

November 9, 2017

Mr. Neven F. Stipanovic  
Acting Assistant General Counsel  
Federal Election Commission  
Office of General Counsel  
999 E Street, NW  
Washington, D.C. 20463

**RE: Internet Communications Disclaimers**

Dear Mr. Stipanovic:

On behalf of Revolution Messaging LLC (“Revolution Messaging”), I write to submit the following comments on the newest iteration of the Commission’s longstanding Rulemaking 2011-02, regarding disclaimers in Internet advertisements, including communications disseminated through smaller mobile devices.

By way of background, Revolution Messaging is a full-service digital technology and strategy company that specializes in the provision of mobile and text messaging services to political organizations, including candidates, party committees, political committees and non-profit organizations. In 2013, Revolution Messaging requested an Advisory Opinion from the Commission regarding the applicability of the “small items” and “impracticable” exemptions in the Commission’s disclaimer regulations to advertisements on mobile devices. 11 C.F.R. § 110.11(f)(1); AOR 2013-18. Our comments below are limited to the application of these exemptions, and do not generally address the Commission’s “Internet Exemption” or any other aspect of the scope of Commission regulation.

Specifically, we would like to reiterate our concerns expressed during the consideration of AOR 2013-18. In this request, Revolution Messaging requested clarification as to application of the Commission’s disclaimer rules to advertisements that were designed to appear on mobile devices with small screen sizes. As mobile advertising has evolved since our previous AOR this has grown more important. As explained in our request, we provided several reasons why advertisements that appear on mobile devices should be exempted from the Federal Election Campaign Act’s (“FECA”) disclaimer requirements in accordance with 11 C.F.R. § 110.1(f). There are two major concerns - mobile advertisements are too small to read, and given the technological and size limitations of small advertisements, a disclaimer could not be “clear and conspicuous” on a mobile advertisement. 11 C.F.R. § 110.1(c).

Although we had presented a straight-forward and compelling request for the application of the exemption, the Commission was unable to find a consensus on the issues presented in our request, and failed to provide any guidance on whether the small item or impractical exemptions apply to mobile devices. In its Statement for the Record, three Commissioners chose to narrowly construe the small item and impractical exemptions to not include items other than “physical items.” See Statement for the Record by Vice Chair Ann M. Ravel, Commissioner Steve T. Walther, and Commissioner Ellen L. Weintraub in Advisory Opinion Request 2013-18 (Revolution Messaging, LLC), February 27, 2014, p. 2. This is an absurdly narrow reading of the Commission’s regulations; mobile devices are clearly “physical items” just as much as a bumper sticker or button.

The Commission must move forward and update its regulations to incorporate digital technologies, which allow campaigns and committees to reach a large number of voters at costs that are significantly lower than traditional campaign communications. The Commission should not create rules that will make the use of such technology impractical or cost prohibitive or that would allow some communications but not others to be disseminated based upon arbitrary applications of the nuances of the technology. Rather, objective standards should be created that would allow a consistent and fair application of Commission regulations. Such standards should include any generally understood technical limitations that may apply to that technology, such as the pixel limitations that we described in our request.

As explained in our comments in connection with AOR 2013-18, advertisements that appear on a mobile device are simply not large enough to provide a readable disclaimer in the formats proscribed by the FECA. It is not a simple enough response to suggest that ads could be customized to provide the proper disclaimer. As we described in our request, standards provided by the Interactive Advertising Bureau for mobile phone advertisements place strict pixel limitations to ensure that mobile phone advertisements appear uniformly across different sized mobile devices.

In its consideration of AOR 2013-18, some members of the Commission suggested that if one type of advertisement was too small to place a disclaimer on it, then those who purchase such advertisements should present their ads in a different format so that a disclaimer could be added. Under that logic, the Commission could also ban buttons, apparel and bumper stickers and require that all campaigns communicate with billboards and yard signs.

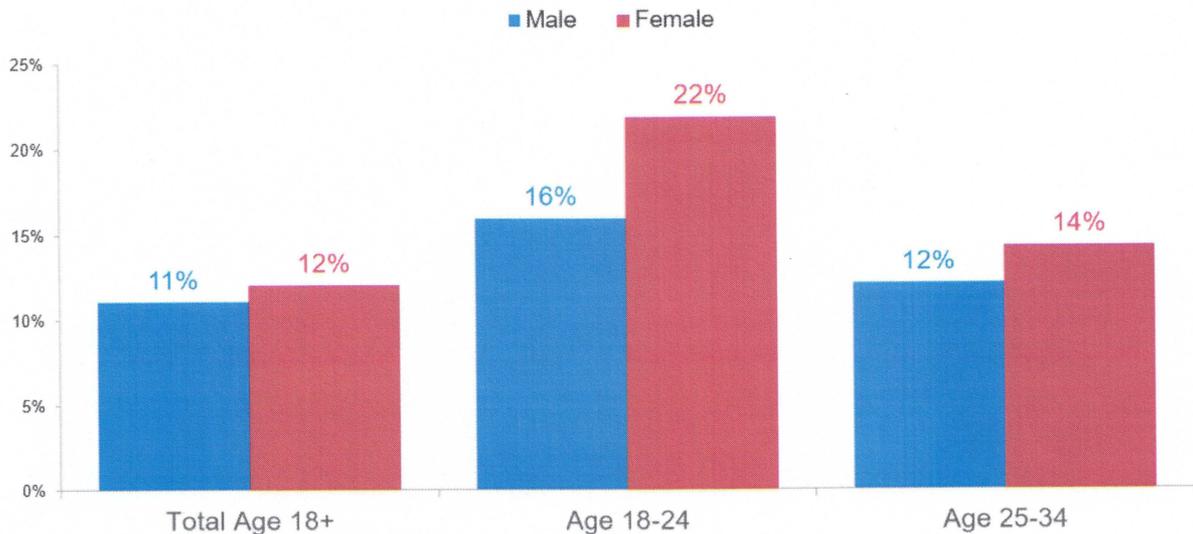
The Commission cannot and should not dictate the size and format of political speech so that it can require a disclaimer notice on that medium. If the Commission were to require that mobile advertisements contain disclaimers, it would effectively preclude the use of this medium at a time when mobile devices are central to communications in America.

In addition, decisions regarding whether a disclaimer should be required should not be based on other technological or ancillary factors, such as whether the advertisement would link to another page, or whether there exists sufficient or evolving technology to provide an alternative means to display a disclaimer. Speakers should not be required to create links or other technological devices in order to disseminate communications. Requiring those who

advertise on mobile devices to use added technology, such as roll-over disclaimers, will make the costs of those activities prohibitive and will force many speakers to forgo the use of mobile technology. In addition, not all linked banner ads ask its reader to refer back to the website of the sponsoring organization. In many cases, such ads, to the extent they contain links, will send a reader to a third-party website, such as a news organization or other non-profit organization. The Commission should not require content based requirements in order to satisfy its disclaimer requirements.

Since the Commission’s statement in 2014, reliance on mobile devices for communication has only increased. Nearly 70 percent of all time spent on digital devices is spent on smartphones, according to comScore, a leading digital analytics company. The company also found that there is a significant and growing segment of Americans who rely solely on mobile phones for accessing the internet, including 22 percent of women aged 18-24. In the last few years, new ad formats have been rolled out, such as paid search ads in the Apple app store, and new devices have hit the market, like smartwatches. With smaller ad units, smaller devices, and growing reliance on mobile devices for communication, a disclaimer requirement would in effect block more speech now than ever before and cut off communication with entire swaths of young Americans.

**Mobile-Only Share of Digital Audience by Age Segment**  
 Source: comScore Media Metrix Multi-Platform, U.S., Age 18+, Dec 2016



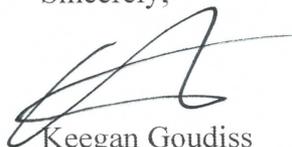
There need to be other ways of communicating who is behind the ad. Therefore, we urge the Commission to consider additional reporting requirements to require more accurate spending information with respect to payments to companies that provide digital and similar related services to political committees. Specifically, we recommend that the Commission issue interpretive guidance that would require committees to separately disclose the amount paid to a vendor for the dissemination of Internet or digital advertisements.

Currently, it is standard practice for such digital vendors to invoice clients for a suite of services, including creative services, monthly retainer fees, and ad purchases in one invoice. Unlike television and radio advertising, there is no available public information available to accurately determine the amounts being spent on digital advertising. Any expenditure for Internet or digital advertising services that contains a dual purpose should indicate, either in the purpose or a memo text supplement to the payment, the actual amount of Internet or digital advertising that was included in the payment.

For the reasons stated above, we implore the Commission to create common sense rules to regulate communications that are disseminated through small devices, such as mobile phones. The Commission's regulation should not create a bar to entry for such devices to be used for political speech, and should not attempt to create unworkable technological distinctions that may favor one format or medium over another. For your convenience, we have attached our substantive comments regarding AOR 2013-18, so that they may be incorporated by reference as part of the rulemaking record.

Thank you for your consideration of our comments in connection with this rulemaking.

Sincerely,

A handwritten signature in black ink, appearing to read 'Keegan Goudiss', with a stylized flourish extending to the right.

Keegan Goudiss  
Partner  
Revolution Messaging, LLC



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**MEMORANDUM**

**TO:** The Commission  
**FROM:** Commission Secretary's Office *see*  
**DATE:** January 15, 2014  
**SUBJECT:** Comments on Draft AO 2013-18  
(Revolution Messaging, LLC)

**Attached is an untimely submitted comment received from Joseph Sandler, Neil Reiff, and Dara Lindenbaum on behalf of Revolution Messaging, LLC. This matter is on the January 16, 2014 Open Meeting Agenda.**

**Attachment**

# SANDLER, REIFF, YOUNG & LAMB, P.C.

FEDERAL ELECTION COMMISSION  
SECRETARIAT

January 15, 2014

2014 JAN 15 A 11:06

BY E-MAIL AND FACSIMILE

Hon. Shawn Woodhead Werth  
Commission Secretary  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

Re: Advisory Opinion Request 2013-18 (Revolution Messaging, LLC)

Dear Madame Secretary:

We are writing on behalf of our client, Revolution Messaging, LLC ("Revolution Messaging"), to comment on Drafts A and B of Advisory Opinion 2011-19, which are on the Commission's Open Meeting Agenda for tomorrow, January 16, 2013.

In summary, Draft A does not take into account the nature of the medium at issue and will effectively bar the use of the industry standard form of mobile advertising. The intrinsic limitations of the specific format at issue in this AOR clearly make this format a "small item[] upon which the disclaimer cannot be conveniently printed" within the meaning of the Commission's regulations, 11 C.F.R. §110.11(f). The approach of Draft A is to insist, in effect, that Revolution Messaging's political advertising clients simply choose a different format for their communication. That approach is illogical and inconsistent with both the meaning of the exemption as the Commission had interpreted and applied it, and with the Commission's commitment to accommodate new technologies that lower the cost of campaigning. Draft B is consistent with the language of the regulations and the Commission's longstanding approach to evolving technology. For these reasons, the Commission should adopt Draft B.

## Discussion

Under the "small items" exception, the Commission's disclaimer requirements do not apply to "[b]umper stickers, pins, buttons, pens and similar small items upon which the disclaimer cannot be conveniently printed." 11 C.F.R. §110.11(f)(i). As the Commission explained in Advisory Opinion 2002-09 (Target Wireless), "By virtue of their size, the 'small' items listed in [ the regulation], such as bumper stickers, pins, buttons and pens are limited in the size and length of the messages that they are able to contain." *Id.* at 4.

In this AOR, Revolution Messaging has asked the Commission simply to confirm the obvious: that a certain class of mobile phone advertisements—smart phone static banner ads, for which the maximum size is of 320 x 50 pixels or less in size—"by virtue of their size"—are indeed "limited in the size and length of the messages that they are able to contain" and therefore fall within the "small items" exemption.

Draft A suggests, however, that the exemption is inapplicable because the advertising of Revolution Messaging's clients "can be presented in larger and expandable formats than the static banner ad of 320 x 50 pixels." Draft A at 6. Specifically, Draft A cites the availability of what the Interactive Advertising Bureau's Mobile Phone Creative Guidelines characterize as entirely different categories of advertising: static interstitial, rich media interstitial and rich media banners. "Revolution Messaging therefore has the technological option to use larger mobile phone advertisements that could accommodate both the desired advertising text and the required disclaimer." *Id.* at 6-7.

The position taken by Draft A is illogical and contrary to the meaning of the "small items" exemption as the Commission has interpreted it.

**1. The Commission Should Analyze the Applicability of the Exemption to the Format Chosen by the Advertiser, Not Require the Advertiser to Use a Different and Less Suitable Format**

If an advertisement in a particular format is too small to display a disclaimer, the "small items" exemption clearly applies even though other items in the same medium, but using a different format, could be made larger. Campaign buttons, for example, can and are made in larger sizes—more than large enough to accommodate a disclaimer. That does mean, of course, that the specific exemption for "buttons" does not apply when a specific campaign button in fact is too small for the disclaimer to be "conveniently printed."

In that regard, the Commission has never required any committee or entity which chooses to use a specific format for political advertising, in a particular medium, to use a different format in order to accommodate a disclaimer. The Commission has never, for example, denied the availability of the "small items" exemption for a bumper sticker on the ground that the advertiser could include a disclaimer if only the bumper sticker were made big enough. Yet, that is precisely what Draft A would do.

The larger-sized mobile formats identified by Draft A are in fact very different than static banner ads. They are less popular and much less prevalent, in part because they are more expensive and in part because mobile websites and mobile applications do not want to have ads that are too obtrusive to their users. The 300 x 50 and 320 x 50 banner ads are standard and widely available. They are the most popular for smartphones today because they work best with how a mobile phone displays digital content. According to the MoPub Mobile Advertising Marketplace Report for the first quarter of 2013, for example, in March 2013 the cost per mille (thousand impressions) for a 320x50 pixel ad was 54 cents compared to 62 cents for a 300x250 ad and \$1.85 for 320x480. Of total smartphone spending in March 2013, including tablets, 320x50 ads accounted for nearly 53% of total ad spend—more than all other sizes of advertisements combined.

In such circumstances, the Commission has not required political advertisers to choose an

advertising format different than the one they want to use. To the contrary, the Commission has respected the advertiser's choice of format and then looked at the applicability of the exemption to *that format*. In Advisory Opinion 2002-09 (Target Wireless), for example, the requestor explained that although it *was technically possible* to remove content in a text message (SMS message) to make room for a disclaimer, it would be unattractive to potential subscribers. See Letter from Target Wireless to Federal Election Commission, Comment on AOR 2002-09 (August 21, 2002). The Commission determined that the format in which SMS messages are displayed met the requirements for the small-items exemption: "[T]he wireless telephone screens that you have described have limits on both the size and the length of the information that can be conveyed." AO 2002-09 at 4.

Likewise, in the case of Revolution Messaging's clients, the "options" identified by Draft A may frequently be less desirable for a number of reasons. The format about which Revolution Messaging has submitted this request—static banner ads for mobile phones—clearly has "limits on both the size and the length of the information that can be conveyed," just as in AO 2002-09. Indeed, it is literally impossible to make a disclaimer included in this format "clear and conspicuous" as required by the Commission's disclaimer regulation, 110.11(c)(1).

Draft A's reliance on Advisory Opinion 2007-33 (Club for Growth PAC) is clearly misplaced. In that Advisory Opinion, the Commission denied a request to exempt a short television advertisement from the "stand-by-your-ad" spoken disclaimer. The Commission found the "small items" exemption inapplicable in that case because it applies to only visual media, not to a "~~spoken~~ stand by your ad disclaimer....." *Id.* at 4 (emphasis in original).

The Commission should consider the format about which the requestor, Revolution Messaging, has actually asked and decide whether the small-items exemption applies to that format. The answer should be obvious.

## **2. Draft A Is Contrary to the Commission's Policy of Accommodating Technological Innovation That Expands Opportunity for Political Communication**

As Draft A itself acknowledges, "the Act and Commission regulations need not be barriers to technological innovation and creative forms of advertising." *Id.* at 8. Yet imposing such barriers is precisely what would result from adopting Draft A.

Draft A would bar the most standard mobile advertising format from political advertising and prevent the use of new and often less expensive ways to spend money on paid messaging. Some political advertisers who could afford static banner ads may not be able to afford rich media or interstitial ads. Draft A would require such advertisers to utilize mobile advertising formats to better fit the Commission's requirements, instead of allowing such advertisers to utilize the format that best meets their needs, and thereby expanding access to political communication. Political campaigns and committees should be able to take advantage of the

evolving technology that reduces the amount that any one committee or entity needs to spend to get across a given message, and thereby enhances the ability of more people to participate in the political process.

In that regard, we respect and appreciate the concerns raised by Senator Ron Wyden (D-Ore.) in his letter to the Commission of September 16, 2013, as to maintaining and strengthening disclosure laws. Indeed, Revolution Messaging itself has strongly advocated for increased disclosure of political spending, particularly in the area of spam text messaging. The "small items" exemption, however, long pre-dates the recent controversy about anonymous political spending; in fact, that exemption dates back at least to the first set of FEC regulations issued after the 1974 Amendments to the Federal Election Campaign Act. All Revolution Messaging is asking for is that the Commission apply that exemption by its terms to more recently developed technology.

### **3. Requiring a Link to a Website Is Not a Feasible Alternative**

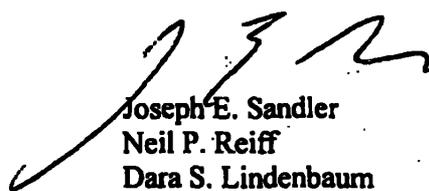
Draft A suggests that a political committee can satisfy the disclaimer requirements by using its own website as the landing page which then has a disclaimer. Complying with this "modified disclaimer" requirement, however, will not be possible in situations where the website linked to an ad is not controlled by the original advertiser. As has been discussed repeatedly in past Advisory Opinions, while ads that link to the advertiser's own political committee page will have the disclaimer, ads that link to a third party website, out of the control of the advertiser, will not. See Advisory Opinions 2011-09 (Facebook); 2010-19 (Google). Therefore, Revolution Messaging urges the Commission to exempt from the disclaimer requirements all static banner mobile advertisement on which it is not physically possible to include a readable disclaimer.

### **CONCLUSION**

For the reasons set forth above, Revolution Messaging strongly urges the Commission to reject Draft A and adopt Draft B of Advisory Opinion 2013-18.

Thank you for your time and attention to this matter.

Sincerely yours,



Joseph E. Sandler  
Neil P. Reiff  
Dara S. Lindenbaum

Attorneys for Revolution Messaging, LLC

cc: Office of General Counsel

SANDLER, REIFF, YOUNG & LAMB, P.C.

AOR 2013-18

September 11, 2013

Via Hand Delivery

Lisa Stevenson, Esq.  
Deputy General Counsel  
Federal Election Commission  
999 E Street N.W.  
Washington, D.C. 20463

Re: **Advisory Opinion Request**

Dear Ms. Stevenson:

Pursuant to 2 U.S.C. §437f and the Commission's rules, 11 C.F.R. §112.1, we are writing on behalf of our client, Revolution Messaging, LLC ("Revolution Messaging") to request an advisory opinion regarding the applicability of the "small items" and "impracticable" exemptions to the disclaimer requirements under the Federal Election Campaign Act and Commission regulations to mobile phone advertisements.

**I. Revolution Messaging**

Revolution Messaging, a District of Columbia limited liability company, is a full-service digital technology and strategy company, specializing in the provision of mobile communications strategies, content, and text messaging services to progressive non-profit organizations, labor organizations, and Democratic federal and state political committees, including candidates for federal office, and other organizations. Revolution Messaging creates mobile and digital messaging strategies on behalf of its clients, including creating the content of, placing and providing mobile advertisements.

Revolution Messaging has been contracted to place and provide mobile advertisements by various clients, including federal committees and labor organizations. Some of these clients wish to use mobile advertising for independent expenditures as defined by 2. U.S.C. § 431(17). Although some of Revolution Messaging's clients' mobile advertisements will link to sites which contain a disclaimer, some will not.

Revolution Messaging has encountered several mobile advertising vendors that refuse to accept these ads unless a disclaimer is included. As discussed below, given the physical size constraints of the mobile advertisements and the technology involved, it is not possible to include a disclaimer that complies with Commission regulations in these advertisements. Thus, these clients will be prevented from placing mobile advertisements that contain express advocacy unless the Commission clarifies that these small mobile advertisements are exempt from disclaimer requirements.

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OFFICE OF GENERAL COUNSEL

## II. Mobile Advertisements

Mobile phone advertisements appear on mobile phones when a user accesses certain content on their mobile phones. Frequently, these ads appear when users access free mobile phone applications and appear at the top or bottom of the mobile phone screen in tandem with the actual application content. In addition, these mobile advertisements may appear on a portion of the screen when a user accesses certain web sites.

Mobile advertisements are subject to size and content limitations based on two distinct criteria: 1) the size of the mobile phone on which the advertisement appears, and 2) the number of pixels available for a particular mobile advertisement.

Although today's top selling mobile phones are more advanced than ever, in order to retain their utility, physical size limitations exist. Mobile phone screens are typically measured in diagonal inches. Providing screen size in diagonal inches gives the largest straight-line measurement that can be obtained from the display. The quoted screen size, being a diagonal, is larger than the height or the width of the display and provides an "aspect ratio" (the ratio between the vertical and horizontal size) in addition to physical size. Today's most common mobile phones measure 5 inches diagonally or less. Specifically, the iPhone 5 measures 4 inches diagonally; the Samsung Galaxy S4 measures 5 inches diagonally; and the Blackberry 10 measures 4.2 inches diagonally. Of course, mobile phone advertisements will appear even smaller than the full screen size of the mobile phone.

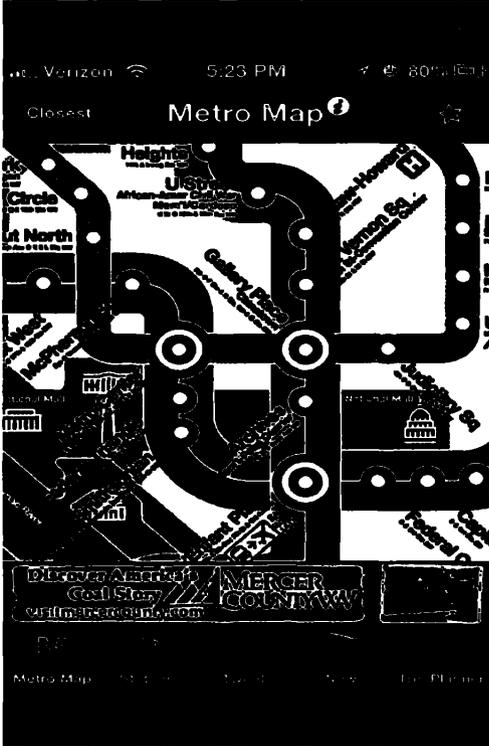
As the physical size of the various mobile phones varies, mobile advertisements are not measured, priced or purchased based on physical size. To provide advertisers with the ability to create and purchase advertisements that will appear uniformly on various mobile phones, the Interactive Advertising Bureau ("IAB") created industry standards for mobile phone advertisements.<sup>1</sup> These industry standards measure mobile advertisements' dimensions by the width and height of pixels available.

A pixel is the building block upon which mobile images are created. The more pixels an image has, the more detailed the image can be rendered. Pixel limitations restrict the possible content of an advertisement - as each graphic or piece of content requires a certain number of pixels - which will vary based on several factors, including the crispness of the image, the number of colors used, and the amount of detail included in a graphic. These pixel limitations are similar to character limitations in that pixel limitations curtail the amount of content which can be included in an advertisement.

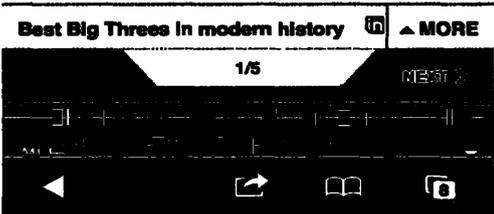
IAB's Mobile Phone Creative Guidelines limit the dimensions of the largest available advertisement to 320 x 50 pixels. These ads, often referred to as "banner ads," generally appear across the top of a mobile phone's screen. See true-to-size examples of these banner advertisements below:

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<sup>1</sup> These guidelines are available at <http://www.iab.net/guidelines/508676/508767/mobileguidelines>.



**Living On The Edge**  
Like it or not, the Miami Heat's stars will be judged harshly if they fall to the Spurs.



These pixel limitations help ensure that advertisements do not appear blurry regardless of the type of mobile phone on which it appears. In addition, attempting to include too much content in a limited pixel graphic may result in an image of reduced quality and clarity. These physical and technological limitations restrict a political advertiser's ability to include a disclaimer on mobile advertisements.

### **III. Legal Discussion**

Pursuant to the Act and Commission regulations, all public communications require a disclaimer. 11 C.F.R. § 110.11. Specifically, all required disclaimers must be "presented in a clear and conspicuous manner... A disclaimer is not clear and conspicuous if it is difficult to read or hear, or if the placement is easily overlooked." 11 C.F.R. § 110.11(c). The Commission's regulations establish certain exemptions to this broad disclaimer requirement. Specifically, items, such as "[b]umper stickers, pins, buttons, pens, and similar small items upon which a disclaimer cannot be conveniently printed" are exempt from the disclaimer requirements, 11 C.F.R. § 110.11(f)(1)(i). Also exempt are "water towers, wearing apparel, or other means of displaying a communication an advertisement of such a nature that the inclusion of a disclaimer would be impracticable." 11 C.F.R. § 110.11(f)(1)(ii).

Although the Commission previously concluded that certain limited character advertisements are exempt from the disclaimer requirements, FEC Advisory Opinion 2010-19 (Google), it welcomed "those other entities [with] slightly different concerns and... business models... to submit their requests." (Commission Open Meeting Audio Recording (Sept. 23, 2010) (Statement of Commissioner Weintraub) (starting at 06:25). By submitting this Advisory Opinion Request, Revolution Messaging is requesting the Commission to clarify its regulations and conclude that mobile advertisements which are subject to content restrictions due to the pixel limitations and physical size limitations applicable to mobile phone advertisement qualify for either the "small item" or "impracticable" exemption.

#### **A. Small Item Exemption**

The Commission should conclude that mobile advertisements qualify for the "small items" exemption for several reasons. First, these mobile advertisements are "small" under any reasonable definition of "small." In fact, these advertisements are physically far smaller than other items expressly exempt from the disclaimer requirements due to their physical size, e.g., bumper stickers and pins.<sup>2</sup>

In concluding that text messages qualify for an exemption to the disclaimer requirements under 11 C.F.R. § 110.11(f)(1)(i), the Commission explained these communications are "limited in the size and length of the messages that they are able to contain." Mobile advertisements are subject to almost identical physical "wireless telephone screen [size restrictions which]... limit [] both the size and the length of the information that can be conveyed," applicable to text

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<sup>2</sup> See Google Request, Advisory Opinion 2010-19 (noting that the "standard political button is 2.25 inches in diameter, though buttons of 3.5 inches in diameter are regularly sold as well.") (citing [http://www.onlineconversion.com/shape\\_area\\_circle.htm](http://www.onlineconversion.com/shape_area_circle.htm)).

messages. Further, the pixel (as opposed to the SMS) technology “places similar limits on the length of a political advertisement as those that exist with bumper stickers.” FEC Advisory Opinion 2002-09 (Target Wireless). Due to these physical size and technological restrictions, these ads are too small to contain a disclaimer which “is not difficult to read.” 11 C.F. R. § 110.11(c).

As the banner ad examples provided in Section II above demonstrate, due to the physical and pixel limitations of these ads, the content is exceptionally limited. This media is too small to include any actual messaging as well as a legible federal disclaimer:

Paid for by ABC PAC, [www.abcpac.com](http://www.abcpac.com). Not authorized by any candidate or candidate’s committee.<sup>3</sup>

The disclaimer alone consists of fourteen words - twice as many as the number of words in the content of the wordiest example above. Specifically, it would take more than 40% of the available pixels to include the required disclaimer (fourteen words) on a banner ad which includes only ten words, such as in the example below.



Even if the Commission were to craft a shorter alternate disclaimer, the number of pixels required to ensure that the disclaimer is legible and easy to read would prevent political advertisers from using mobile advertisements as a medium to communicate with voters. To be sure, these advertisements are too small to include a disclaimer that can be “conveniently printed” because of the physical size limitations and the technological pixel limitations.

<sup>3</sup> 11 C.F.R. § 110.11(b)(3).

### **B. Impracticable Exemption**

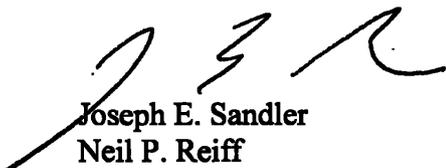
In the alternative, the Commission should conclude that these advertisements qualify as an "advertisement of such nature that the inclusion of a disclaimer would be impracticable." 11 C.F.R. § 110.11(f)(ii). As is clear from the true-to-size mobile advertisement examples in Section II above, even if a significant portion of the available pixels is allocated to the disclaimer, due to the specific restrictions applicable to this communications medium, it is impossible to ensure that a disclaimer complies with the Act.

Further, as the example above demonstrates, even a disclaimer using a significant portion of the available pixels and space cannot clearly meet the Commission's requirements as this disclaimer is easily considered "difficult to read." Therefore, the Commission should clarify that it is impracticable to include disclaimers on these advertisements and thus, these mobile advertisements qualify for an exemption pursuant to 11 C.F.R. § 110.11(f)(1)(ii).

### **IV. Conclusion**

Based upon the factual and legal analysis above, the Commission should conclude that the mobile advertisements that Revolution Messaging and its client seek to place qualify for an exemption to the disclaimer requirements of the Act and the Commission's rules and issue an advisory opinion to this effect.

Sincerely,



Joseph E. Sandler  
Neil P. Reiff  
Elizabeth L. Howard  
Counsel to Revolution Messaging, LLC

Liz Howard

Dear Mr. Lutz: Please find our responses below

10/23/2013 04:52:54 PM

From: Liz Howard <Howard@sandlerreiff.com>  
To: "TLutz@fec.gov" <TLutz@fec.gov>, "Joseph E. Sandler" <sandler@sandlerreiff.com>,  
Cc: "ANoti@fec.gov" <ANoti@fec.gov>, "rkноп@fec.gov" <rkноп@fec.gov>, "NStipanovic@fec.gov" <NStipanovic@fec.gov>  
Date: 10/23/2013 04:52 PM  
Subject: RE: Revolution Messaging Advisory Opinion Request

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Dear Mr. Lutz:

Please find our responses below:

1. Confirmed.
2. Confirmed.
3. Confirmed.
4. Confirmed.

Do not hesitate to contact us if you need any additional information.

Sincerely,

Elizabeth Howard

Sandler Reiff Young & Lamb, P.C.  
1025 Vermont Avenue NW, Suite 300  
Washington, D.C. 20005  
w. (202) 479 - 1111  
f. (202) 479 - 1115

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**IRS Circular 230 Disclosure:** To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the

Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed herein.

**From:** TLutz@fec.gov [mailto:TLutz@fec.gov]  
**Sent:** Tuesday, October 22, 2013 11:18 AM  
**To:** Joseph E. Sandler; Liz Howard  
**Cc:** ANoti@fec.gov; rknop@fec.gov; NStipanovic@fec.gov  
**Subject:** Fw: Revolution Messaging Advisory Opinion Request

----- Forwarded by Theodore Lutz/FEC/US on 10/22/2013 11:15 AM -----

**From:** Theodore Lutz/FEC/US  
**To:** "Joseph E. Sandler" <sandler@sandlerreiff.com>,  
**Cc:** Neven Stipanovic/FEC/US@FEC, Robert Knop/FEC/US@FEC  
**Date:** 09/26/2013 02:35 PM  
**Subject:** Revolution Messaging Advisory Opinion Request

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Dear Mr. Sandler:

In our recent telephone conversations, you provided us with additional information regarding the advisory opinion request submitted on behalf of Revolution Messaging. We have set out below our understanding of the new information. Please either confirm the accuracy of these statements or correct any misperceptions.

1. With reference to the IAB Mobile Phone Creative Guidelines chart, Revolution Messaging is asking the Commission to address the options listed in the row entitled "Image" on the IAB chart – except for the smartphone interstitial ad (300x250). Revolution Messaging is not asking the Commission to address the options in the row entitled "Rich Media/Expandable."
2. The advertisements implicated in the request will be embedded in mobile phone applications or websites that, when accessed on a mobile phone, default in their presentation to a mobile phone format. The request therefore does not implicate advertisements placed on websites formatted for viewing on a desktop, laptop, or tablet.
3. The proposed advertisements, when clicked by a user, will either open a website in the phone's browser or prompt the user to make a phone call. Of those advertisements that link to a website, there is no limitation on the websites a user could be directed to (i.e., the advertisement will not necessarily link to a candidate or political committee's website).
4. Revolution Messaging asks the following question: "Are the advertisements described in the request exempted from the disclaimer requirements of the Act and Commission regulations under either the small items or, in the alternative, the impracticability exception?"

We would appreciate your response by email. Your response may be treated as a supplement to the advisory opinion request and, as such, may be placed on the public record. Thank you for your cooperation.

Sincerely,

Theodore M. Lutz  
Office of General Counsel – Policy Division  
Federal Election Commission  
[tlutz@fec.gov](mailto:tlutz@fec.gov) | (202) 694-1650