

OPENING STATEMENT OF CHAIRMAN MICHAEL E. TONER
FINAL VOTE ON INTERNET REGULATIONS
MARCH 27, 2006

I am pleased that it appears we have a consensus today and will establish several important protections for online political speech. This has been a very difficult rulemaking on multiple levels. However, if the Commission adopts the proposed final rules before it today, I think a number of positive things will be accomplished.

First, the proposed rules totally exempt individuals who engage in political activity on the Internet from the restrictions of the campaign finance laws. The exemption for individual Internet activity in the final rules is categorical and unqualified. Individual online political activity will be protected from FEC restriction regardless of whether the individual acts alone or as part of a group, and regardless of whether the individual acts in coordination with a candidate or acts independently. The exemption applies no matter who owns the computer equipment the individual uses and no matter where the Internet activities are performed. The final rules, thus, avoid disparate treatment of individuals who may not be able to afford to purchase their own computer and explicitly protect individuals who may borrow a computer from a friend, neighbor, family member, or anyone else to do political activity.

The exemption in the final rules protects Internet activities by individuals in all forms, including emailing, linking, blogging, or hosting a website. The exemption encompasses all types of Internet equipment and services, including computer hardware, software, ISP services, and Internet domain names. The exemption also includes “any other technology that is used to provide access to or use of the Internet,” to ensure that future innovations in computer equipment and services are protected. Under the exemption, an individual or group of individuals can spend whatever money they wish on their Internet activities without any of the expenditures being considered a contribution to the candidates they support, even if the activities are done in direct consultation with the candidates or with the candidates’ campaign staff. In all these respects, the final rules recognize that the online political speech of individuals should not be restricted by the Commission in any way, and I strongly support this result.

Second, the proposed rules before the Commission today would broadly extend the media exemption to the Internet. In so doing, the Commission recognizes that the media exemption should apply with full force to news stories, commentaries, and editorials that appear over the Internet, and that the media exemption fully protects entities that have no off-line component and conduct all of their activities online – such as The Drudge Report and Salon.com. If the proposed rules are adopted, the Commission will also make clear that bloggers are entitled to the same media exemption as traditional media entities, such as CBS, CNN, and the New York Times. In this respect, if the Commission adopts the rules before it today, there will be no second-class citizens among the media, and Internet journalists will be entitled to the same broad press exemption that their traditional media counterparts have enjoyed for decades.

Third, the proposed final rules would significantly broaden the ability of corporate employees and union members to use their work computers to volunteer for the candidates of their choice. The Commission’s existing regulations contain a safe harbor which indicates that corporate employees and union members may use their work facilities for campaign purposes up to one hour per week and four hours per month. Although this regulation is styled as a safe harbor, it has widely been interpreted as setting a limit on the amount of permissible campaign activity that people can do through the facilities of their office. The vast majority of comments we received in this rulemaking – including comments from several reform organizations – urged the Commission to abolish any time restriction on the use of corporate and union computers for volunteer political activities.

The final rules, if adopted today, would permit rank-and-file corporate employees and union members to use work-issued PCs, laptops, and other Internet equipment and services on an unlimited basis for political activities, provided the employee volunteers on his or her own time and does not increase the overhead costs of the corporation or labor union. As one commenter noted:

“It is now common for companies and unions to permit (and at times encourage or even require) employees to keep and use company or union-owned laptops during non-working hours. Thus, for many employees, a company or union-owned computer is their primary or only home computer, and the employees are permitted to make essentially unlimited personal use of those computers – including, for those so inclined, political speech on the Internet.”

If the final rules are adopted, the Commission will take an important step in protecting the online political activities of rank-and-file employees across the country.

I look forward to the Commission’s consideration of the final rules. In closing, I want to thank everyone at the agency who has worked so hard to get us here today. All the people involved are too numerous to mention, but I would like to specifically thank Richard Ewell, Rosie Smith, and Brad Deutsch of the General Counsel’s Office. I also would like to personally thank Melissa Laurenza and Stephanie Danis from my office for their outstanding work during this rulemaking.