

**Statement of Commissioner Ellen L. Weintraub
On the Notice of Proposed Rulemaking on Certain Internet Communications
March 24, 2005**

This is an unusual rulemaking. It has generated a great deal of public attention, and we have heard from a number of Members of Congress, and we haven't even started yet.

The good news is that most of the people we've heard from seem to be urging us in the same direction. Everyone agrees that the Internet is a potent and dynamic tool for fostering political debate, and that any regulatory efforts should proceed on a "less is more" theory. As my colleagues know, that's one of my favorite theories.

The other good news is that the direction that everyone is urging us to take is the direction we were headed in already. Some of the most spirited debates that have taken place in the course of preparing this Notice have concerned how best not to regulate certain activities, such as blogging. Should we not regulate by not issuing a regulation about blogging or should we not regulate by issuing a regulation that specifically exempts blogging from other regulations? That's the sort of discussion we've been having, and however we resolve it, I think it's pretty clear that the result is not going to be bad for bloggers.

So if our most fervent disagreements have concerned how not to regulate, why are we issuing a Notice of Proposed Rulemaking? Congress, in the Bipartisan Campaign Reform Act, limited how one can pay for communications that are coordinated with political campaigns, including any form of "general public political advertising." The Commission issued a regulation defining those communications so as to exempt anything transmitted over the Internet. A Federal judge struck down that regulation as inconsistent with the law. So now, we're under a judicial mandate to consider whether there is anything short of a blanket exemption that will do.

The judge's decision does not mean that the FEC must now regulate all, most, or even very much Internet activity. We're faced with a question of statutory interpretation, and the phrase we're interpreting is "general public political advertising." We've taken that statutory language as our guidepost and focused on paid advertising and political "spam" e-mail sent to lists acquired in commercial transactions.

This is appropriate because the focus of this agency is campaign finance. We are not the speech police. The FEC does not tell private citizens what they can

or cannot say, on the Internet, or elsewhere. As stated by BCRA's main sponsors, Senators McCain and Feingold, "[t]his issue has nothing to [do] with private citizens communicating on the Internet. There is simply no reason - none - to think that the FEC should or intends to regulate blogs or other Internet communications by private citizens." They are absolutely correct. It is my intent to preserve the Internet exemption to the greatest extent possible, and to make clear that this rulemaking is about paid advertising, and not about an individual's right to free speech on the Internet.

I urge those who are trying to divine what the Commission might do to focus on the text of the proposed rules themselves. We have taken a very restrained approach. The only Internet activity the proposed rules define as public communications are advertisements placed for a fee on another person's website. Additionally, the NPRM refines the FEC's current disclaimer requirements for certain e-mail communications. Under current regulations, disclaimers are required if 500 substantially similar unsolicited e-mails are sent. The proposed rule would clarify that "unsolicited" e-mail is that which is sent to lists that are purchased from third parties. This is meant to ensure that the regulation captures only spam, and not communications to large groups of an individual's personal contacts.

The NPRM also specifically exempts a substantial amount of Internet activity from regulation. The NPRM:

- makes clear that the media exemption applies to the Internet;
- exempts any Internet activity by unpaid individuals or volunteers in their own residences, on their own equipment, or on publicly available equipment; and
- specifies that the allowance for occasional, isolated, and incidental use of corporate and labor union facilities includes the use of the Internet and computer equipment.

I cannot speak for my colleagues, but I am not aware of anyone here who views this rulemaking as a vehicle for shutting down the right of any individual to use his electronic soapbox to voice his political views. For people who worry about the influence of money on politics, the Internet can only be seen as a force for good, for the simple reason that it's generally a very cheap form of communication. As the Internet becomes an increasingly effective political tool, a candidate may not need to raise large sums of cash to run television ads, if she can get her message out cheaply and efficiently over the Internet.

It is noteworthy in this context that Senator Harry Reid recently introduced legislation that would exempt all Internet activity from regulation under BCRA,

effectively codifying the Commission regulation that the court struck down. In a letter to the Commission, Senator Reid stated that the Internet "has generated a surge in grassroots involvement in our government and has proven to be a democratizing medium in our political process." And let me state for the record that if Senator Reid's bill passes, I will be delighted to move that we close this rulemaking down and stand on the exemption in our current rule.

In addition, fourteen members of the House Committee on the Judiciary wrote the Commission to urge that we clearly exempt uncompensated bloggers from regulation, noting their belief that such an interpretation "is entirely consistent with BCRA" and "would easily pass judicial muster."

It would be ironic indeed if, in the name of campaign finance reform, we were to try to squelch good old-fashioned grassroots political rabble-rousing in its new, inexpensive, on-line iteration. Fortunately, I'm not aware of any intent to do so, either here at the Commission, or on Capitol Hill, as the statements by Senators McCain and Feingold and the House Judiciary Members, and Senator Reid's bill, make clear.

Today is the beginning of a process that, like the Internet, is open and interactive in nature. Today we are considering and voting on the Notice of Proposed Rulemaking. This document defines the scope of the rulemaking we are about to undertake. We cannot proceed unless this document is approved by a majority of the six commissioners. The Notice seeks public comment on a wide range of issues related to the topic at hand. If you think we're not getting it right, tell us. We welcome and will consider the public's comments.

Following the comment period, the Commission will hold a public hearing. We will then publish draft final rules, which will be considered in another open meeting, and which also must be approved by a majority of the Commissioners.

The document we have before us represents the hard work and concerted efforts of many people. I very much appreciate the energy and diligence of everyone who worked so hard to pull it together for today's meeting so we could stay on the ambitious regulatory schedule that we adopted at the end of last year. I would particularly like to thank Vice Chairman Toner, my colleague on the regulations committee, Melissa Laurenza of his staff and Rebekah Harvey and Mike French of my staff, for their many hours of work.

I look forward to receiving what I expect will be voluminous and passionate comments, and look forward to working with my colleagues to craft a limited and measured regulation.

