

Subject: Draft AO 2007-35

AGENDA ITEM
For Meeting of: 01-24-08

SUBMITTED LATE

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for January 24, 2007.

Attachment

1 ADVISORY OPINION 2007-35

2 Joseph E. Sandler
3 Neil P. Reiff
4 Sandler, Reiff & Young PC
5 50 E Street, S.E. #300
6 Washington, D.C. 20003

DRAFT

7
8 Jonathan Zucker
9 36 A Street #5B
10 Boston, MA 02127

11 Dear Messrs. Sandler, Reiff, and Zucker:

12 We are responding to your advisory opinion request on behalf of FreeCause, Inc.
13 ("FreeCause"), concerning the application of the Federal Election Campaign Act of 1971,
14 as amended (the "Act"), and Commission regulations to a proposed affinity program
15 involving Internet browser toolbars.

16 The Commission concludes that FreeCause may enter into the proposed affinity
17 program with Federal political committees and qualified nonprofit corporations
18 ("QNCs"), without providing prohibited corporate contributions.

19 ***Background***

20 The facts presented in this advisory opinion are based on your letters received on
21 October 18 and November 27, 2007.

22 A. *The Affinity Relationship*

23 FreeCause is a closely held, privately owned, for-profit corporation specializing in
24 online communications. FreeCause has built and is marketing an Internet browser
25 toolbar to various nonprofit organizations.¹ FreeCause intends to make its toolbar
26 available free of charge to any nonprofit organization that becomes an affinity sponsor

¹ An Internet or web browser "toolbar" is a piece of software that provides added functionality and ease-of-use options to a user's web browser by enabling the user, for example, to search the Internet, to access weather and news reports, or to link to other websites.

1 (“Affinity Sponsor”), in exchange for the use of the Affinity Sponsor’s logo and the
2 Affinity Sponsor’s agreement to market the toolbar to its members and supporters at its
3 own cost.

4 The basic FreeCause toolbar will provide Internet search capability, as well as
5 news and video feeds. Each Affinity Sponsor will have the ability to customize its
6 toolbar’s news, video, and audio feeds.² The Affinity Sponsors will provide FreeCause
7 with permission to use their names and logos on their affinity toolbars and permission to
8 include their toolbars in a master list of all affinity toolbars available for download from
9 FreeCause. The promotion and marketing of the toolbar to an Affinity Sponsor’s
10 members is the responsibility of that particular Affinity Sponsor.

11 *B. Revenue Generation*

12 The FreeCause toolbar is based on a revenue-sharing model, where use of the
13 toolbar by an Affinity Sponsor’s members and supporters generates revenue for
14 FreeCause, a portion of which is shared with the individual toolbar user or Affinity
15 Sponsor. The FreeCause toolbar generates revenue for FreeCause, and through
16 FreeCause, to Affinity Sponsors and individual users through two mechanisms:
17 commissions on Internet searches and commissions on Internet shopping.

18 FreeCause has arranged with Yahoo! Search for a commission to be paid to
19 FreeCause for each search generated through a FreeCause toolbar. Every time an
20 individual member or supporter of an Affinity Sponsor uses the Affinity Sponsor’s

² As part of the basic package, FreeCause will provide the Affinity Sponsor with access to an administrative page where the sponsor will be able to choose which features are available and to customize those features; customize the look and feel of the sponsor’s default toolbar; update contact information for the sponsoring organization; and monitor toolbar usage and prospective donations. In addition, the Affinity Sponsor will be charged the usual and normal fee for the inclusion and customization of certain features.

1 toolbar to make a search, FreeCause will receive revenue. FreeCause will then rebate a
2 portion of that revenue to the Affinity Sponsor.³ You state that it is common practice for
3 search engine companies to enter into commission-based agreements with companies that
4 direct traffic to their particular search engine and that toolbar providers, in turn, have
5 begun promoting their toolbars by arranging to share these commissions with users of the
6 toolbar.

7 FreeCause will also receive revenue under your proposal every time a person uses
8 an Affinity Sponsor's toolbar to make a purchase. FreeCause will in turn remit a portion
9 of that revenue to the Affinity Sponsor. You state that it is common for online retailers to
10 offer commissions to website owners that send them customers who make purchases. For
11 example, you note that the online retailer Amazon.com pays an 8.5% commission to most
12 websites that refer customers and that some websites have established affinity programs
13 that enable nonprofit organizations to raise revenue through such retail commissions.

14 *C. Proposal to Expand to Political Affinity Sponsors*

15 FreeCause proposes to expand its affinity toolbar program to nonprofit
16 organizations that are Federal political committees and QNCs. The expanded program
17 would be promoted and made available to any QNC or Federal political committee that
18 asks to participate, including authorized candidate committees, separate segregated funds
19 ("SSFs"), non-connected political committees, and party committees, without regard to
20 party affiliation or ideological orientation. FreeCause will make the toolbar available and

³ FreeCause is currently marketing its affinity program to a number of nonprofit organizations and is beta testing an affinity toolbar called LookPink, in which several nonprofit organizations engaged in breast cancer research, detection, prevention and treatment jointly serve as the Affinity Sponsor. The funds generated by use of the LookPink search engine go directly to the nonprofit organizations participating in the program.

1 market the program to political Affinity Sponsors in “exactly” the same manner as it is
2 made available to other Affinity Sponsors. You also state that political Affinity Sponsors
3 will be able to arrange to download data files containing all information required to meet
4 the political Affinity Sponsor’s recordkeeping and reporting requirements under the
5 Commission’s rules.

6 When an individual user downloads an affinity toolbar sponsored by a political
7 Affinity Sponsor, he or she will be required to create an account with FreeCause. To
8 create the account, the user will be required to provide his or her name, address,
9 occupation, and employer. The user will also need to create a user name and password to
10 be used for logging in. When creating an account, each individual user will be offered an
11 automatic remittance of 50% of the commissions generated to FreeCause by use of the
12 toolbar, by that user, both for Internet searches and retail sales.⁴ Users will be given the
13 option to receive the remittance in the form of a monthly check for any balance in excess
14 of \$5, or to direct it as a contribution to the political Affinity Sponsor. This option will
15 be offered at the time of initial set up and annually thereafter. Users will be able to
16 change their option at any time. The user will also be informed that choosing to direct his
17 or her remittance to a political Affinity Sponsor will represent a political contribution to
18 the political Affinity Sponsor, which will be subject to the limitations and prohibitions of
19 the Act. The user will also be asked to certify that he or she is an individual U.S. citizen
20 or legal permanent resident that would be receiving the remitted funds individually in the
21 absence of re-direction and will be asked to make the certifications set forth in Advisory

⁴ This arrangement, where FreeCause retains one half of the commissions generated by use of the toolbar, will apply both to nonpolitical and political Affinity Sponsors.

1 Opinion 1995-9 (NewtWatch).⁵ The account creation page will also inform the user that
2 Federal law requires the political Affinity Sponsor to use its best efforts to collect and
3 report the name, mailing address, occupation and name of employer of each individual
4 whose contributions exceed \$200 in a calendar year. Finally, the account creation page
5 will include public communications disclaimers that are intended to meet the
6 specifications set forth at 11 CFR 110.11.

7 All remittances directed to political Affinity Sponsors will be held in a segregated
8 account and will not be commingled with FreeCause's other corporate funds.
9 Remittances to political Affinity Sponsors will be credited to the political Affinity
10 Sponsor through an automated clearinghouse transaction on the last day of each month.
11 FreeCause will transmit the contributor's name, address, occupation and employer to the
12 political Affinity Sponsor within ten days of the transfer of funds pursuant to
13 11 CFR 102.8(b)(2). The political Affinity Sponsor will be charged for all expenses
14 related to the processing of remittances and related to the transmittal of the remittances
15 and contributor information.

16 In addition, FreeCause intends to market certain affinity toolbars that FreeCause
17 considers, in its best business judgment, to be of particularly broad appeal and likely to
18 generate substantial revenue.⁶ Such marketing will be made without consultation with or
19 participation by any political Affinity Sponsor. You inform us that FreeCause will not

⁵ In Advisory Opinion 1995-9, the Commission concluded that solicitations over the Internet are permissible under the Act where the requestor built in certain safeguards against the receipt of excessive contributions, contributions in the name of another, and contributions from corporations, labor organizations, national banks, federal government contractors and foreign nationals.

⁶ In the case of political Affinity Sponsors that are SSFs, the toolbar will be marketed only on that Affinity Sponsor's website on a password protected area in order to limit those who can access and sign up for the toolbar to members of the restricted class of the Affinity Sponsor's connected organization. As a result of

1 expend any funds or incur any measurable, incremental increase in its staff time or other
2 resources in this marketing of specific affinity toolbars.

3 ***Question Presented***

4 *May FreeCause enter into the proposed affinity program with Federal political*
5 *committees and QNCs without making prohibited corporate contributions or otherwise*
6 *violating the Act or Commission regulations.?*

7 ***Legal Analysis and Conclusions***

8 Yes, FreeCause may enter into the proposed affinity program with Federal
9 political committees and QNCs without making prohibited corporate contributions or
10 otherwise violating the Act or Commission regulations, under the conditions set forth
11 below.

12 The Act and Commission regulations prohibit corporations from making a
13 contribution in connection with a Federal election. *See* 2 U.S.C. 441b(a);
14 11 CFR 114.2(b)(1). A contribution includes “any gift, subscription, loan, advance, or
15 deposit of money of anything of value made by any person for the purpose of influencing
16 any election for Federal office.” 2 U.S.C. 431(8)(A)(i); 11 CFR 100.52(a); *see also*
17 2 U.S.C. 441b(b)(2); 11 CFR 114.2(b)(1). “Anything of value” includes all in-kind
18 contributions, including the provision of goods or services without charge or at a charge
19 that is less than the usual and normal charge. *See* 11 CFR 100.52(d)(1). “Usual and
20 normal charge” is defined as the price of goods in the market from which they ordinarily

this limitation, FreeCause will not independently market affinity toolbars in which the Affinity Sponsor is an SSF.

1 would have been purchased at the time of the contribution, or the commercially
2 reasonable rate prevailing at the time the services were rendered. *See*
3 11 CFR 100.52(d)(2).

4 In prior advisory opinions, the Commission has examined a number of business
5 arrangements between political committees and service providers that were either affinity
6 programs or similar to affinity programs. *See* Advisory Opinions 2007-34 (Working
7 Assets), 2003-16 (Providian National Bank), 2002-7 (Careau & Co.), 1995-34
8 (Politechs), 1994-33 (VITEL International), 1992-40 (Leading Edge Communications),
9 1991-20 (Call Interactive), 1990-1 (Digital Corrections), 1988-12 (Empire of America
10 Federal Savings Bank), and 1979-17 (RNC). In these advisory opinions, the Commission
11 permitted corporations to offer affinity programs and to enter into affinity-type business
12 arrangements so long as the corporation and committee (1) enter into a commercially
13 reasonable transaction, and (2) the amounts contributed to political committees via
14 rebates or rewards are from individual customers' funds and not from the corporation's
15 funds. *See* Advisory Opinions 2007-34 (Working Assets), 2006-16 (Providian National
16 Bank), 2002-7 (Careau & Co.).

17 *A. Commercially Reasonable Transaction*

18 In order for the proposed political affinity program to be a commercially
19 reasonable transaction, the political Affinity Sponsors must pay the usual and normal
20 charge, including a reasonable profit, for any services provided or those services must be
21 provided in exchange for bargained for consideration of equal value. *See, e.g.,* Advisory
22 Opinions 2007-34 (Working Assets), 2006-16 (Providian National Bank). As described
23 in the request, FreeCause will provide without charge to its political Affinity Sponsors

1 the basic Internet browser toolbar in exchange for use of the political Affinity Sponsor's
2 logo and the political Affinity Sponsor's agreement to promote and market the toolbar to
3 its members and supporters at its own cost. Based upon the requestor's representation
4 that "virtually all toolbars now offered in the marketplace" are made available free of
5 charge, the provision by FreeCause of its basic toolbar without charge to political
6 Affinity Sponsors would be standard practice within the industry. In exchange,
7 FreeCause would receive the value of the political Affinity Sponsor's logo and marketing
8 services. Moreover, FreeCause states that it will "incur no additional costs whatsoever"
9 in providing the toolbar to "any particular Affinity Sponsor." Because each additional
10 user of FreeCause's toolbars produces revenue for FreeCause (as well as the prospect of
11 future individual contributions for the political Affinity Sponsor), the provision of the
12 Internet browser toolbar in exchange for the political Affinity Sponsor's promotion of the
13 toolbar would represent a commercially reasonable transaction made in the ordinary
14 course of business, with the expectation of a reasonable profit for FreeCause. *See*
15 *Advisory Opinions 2007-4 (Atlatl, Inc.), 2004-19 (Dollar Vote), 2002-07 (Careau & Co.),*
16 *1995-34 (Politechs), 1994-33 (VITEL).* As a result, FreeCause would not be providing
17 political Affinity Sponsors the basic toolbar at less than the "usual and normal charge"
18 for this type of software. *See 11 CFR 100.52(d)(2).*

19 Moreover, the political Affinity Sponsors would be required to pay the usual and
20 normal charge for a variety of additional services and optional customizations. For
21 instance, FreeCause indicates that it will charge the political Affinity Sponsors the
22 "normal and usual fee" for inclusion of news, video, and audio feeds as part of the
23 toolbar. Furthermore, FreeCause will charge political Affinity Sponsors the "industry

1 standard” fee for customization of the toolbar beyond the basic options provided as part
2 of the political Affinity Sponsor’s setup and administrative page. Additionally,
3 FreeCause will be paid by the political Affinity Sponsor for expenses related to
4 processing the remittances directed to the political Affinity Sponsor and related to
5 transmitting the proceeds and contributor information to the political Affinity Sponsor.
6 Accordingly, it appears that FreeCause would not provide these services to the political
7 Affinity Sponsors for free or at a reduced rate that would result in a prohibited in-kind
8 contribution. *See* 11 CFR 100.52(d)(1).

9 Finally, FreeCause intends to market certain affinity toolbars that FreeCause
10 considers, in its best business judgment, to be of particularly broad appeal and likely to
11 generate substantial revenue.⁷ FreeCause indicates that it will conduct this marketing
12 independently, without consultation with or participation by the political Affinity
13 Sponsors, and it will not spend funds or incur any additional measurable incremental
14 costs.

15 Although a benefit could flow to a political Affinity Sponsor by increasing the
16 number of individuals using the political Affinity Sponsor’s toolbar, that benefit would
17 not be the primary purpose of FreeCause’s proposed independent marketing activities.
18 Instead, the primary purpose would be to generate revenue for FreeCause. Furthermore,
19 any benefit flowing to a particular Affinity Sponsor would be not only incidental but also
20 contingent both on an individual’s decision to download a political Affinity Sponsor’s
21 toolbar, and the individual’s decision to forward earned remittances to the political
22 Affinity Sponsor rather than keep them for him or herself.

⁷ FreeCause will not market any toolbar where the political Affinity Sponsor is an SSF.

1 The Commission has previously concluded that marketing solicitations having the
2 primary purpose of generating revenue for the service provider are not in-kind
3 contributions to the political committee sponsor under similar circumstances, so long as
4 the political committee sponsor pays the usual and normal charge for the services
5 provided. Advisory Opinion 2006-34 (Working Assets). As noted above, the primary
6 purpose of the proposed marketing is to generate revenue for FreeCause, and the potential
7 contributions flowing to any political Affinity Sponsor are contingent in nature.
8 Moreover, unlike Advisory Opinion 2006-34, the marketing at issue would not be
9 targeted at previously identified members and supporters of the political Affinity
10 Sponsors and therefore would presumably be even less likely to result in contributions to
11 any particular political Affinity Sponsor. Accordingly, assuming that your proposed
12 selective marketing of political Affinity Sponsors' toolbars does not differ in any material
13 respects from your selective marketing of non-political Affinity Sponsors' toolbars, the
14 use of the political Affinity Sponsor's name and/or logo and targeted marketing by the
15 political Affinity Sponsor in exchange for the potential for individual contributions would
16 be consistent with the commercial reasonableness of the entire transaction and would not
17 result in prohibited corporate contributions. *Id.*

18 You have stated that there will be no expenditure of funds or incremental cost
19 incurred by FreeCause to undertake the proposed marketing. To the extent that any costs
20 are incurred, however, the appropriate portion of those costs (representing the portion of
21 the costs attributable to the political Affinity Sponsor as well as a reasonable profit for
22 FreeCause) must be paid by the political Affinity Sponsor so that FreeCause does not

1 make a contribution to the political Affinity Sponsor.⁸ See 11 CFR 100.52(d); Advisory
2 Opinion 2006-34 (Working Assets). Similarly, FreeCause has stated that it will market
3 the selected affinity toolbars by several means, including on its own website and through
4 “unpaid advertisements on other’s websites.” To the extent that FreeCause or the
5 unspecified other websites would normally charge for these advertisements, the lack of a
6 charge would be an in-kind contribution to the political Affinity Sponsor.
7 11 CFR 100.52(d).

8 *B. Contributions From Rebates and Rewards*

9 The second element discussed above requires that any contributions from rebates
10 or rewards be made by individuals from their own funds and not by the corporate service
11 provider. As a general matter, the Commission has concluded that affinity programs in
12 which a portion of the revenues charged and collected by a corporation are transmitted to
13 a political committee results in prohibited corporate contributions under the Act and
14 Commission regulations. See generally Advisory Opinion 2003-16 (Providian National
15 Bank). The Commission has, however, approved affinity programs that generate revenue
16 in the form of rebates or rewards to individual customers or users, who then choose to
17 pass their earned revenue on to a political committee affinity partner. See Advisory
18 Opinions 2006-34 (Working Assets), 2003-16 (Providian National Bank). In approving
19 these programs, the Commission focused on the facts that (1) the revenue or rebate was
20 offered in the ordinary course of business, and (2) the revenue was the property of the

⁸ These costs include a portion of the staff salaries dedicated to developing, executing, and monitoring the marketing program, as well as the costs associated with acquiring email address lists, website development, or other expenses directly related to the marketing program. 2 U.S.C. 431(8)(A)(i); 11 CFR 100.52(a) and 100.52(d)(1); see Advisory Opinion 2007-27 (ActBlue).

1 individual customer who – rather than the corporate affinity partner – controlled the
2 disposition of the revenue. *See id.*

3 The remittances at issue in FreeCause’s request appear to be offered in the
4 ordinary course of business. Under the proposal, third parties make payments to
5 FreeCause in the ordinary course of their business, regardless of whether FreeCause
6 shares that revenue and regardless of whether individual users of any particular political
7 Affinity Sponsor’s toolbar choose to contribute their share of the revenue to the political
8 Affinity Sponsor. In addition, FreeCause will retain the same share of the commissions
9 generated by use of the toolbar on the same terms, regardless of whether the Affinity
10 Sponsor is a political committee or not. *See* Advisory Opinion 2006-34 (Working
11 Assets); *cf.* 11 CFR 116.3(c) (setting forth factors relevant to determining whether a
12 commercial vendor extends credit in the ordinary course of business).

13 It also appears that the individual toolbar users would make the decision to direct
14 any contributions to the political Affinity Sponsor. One element of the proposal raises a
15 question, however, as to whether the contributions are truly the property of the individual
16 toolbar users. Under the proposal, each individual toolbar user earns a share of the
17 commissions paid to FreeCause by search engines and retailers. Each individual toolbar
18 user is then given the option either to receive the remittance as a monthly check when the
19 balance exceeds \$5, or to direct it as a contribution to the political Affinity Sponsor.
20 FreeCause will forward contributions to the political Affinity Sponsor each month,
21 regardless of the amount. Thus, FreeCause will forward contributions to political
22 Affinity Sponsors that would not be accessible had the users elected to retain their funds
23 instead. Since control is one indication of ownership, if FreeCause were to forward

1 contributions made from remittances that would not be accessible if they were being
2 retained by the individual toolbar user, FreeCause runs the risk of making a corporate
3 contribution in violation of 2 U.S.C. 441b(a). *See* 2 U.S.C. 441b(b)(2); 11 CFR
4 114.1(a)(1). In order to avoid this situation, FreeCause must ensure that all individual
5 toolbar users have equal access to their funds.

6 Under the proposal, FreeCause will inform each individual toolbar user that
7 choosing to direct his or her remittance to a political Affinity Sponsor will represent a
8 political contribution to the political Affinity Sponsor, which will be subject to the
9 limitations and prohibitions of the Act. FreeCause will also ask the user to certify that he
10 or she is an individual U.S. citizen or legal permanent resident who would be receiving
11 the remitted funds individually in the absence of re-direction, and will require the user to
12 make all certifications required of individuals making contributions over the Internet as
13 set forth in Advisory Opinion 1995-9 (NewtWatch). The Commission has previously
14 found that the use of attestation language, derived from the Commission's guidance in
15 Advisory Opinion 1995-9, constitutes an adequate screening procedure for contributions
16 solicited over the Internet.⁹ *See* Advisory Opinions 2006-34 (Working Assets), 2004-19
17 (DollarVote), 1999-22 (Aristotle Publishing), 1999-9 (Bradley for President), and 1995-9
18 (NewtWatch).

⁹ You also state that when a user creates an account with FreeCause, the account creation page will inform the individual user that Federal law requires the political Affinity Sponsor to use its best efforts to collect and report the name, mailing address, occupation and name of the employer of individuals whose contributions exceed \$200 in a calendar year. This language constitutes an accurate statement of federal law as required by 11 CFR 104.7(b). *See* 11 CFR 102.9(d). In addition, the account creation page will also set out the necessary disclaimers required by 11 CFR 110.11 (as applicable to the political Affinity Sponsor). The Commission notes that under certain circumstances, the marketing of the Affinity Sponsor's toolbars, including the independent marketing proposed by FreeCause, may constitute a public communication for which an appropriate disclaimer is required under 11 CFR 110.11.

1 All remittances directed to political Affinity Sponsors will be held in a segregated
2 account and will not be commingled with FreeCause's corporate funds. This particular
3 safeguard is a longstanding requirement for businesses engaged in soliciting and
4 processing contributions. See Advisory Opinions 2006-34 (Working Assets), 2004-19
5 (DollarVote), 1999-22 (Aristotle Publishing), and 1991-20 (Call Interactive).
6 Remittances to political Affinity Sponsors will be credited to the political Affinity
7 Sponsor through an automated clearinghouse transaction on the last day of each month in
8 which the remittance is earned by the user. This complies with the requirement that any
9 person who receives a contribution of \$50 or less for a political committee must forward
10 the contribution to the political committee within 30 days after receipt. See
11 2 U.S.C. 432(b)(2)(A); 11 CFR 102.8(b)(1). FreeCause will transmit the contributor's
12 name, address, occupation and employer to the sponsoring committee within ten days of
13 the transfer of funds, pursuant to 11 CFR 102.8(b)(2).¹⁰

14 C. *Effect on Qualified Nonprofit Corporations*

15 QNCs may make independent expenditures and electioneering communications
16 free from the funding restrictions imposed on other corporations. See
17 11 CFR 114.10(d)(1) and (2). One of the requirements for a QNC is that it cannot offer
18 benefits that serve as a disincentive for persons to "disassociate themselves with the
19 corporation on the basis of the corporation's position on a political issue."

¹⁰ The request indicates that it is "virtually certain that the remittance to which any one individual would be entitled would not exceed \$50 in any one calendar year." Nonetheless, FreeCause must transmit any contribution exceeding \$50, along with contributor information for that contribution, within ten days after receipt of the remittance. See 2 U.S.C. 432(b)(2)(B); 11 CFR 102.8(b)(2); Advisory Opinion 2006-34 (Working Assets).

1 11 CFR 114.10(c)(3)(ii). Assuming that the shared commissions “would be available on
2 the same terms to individuals who are not members of the QNC, and that individuals
3 could continue to be eligible for the . . . rebate even after they terminate their membership
4 with the QNC,” a corporation would not lose its QNC status by participating in
5 FreeCause’s affinity toolbar program as an Affinity Sponsor. Advisory Opinion 2006-34
6 (Working Assets).

7 *D. Conclusion*

8 FreeCause may enter into the proposed affinity program with Federal political
9 committees and QNCs without making prohibited corporate contributions or otherwise
10 violating the Act or Commission regulations, under the conditions set forth in this
11 Advisory Opinion.

12 This response constitutes an advisory opinion concerning the application of the
13 Act and Commission regulations to the specific transaction or activity set forth in your
14 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any
15 of the facts or assumptions presented and such facts or assumptions are material to a
16 conclusion presented in this advisory opinion, then the requester may not rely on that
17 conclusion as support for its proposed activity. All cited advisory opinions are available
18 on the Commission’s website at <http://saos.nictusa.com/saos/searchao>.

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Sincerely,

David M. Mason
Chairman