

National Republican Senatorial Committee

ALEX N. VOGEL
GENERAL COUNSEL

VALERIE E. FRENCH
DEPUTY GENERAL COUNSEL

Comment to
AOR 2002-09

August 2, 2002

Jonathan Levin
Senior Attorney
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Re: Request of Advisory Opinion by Target Wireless

Dear Mr. Levin:

Pursuant to 11 CFR § 112.3(a), the National Republican Senatorial Committee respectfully submits comment on the request for advisory opinion by Target Wireless, endorsing the application of 2 U.S.C. § 441d and its exceptions at 11 C.F.R. § 110.11(a)(6) to the distribution of political advertising to subscribers of wireless digital phones through digital text messaging. Specifically, the NRSC requests the Commission issue an opinion stating that the disclaimer exception provided in 11 C.F.R. § 110.11(a)(6) for advertising on types of items, such as bumper stickers, skywriting, etc., apply to advertising on wireless digital telephones on grounds of impracticability.

As provided by 2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11(a)(2), a communication that expressly advocates the election or defeat of a candidate through public political advertising must be accompanied by a clear and conspicuous disclaimer to give the reader notice of the identity of the party who paid for the communication. However, 11 C.F.R. § 110.11(a)(6) recognizes exceptions to the disclosure requirement for items where inclusion of a disclaimer with the advertisement would prove impracticable due to the relative size of the disclaimer to the advertisement.

When advertising through Target Wireless, short digital messages, with content related advertisements accompanying, are sent to those wireless subscribers who opt to receive such messages. Based on the average character capacity of one hundred sixty (160) characters for each textual message, messages are compressed into a limited amount of character space into which there is no room to place a disclaimer. Additionally, any single message may not be continued. Should a single content be sent through two "continuous," or related, messages, the subscriber will be billed for each of the messages. Also, since the two messages are sent separately, the messages may not

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425 SECOND STREET, N.E. • WASHINGTON, D.C. 20002 • (202) 675-8000

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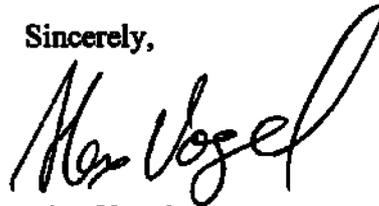
appear continuous in nature, as the subscriber may receive other messages between the two related messages.

By requiring disclaimers to be displayed with digital text advertisements, political candidates are effectively prevented from using this new media when creating advertising initiatives. Additionally, wireless providers and agencies are prevented from turning to an alternative client pool, political candidates, when seeking sponsorship for the services that they provide.

Given the size of the advertisement, limited space, and nature of advertising through digital text messaging, it is similar to the types of advertising excepted from disclaimers under 11 CFR § 110.11(a)(6). By finding that the disclaimer exceptions under § 110.11(a)(6) include digital text messaging advertising, a new media would be open to political candidates to effectively reach hard-to-reach mobile voters.

On the grounds of impracticability, the NRSC respectfully requests that the Commission issue an advisory opinion on the request of Target Wireless stating that digital text messaging advertising is exempt from the disclaimer requirement provided in 2 U.S.C. § 441d.

Sincerely,

A handwritten signature in black ink, appearing to read "Alex Vogel". The signature is written in a cursive, flowing style with a large loop at the end.

Alex Vogel
General Counsel