



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

FIRST CLASS MAIL

NOV 19 2007

Joseph E. Sandler, Esq.
Sandler, Reiff & Young, P.C.
50 E Street, SE
Suite 300
Washington, DC 20003

RE: MUR 5440

Dear Mr. Sandler:

On September 30, 2004, the Federal Election Commission notified your client, DNC Services Corporation/Democratic National Committee and Andrew Tobias, in his official capacity as treasurer ("DNC"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On November 14, 2007, the Commission found, on the basis of the information in the complaint and other information, no reason to believe that the DNC violated 2 U.S.C. §§ 434(b) and 441a(f) by knowingly accepting and failing to report excessive contributions in the form of coordinated communications from New Democrat Network and Simon Rosenberg, in his official capacity as treasurer. Accordingly, the Commission closed its file in this matter on November 16, 2007.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie McConnell", is written over a circular stamp.

Julie McConnell
Acting Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

**FACTUAL AND LEGAL ANALYSIS REGARDING ALLEGED
COORDINATION OF EXPENDITURES BY NEW DEMOCRAT NETWORK
AND SIMON ROSENBERG, IN HIS OFFICIAL CAPACITY AS TREASURER,
WITH DNC SERVICES CORPORATION/DEMOCRATIC NATIONAL
COMMITTEE AND ANDREW TOBIAS, IN HIS OFFICIAL CAPACITY AS
TREASURER**

MUR 5440

Respondent: **DNC Services Corporation/Democratic National Committee and
Andrew Tobias, in his official capacity as treasurer**

I. INTRODUCTION

The complaint alleges that DNC Services Corporation/Democratic National Committee and Andrew Tobias, in his official capacity as treasurer ("DNC"), knowingly accepted and failed to report excessive contributions in the form of coordinated communications from New Democrat Network and Simon Rosenberg, in his official capacity as treasurer ("NDN"), under 11 C.F.R. § 109.21. Specifically, the complainant alleges that NDN and the DNC engaged in coordinated communications through the activities of Bill Richardson. *See* Compl. at 26-27 and 31-32. The complaint, the responses to it, and the public record, however, contain insufficient information to warrant an investigation into whether NDN's expenditures were made in cooperation, consultation, or concert with, or at the request or suggestion of the DNC.

Under the Federal Election Campaign Act of 1971, as amended ("the Act"), payments for coordinated communications are made for the purpose of influencing a federal election, constitute in-kind contributions to the candidates or committees with whom or which they are coordinated, and must be reported as expenditures made by those candidates or committees. *See* 11 C.F.R. § 109.21(b)(1). Communications are coordinated with a candidate, an authorized

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committee, a political party committee, or agent¹ thereof if they meet a three-part test: (1) the communication is paid for by a person other than a candidate, authorized committee, political party committee, or agent thereof; (2) the communication satisfies at least one of the four content standards described in 11 C.F.R. § 109.21(c);² and (3) the communication satisfies at least one of the six conduct standards described in 11 C.F.R. § 109.21(d).³

II. ANALYSIS

The complaint alleges that coordination occurred between NDN and the DNC based on the activities of Bill Richardson, who was the Chair of the Democratic National Convention and was an “advisor” to NDN, which ran Spanish-language advertisements that attacked or opposed President Bush during the 2004 cycle. *See* Compl. at 26-27, 31-32, and 59. Neither the complaint nor the available information, however, provides information suggesting that Richardson’s activities at NDN met any conduct standard, and his role as Chair of the Democratic National Convention appears to be insufficient to connect any activity between the DNC and NDN that would satisfy any conduct standard.

¹ For the purposes of this section of the regulations, an “agent” is defined as “any person who has actual authority, either express or implied, to engage in any of” a number of defined activities relating to the creation or production of a communication. *See* 11 C.F.R. § 109.3.

² The content standards include: (1) electioneering communications; (2) public communications that disseminate campaign materials prepared by a candidate; (3) communications that expressly advocate the election or defeat of a clearly identified federal candidate; and (4) certain public communications distributed 120 days or fewer before an election, which refer to a clearly identified federal candidate (or political party). *See* 11 C.F.R. § 109.21(c).

³ Any one of six conduct standards will satisfy the third element of the three-part coordination test, whether or not there is agreement or formal collaboration. *See* 11 C.F.R. §§ 109.21(d) and 109.21(e). These conduct standards include: (1) communications made at the request or suggestion of the relevant candidate or committee; (2) communications made with the material involvement of the relevant candidate or committee; (3) communications made after substantial discussion with the relevant candidate or committee; (4) specific actions of a common vendor; (5) specific actions of a former employee; and (6) specific actions relating to the dissemination of campaign material. *See* 11 C.F.R. §§ 109.21(d)(1)-(6).

- 1 Based on this information, there is no reason to believe that the DNC and Andrew
- 2 Tobias, in his official capacity as treasurer, violated the Act by knowingly accepting and failing
- 3 to report excessive contributions from NDN in the form of coordinated communications.

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