

AOR 2012-30
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OFFICE OF GENERAL COUNSEL

August 6, 2012

Via Email and First Class Mail

Anthony Herman, Esq.
General Counsel
Federal Election Commission
999 E Street N.W.
Washington, D.C. 20463

Re: Advisory Opinion Request

Dear Mr. Herman:

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 that certain transactions in which Revolution Messaging plans to engage, involving the solicitation and collection of contributions to federal committees through text messaging campaigns, will comply with the Federal Election Campaign Act of 1971 as amended ("FECA" or "the Act") and the Commission's regulations. Specifically, Revolution Messaging, which is an application provider of text messaging services to progressive non-profit organizations, labor organizations and federal and non-federal political committees, seeks to arrange for the provision of text messaging transactions as described in Advisory Opinion 2012-17, *except* that (i) wireless users would be able to contribute more than \$50 per billing cycle to a federal political committee; and (ii) multiple federal political committees would share a common premium short code. We further request that the Commission issue an opinion within 30 days of this request in accordance with its informal practice to expedite "certain highly significant time sensitive requests." *See Advisory Opinion Procedure, 74 Fed. Reg. 32160, 32162 (July 7, 2009).*

In AO 2012-17, the Commission recognized that, "While the Commission here is determining that m-Qube's particular proposal complies with the Act, the Commission anticipates that other proposals, by m-Qube or other vendors, would provide equally viable and compliant methods of raising campaign funds through text messaging." AO 2012-17 at 7 n. 11. Revolution Messaging is submitting such a modified proposal for the Commission's consideration. Revolution Messaging strongly believes that without the modifications set out in this request, the proposal approved by the Commission in AO 2012-17 will not, as a practical matter, enable federal political committees to make widespread use of text messaging as a means of fundraising; and will not result in achieving the benefits of expanded grassroots fundraising, the expectation of which led to wide bipartisan support for the Advisory Opinion Request in that case.

As general background on the mechanics of text messaging, Revolution Messaging relies on the descriptions set forth in Advisory Opinions 2010-23 and 2012-17, except as otherwise set forth in this request.

I. Revolution Messaging

Revolution Messaging, a District of Columbia limited liability company that has elected to be taxed as a partnership with the Internal Revenue Service, 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 and organizations. Revolution Messaging coordinates mobile messaging on behalf of its clients, providing a proprietary web-based platform allowing clients to obtain an SMS short code and customized keyword associations; allowing individual wireless users to opt in to receive SMS messages from the client; allowing the client to send customized messages to such wireless users; and allowing the client to maintain, analyze and manage data provided by wireless users and data relating to actions taken by them in the course of the text messaging program. Revolution Messaging also advises its clients on, and helps create, the content of websites, mobile applications and outgoing text messages.

For provision of text messaging services, Revolution Messaging contracts with an aggregator, which, as noted in AO 2012-17, “link application providers to wireless service providers’ networks.” AO 2012-17 at 2 n. 1.

II. Additional Background on Common Short Codes

In order to analyze the modified proposal being put forward by Revolution Messaging, some additional background with respect to the typology of common short codes is required.

CTIA - The Wireless Association (“CTIA”) is an incorporated non-profit trade association that represents the wireless communications industry. One of the many services it offers to members is the management of common short codes (“CSCs” or “short codes”) used to send text messages over wireless networks. CSCs are generally five-digit numbers that can be leased by anyone interested in interacting with wireless consumers.

At one level, CSCs are classified as either “premium” or “standard.” “Premium” short codes are ones for which the wireless user pays a premium charge, typically monthly, in order to receive certain content. Examples of premium messaging programs include purchase of ringtones, wallpaper or screensavers; subscription to weather alerts, sports scores or daily horoscopes; and subscriptions to pornography. Any program involving a wireless user making a contribution requires use of a premium short code to process the actual contribution, because of the additional costs involved for the wireless service provider and/or aggregator. Of course, this additional capability of a premium CSC also results in increased costs to the lessee.

“Standard” short codes involve imposition of a small charge to the wireless user to send or receive regular text messages, beyond a certain data limit included in the user’s monthly plan. Typically, non-profit organizations and political committees use standard short codes to communicate with supporters or members who have opted into the text messaging program of the committee or organization.

A common short code may also be either “dedicated” or “shared.” A “dedicated” short code is one that is assigned to a single content provider. For example, if Save the Whales has a “dedicated” short code of 12345, no other organization will be sending messages from or receiving messages addressed to that short code. A “shared” short code is one that is shared by several content providers. In the case of a shared short code, the application provider limits the keywords to which the client has access.

Once CTIA leases a premium CSC to a user, as noted in Advisory Opinion Request 2010-23 (CTIA), there are four categories of companies that work together to bring CSCs to wireless users: (1) content providers, (2) application providers, (3) aggregators, and (4) wireless service providers.

For purposes of the facts and analysis below, it should be noted that any political committee receiving services under this proposal will contract exclusively with Revolution Messaging. Revolution Messaging then contracts exclusively with an aggregator and does not have any direct contractual relationship with the wireless service provider.

III. Proposal for Accepting Contributions in Excess of Fifty Dollars

Revolution Messaging proposes to accept contributions by text message in excess of \$50 per billing period and \$200 per election cycle or calendar year (as applicable) using the same structure of transactions and factoring arrangement approved in AO 2012-17, except as described below.

Revolution Messaging contracts with an aggregator, which, as noted in AO 2012-17, “link applications providers to wireless service providers’ networks,” AO 2012-17 at 2 n. 1, and has agreed to provide the approved factoring service. As an application provider, Revolution Messaging administers the mobile communications programs of various political committees. In this role, Revolution Messaging is responsible for collecting and maintaining wireless user data, including the name, address, employer and occupation of specific wireless number users. Indeed, as an application provider’s ability to effectively communicate depends on the quality of this information, ensuring the accuracy of this data is an integral component of Revolution Messaging’s services.

Revolution Messaging thus has the capability, through maintenance of the records that it possesses about (i) members of membership organizations that have connected federal PACs and (ii) supporters of non-connected federal PACs who have participated in a committee's mobile program, to gather all required affirmations and identify the actual contributor of all contributions in excess of \$50 per billing cycle or \$200 per election cycle or calendar year (as applicable). This process will be conducted independently of the wireless carriers. Revolution Messaging therefore has the capability to implement the same safeguards against illegal contributions approved in Advisory Opinion 2012-17 and ensure complete compliance with all recordkeeping and reporting requirements for contributions *exceeding* \$50 per billing cycle or \$200 per election cycle or calendar year as applicable.

Revolution Messaging thus submits that, as to the proposal below, the concerns addressed by the \$50 monthly cap that the Commission approved in Advisory Opinion 2012-17 would be obviated and the cap itself would become unnecessary for complying with the Act and Commission regulations.

Revolution Messaging engages various methods to collect and maintain wireless user data, including via a mobile-friendly webform completed by the wireless user when opting in to receive text messages. Therefore, as a result of Revolution Messaging's current work for and with its political committee clients, as a general rule, Revolution Messaging will already possess the information required under the reporting and recordkeeping requirements of 2 U.S.C. § 432(c) for text message contributors.

As explained in m-Qube I, due to restrictions imposed by wireless carriers (\$10 or \$20 per transaction limit), no wireless user's initial contribution will result in a contribution which may not be treated as an anonymous contribution. Prior to reaching either the \$50 per billing cycle cap or the \$200 aggregate cap, a wireless user must have made at least 2 previous text message contributions.

To obtain contributor information, Revolution Messaging will, at a minimum, request all contributors to submit their information on a webform. When a contribution is initiated by a wireless user who texts a unique keyword to a short code, Revolution Messaging will generate an affirmation statement containing the same information contained in the affirmation statement proposed by m-Qube in AQ 2012-17, Supplemental Information (June 6, 2012) at 4 (for example, "Reply YES to give \$20 to Shoemakers Federal PAC & certify ur 18+ & donating with own funds, not foreign national or Fed contractor. <http://rev.ms/terms> Msg&Data Rates May Apply). If the wireless user responds in the affirmative, the contribution will be appropriately processed by the wireless carrier, aggregator and application provider.

The application provider, here Revolution Messaging, will then send a confirmation text which will thank the contributor and request the contributor to provide the information required pursuant to recordkeeping and reporting requirements of the FECA and Commission regulations via text message conversation or by completing a webform. Specifically, Revolution Messaging proposes the following language for the confirmation texts which are limited to 160 characters:

Thanks for contributing! To make best efforts to comply with fed law we need more info. Visit <http://rev.ms/info> or reply OK.

or

Thnx for contributing! Fed law reqs best effort 2 get&report name, address, employer&occupation 4 political contributions. Visit <http://rev.ms/info> or reply OK.

Responses to a confirmation text will not subscribe the contributor to any list. Both the webform and the text message script will include the following attestation statements, very similar to those proposed by CTIA in 2010-23 (CTIA-II):

By checking this box, I confirm that the following statements are true and accurate:

1. Contributions made by text message from this wireless phone will be paid for with my personal, unreimbursed funds, and not those of another.
2. Contributions made by text message from this wireless phone will not be made by a corporation, labor organization, or other person paying my wireless bill.
3. I am not a Federal government contractor.
4. I am not a foreign national who lacks permanent resident status in the United States.
5. I am at least 18 years of age.

In addition, the webform and text message script will collect the contributor's name, address, employer and occupation and cellular telephone number. In addition, the webform or text message script will notify the contributor that the committee is required to collect this information in accordance with 11 C.F.R. § 104.7(b) and will contain any other necessary disclaimers. See e.g., 11 C.F.R. § 102.5(a)(2).

Revolution Messaging proposes to use data provided on this webform or by text message and its existing data to identify contributors. Revolution Messaging will allow contributors for which it has, at minimum, contributor name and address, to contribute in excess of \$50 per billing cycle and \$200 or more per election cycle or calendar year (as applicable). Revolution Messaging will then provide this information to its political committee customers.

Revolution Messaging will work exclusively with the aggregator to block all contributions in excess of \$50 per billing cycle of wireless carrier or of \$200 or more during an election cycle or calendar year (as appropriate) for which Revolution Messaging does *not* have contributor name and address. In response to an attempted contribution from a wireless number which has not completed the form or text messaging script as requested and for which Revolution Messaging does not possess the contributor name and address, Revolution Messaging will inform the wireless user, via text, that additional contributions are not permitted unless the contributor completes the webform or respond to the appropriate text message. Once the contributor completes the webform or text message script, Revolution Messaging will immediately enable that wireless user to make additional text message contributions. In addition, Revolution Messaging will work with the political committee to quickly combine contributor information obtained through text contributions to ensure that contributors, whose contributions aggregate in excess of \$200, whether by text messaging or other modes such as check or credit card, are properly disclosed on committee reports.¹

Of course, Revolution Messaging will block contributions in excess of \$2,500 per election and in excess of \$5,000 or \$10,000 per calendar year (as applicable).

The proposals comply with the recordkeeping and reporting requirements established by the Commission and the FECA by ensuring that contributions to individual federal committees will be properly accounted for, correctly attributed to the contributor, and, if the contributor is unknown, capped at \$50 per billing cycle and \$200 per election cycle or calendar year (as applicable), and if the contributor is known, capped at the applicable contribution limit. Advisory Opinion 2012-17 (m-Qube I) (distinguishing the permissible m-Qube proposal from the impermissible CTIA proposal due to “the attestations, the \$50 gap, and the factoring arrangement” offered by m-Qube).

IV. Proposal for Use of Shared Premium Short Codes

The specific proposal by m-Qube required each political committee client to agree to “operate one and only one short code exclusively for its contributions.” Advisory Opinion Request 2012-17 (m-Qube I). Advisory Opinion 2012-17 noted that m-Qube proposes to add special terms to contracts with political committees, such as “each political committee customer must receive contributions through a single short code per election, with m-Qube as the exclusive provider of services for that short code,”— in other words, that each political committee must obtain and use a *dedicated* premium short code. This requirement will make it impossible, as a practical matter, for the vast majority of federal political committees to avail themselves of text messaging to receive contributions, for two basic reasons.

¹ Revolution Messaging represents that there will be more than sufficient time to merge text message contributor information with other committee donor information to file accurate reports required by the Commission in a timely manner and to ensure that any donor does not make an excessive contribution to the committee. See 11 C.F.R. § 103.3(b).

First, obtaining a dedicated short code is extremely expensive. Short codes are leased for three month minimum periods, but commonly there is little use during the first three months until the code can be promoted. The typical lease cost is either \$500 (code picked at random) or \$1,000 (vanity) per month. In addition, the application provider (and thus its client) must pay an additional set-up fee to the carrier, of about \$2,000. Aggregators and application providers also charge an additional \$1,000 to \$2,000 for the work involved in applying for the short code, connecting it, programming it, testing keywords and getting the code registered. In all, obtaining a dedicated short code can cost up to \$10,000 or a minimum of \$6,000.

Second, obtaining a dedicated short code is time consuming. It typically takes anywhere from 8 to 12 weeks to apply for and obtain a dedicated short code. Campaigns that decide to utilize text messaging to solicit contributions will thus be unable to do so for a large part of the campaign cycle.

Thus, given the amount of contributions likely to be received through text messaging, it would simply not be remotely worth the cost for any political committee other than, perhaps, a major party presidential campaign or national party committee, to obtain a dedicated short code in order to avail themselves of the contribution by text messaging system approved in AO 2012-17.

Furthermore, the use of a unique short code does not play any significant role in ensuring that contributions are compliant, as the contribution process must consist of several steps that are based on keyword and short code to provide the necessary safeguards. In other words, as described below, in order for a contribution to be processed, it must use both a keyword and short code combination and have a reply to an exact keyword as the only way possible to make a contribution. This contribution process includes additional steps based on the keyword messaging attached to the short code including 1) the use of a keyword to identify the unique client that the contribution is to be attributed to and the amount of the donation; 2) a message out to the contributor seeking confirmation that they are eligible to make the contribution, verifying that funds will be charged to their phone bill and requesting that they visit a webform to provide additional information or to provide the information through a text message script; and 3) a reply message from the contributor confirming their eligibility and that they acknowledge the contribution will come from their phone bill. A transaction cannot occur and no funds will ever be drawn without this full keyword to short code process and confirmation. Additionally, the end user's response to a short code message in which they provide the initial keyword will be time and date stamped for auditing purposes.

For this reason, Revolution Messaging proposes to offer a service that would allow multiple federal political committees to share one premium short code for purposes of processing contribution transactions. It is common practice for content providers and aggregators to offer this sharing arrangement to other similar entities, such as non-profit organizations. However, under this proposal, no entities *other* than federal political committees would be allowed to share the one premium short code. In addition, Revolution Messaging will notify all federal committees that the premium short code is being shared with other federal committees.²

It is not necessary for each political committee to use its own dedicated short code in order to ensure that, as required by AO 2012-17, trailing payments are associated with a particular political committee or to ensure that contributions are segregated from corporate treasury funds. (AO 2012-17 at 5).

To ensure that contributions can be associated with a single political committee, when a shared short code is utilized, Revolution Messaging will assign each committee sharing a short code one or more unique keywords. Keywords may be associated with specific contribution amounts *and* specific individual committees sharing a short code. For instance, a wireless user may text GIVESHOE to 675309 to contribute \$10 to the Shoemakers' Union federal PAC and DONATEWHALES to 675309 to contribute \$20 to the Save the Whales federal PAC. CTIA references this ability to link short codes to particular committees in their most recent Advisory Opinion Request, AOR 2012-28 at 3 ("the [mobile-originated] text message include[s] a keyword that is linked to a specific text message campaign").

It should be noted that an essential element of this proposal-- and a key element that makes it affordable and practical for federal campaigns and committees-- is that the outgoing message from a federal political committee to a supporter or member may be transmitted *from* either a dedicated or shared *standard* short code. That message would then ask the wireless user to "Text DONATE to 675309 to give \$20 to the Shoemakers Federal PAC," where 675309 is the shared premium short code.

An affirmation statement, such as the one proposed by m-Qube in AO 2012-17 Supplemental Information (June 4, 2012) at 4, containing the amount of the contribution and the name of the recipient committee will be immediately generated by Revolution Messaging based on the unique keyword. If the contributor confirms the recipient information, a charge will be added to the contributor's wireless bill. Revolution Messaging and the aggregator receive this information in real-time and will immediately assign this transaction to an individual political committee's account based on the unique keyword. This funds-sorting mechanism, which the aggregator and Revolution Messaging regularly employ with all of their customers' funds, will ensure that political contributions are properly accounted for and that neither the aggregator's nor Revolution Messaging's treasury funds will be inadvertently transmitted to political committees.

² Revolution Messaging expects to sign an exclusive contract with political committees so that it is the only provider of text messaging fundraising services to the committee. Therefore, during any period where a committee engages in fundraising via Revolution Messaging's services, it will not be permitted to contract with any other provider, including any aggregator or wireless service provider for such services. Therefore, the committee would not, as a practical matter, have access to any premium short code other than the one being utilized by Revolution Messaging.

Anthony Herman, Esq.
August 6, 2012
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Further, the trailing payments made by the aggregator will be determined based on the outcome of individual transactions associated with a unique keyword on a shared short code and not the short code itself. In essence, a unique keyword also ensures compliance with the segregation and recordkeeping requirements.

With this compliance information, and unique keywords, Revolution Messaging will also be able to block a phone number from making contributions in excess of the appropriate limits to a specific committee, even if that committee shares a premium short code.

Limiting each shared short code to be shared only by federal political committees ensures that contributions will be segregated from corporate treasury funds, to the exact same extent as in the proposal approved in AO 2012-17.

For these reasons, Revolution Messaging requests confirmation that use of a shared premium short code for receiving contributions by multiple federal political committees will comply with the Act and the Commission's rules.

For the reasons set forth above, the Commission should conclude that the proposals provided by Revolution Messaging comply with the Act and the Commission's rules and issue an advisory opinion approving these proposals.

Sincerely yours,



Joseph E. Sandler
Neil P. Reiff
Elizabeth L. Howard

Attorneys for Revolution Messaging, LLC.



RE: Advisory Opinion Request

Neil P. Reiff

to:

TLutz@fec.gov

08/07/2012 05:37 PM

Cc:

"kdeeley@fec.gov", "ARothstein@fec.gov"

Hide Details

From: "Neil P. Reiff" <reiff@sandlerreiff.com>

To: "TLutz@fec.gov" <TLutz@fec.gov>,

Cc: "kdeeley@fec.gov" <kdeeley@fec.gov>, "ARothstein@fec.gov"

<ARothstein@fec.gov>

Your understanding of our questions is correct.

Neil P. Reiff

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From: TLutz@fec.gov [<mailto:TLutz@fec.gov>]

Sent: Tuesday, August 07, 2012 5:28 PM

To: Neil P. Reiff

Cc: kdeeley@fec.gov; ARothstein@fec.gov

Subject: Advisory Opinion Request

Dear Mr. Reiff –

In our recent telephone conversation, you provided additional information regarding your August 6, 2012, letter on behalf of Revolution Messaging, LLC. We have set out below our understanding of the information provided during the conversation. Please either confirm the accuracy of this statement or correct any misperceptions.

Revolution Messaging requests an advisory opinion from the Federal Election Commission as to two questions:

1. Does the proposal to enable the processing of contributions by text message to a political committee in

excess of \$50 per billing cycle and \$200 per calendar year or election cycle, as applicable, comply with the recordkeeping and reporting provisions of the Act and Commission regulations?

2. Does the proposal to use a shared premium short code by multiple Federal political committees to process contributions by text message comply with the Act and Commission regulations?

Please respond by email. Your response may be treated as a supplement to your letter requesting an advisory opinion; as such, it may be placed on the public record.

Thank you for your cooperation.