

## **PUBLIC COMMENTS ON DRAFT ADVISORY OPINIONS**

Members of the public may submit written comments on draft advisory opinions.

DRAFT ADVISORY OPINION 2012-28 is now available for comment. It was requested by Jan Witold Baran, Esq., and Caleb P. Burns, Esq., on behalf of CTIA—The Wireless Association, and is scheduled to be voted by the Commission on August 13, 2012.

If you wish to comment on DRAFT ADVISORY OPINION 2012-28, please note the following requirements:

- 1) Comments must be in writing, and they must be both legible and complete.
- 2) Comments must be submitted to the Office of the Commission Secretary by hand delivery or fax ((202) 208-3333), with a duplicate copy submitted to the Office of General Counsel by hand delivery or fax ((202) 219-3923).
- 3) Comments must be received by 10 a.m. (Eastern Time) on August 13, 2012.
- 4) The Commission will generally not accept comments received after the deadline. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case-by-case basis in special circumstances.
- 5) All timely received comments will be made available to the public at the Commission's Public Records Office and will be posted on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

**FOR FURTHER INFORMATION**

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(202) 694-1650

#### **Other inquiries:**

To obtain copies of documents related to Advisory Opinion 2012-28, contact the Public Records Office at (202) 694-1120 or (800) 424-9530, or visit the Commission's website at <http://saos.nictusa.com/saos/searchao>.

## **ADDRESSES**

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August 10, 2012

**MEMORANDUM**

TO: The Commission

FROM: Anthony Herman *AH by RCB*  
General Counsel

Kevin Deeley *RK*  
Acting Associate General Counsel

Amy Rothstein *AK*  
Assistant General Counsel

Theodore Lutz *AK for TZ*  
Attorney

Subject: Draft AO 2012-28 (CTIA—The Wireless Association)

Attached is a proposed draft of the subject advisory opinion. We have been asked to make this draft public prior to an August 13, 2012 Commission vote.

Attachment

1 ADVISORY OPINION 2012-28  
2

3 Jan Witold Baran, Esq.  
4 Caleb P. Burns, Esq.  
5 Wiley Rein LLP  
6 1776 K Street NW  
7 Washington, DC 20006  
8

DRAFT

9 Dear Messrs. Baran and Burns:

10  
11 We are responding to your advisory opinion request on behalf of CTIA – The Wireless  
12 Association (“CTIA”) and its member wireless service providers, concerning the application of  
13 the Federal Election Campaign Act (the “Act”) and Commission regulations to the proposal to  
14 process contributions by text message. The Commission concludes that the proposal is  
15 consistent with the Act and Commission regulations.

16 ***Background***

17 The facts presented in this advisory opinion are based on your letter received on July 3,  
18 2012 and the supplement that you provided on July 26, 2012. Certain facts have also been  
19 incorporated from Advisory Opinion 2012-17 (Red Blue T LLC, ArmourMedia, Inc., and m-  
20 Qube, Inc.) (“m-Qube I”), Advisory Opinion 2012-26 (Cooper for Congress, ArmourMedia, Inc.,  
21 and m-Qube, Inc.) (“m-Qube II”), and Advisory Opinion 2010-23 (CTIA – The Wireless  
22 Association) (“CTIA I”).

23 CTIA is an incorporated nonprofit trade association that represents the wireless  
24 communications industry. Members of CTIA include wireless service providers and their  
25 suppliers, as well as providers and manufacturers of wireless data services and products.

1        CTIA, through its Common Short Code Administration (the “Code Administration”),  
2    manages and oversees the technical and operational aspects of common short codes.<sup>1</sup> The Code  
3    Administration leases short codes, administers their registration, and maintains a public database  
4    of short codes, available at [www.USShortCodes.com](http://www.USShortCodes.com).

5        The Code Administration also works with wireless service providers, connection  
6    aggregators, application providers, and content providers to enable use of short codes. Wireless  
7    service providers are the companies from which customers purchase their mobile phone service.  
8    Content providers are organizations that use short codes to disseminate content to, or collect  
9    information or funds from, mobile phone users. Application providers convert text messages  
10   received through the code into data that can be interpreted and used by content providers.  
11   Connection aggregators link content providers, service providers, application providers, and  
12   users together.

13        Current and Proposed Practices

14        CTIA and the wireless service providers intend to follow their normal and usual  
15   commercial practices for issuing and administering short codes for use by political committees  
16   and for processing political contributions.<sup>2</sup> To lease a short code, a prospective code holder must  
17   first establish an account at [www.USShortCodes.com](http://www.USShortCodes.com) and apply for a short code. Account  
18   holders are often connection aggregators and application providers who lease short codes on  
19   behalf of their content provider clients. The application for a short code must include several  
20   pieces of information, such as the identities of the content provider, connection aggregator, and

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<sup>1</sup> A common short code is a five- or six-digit number to which wireless users can send text messages to access mobile content.

<sup>2</sup> CTIA incorporates by reference the facts of Advisory Opinion 2010-23 (CTIA – The Wireless Association) and Advisory Opinion 2012-17 (m-Qube). CTIA and the wireless service providers are examining how they may permit contributions by text message consistent with their current business practices and those advisory opinions.

1 service provider conducting the campaign; a description of the campaign, such as whether it is  
2 charitable or political; estimated message volumes; and samples of marketing materials.

3 The Code Administration reviews each application to make sure it includes all necessary  
4 information and confirms the identity of the content provider. The Code Administration does  
5 not, however, organize or process a content provider's identity as an individual, corporation, or  
6 other type of organization or entity, or by the content provider's nationality (U.S. or foreign).

7 Nor does the Code Administration have a way to determine whether an applicant for a short code  
8 will use a factoring arrangement.<sup>3</sup> CTIA does not monitor whether content providers register  
9 multiple short codes.

10 Once the Code Administration issues a short code, the short code is included in a text  
11 message campaign proposal that is submitted to wireless service providers for their review and  
12 approval. This process is known as "provisioning."<sup>4</sup> Wireless service providers determine  
13 whether to accept a text message proposal by measuring it against their own established business  
14 requirements, and they propose to establish objective business criteria that are specific to  
15 political contribution text messaging campaigns. The wireless service providers may decide, due  
16 to commercial considerations, to accept only those proposals by political committees with the  
17 potential for a large volume of transactions, such as presidential campaigns and political  
18 committees that can "demonstrate significant fundraising ability (e.g., candidates with approval  
19 ratings over a certain threshold or with a strong record of past fundraising)." Alternatively, the

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<sup>3</sup> The Commission approved the use of factoring arrangements for contributions by text message in Advisory Opinion 2012-17 (m-Qube). "Factoring" is a financial transaction in which an entity (such as a political committee) sells its accounts receivable to a third party (such as a connection aggregator) at a discount in exchange for receiving a percentage (or "factor") of its outpayment on an expedited basis. More information on factoring appears in Advisory Opinion 2012-17 (m-Qube).

<sup>4</sup> Similar to the process for leasing short codes, application providers and connection aggregators, rather than content providers, take the lead in monitoring a proposal's progress during provisioning.

1 wireless service providers may decide that it would not be in their “commercial” interest to  
2 participate in the political fundraising process and “refuse participation by all political  
3 committees.”

4 If a wireless service provider approves a proposed text messaging campaign, the wireless  
5 service provider and the connection aggregator serving the content provider enter into a contract  
6 that governs that text message campaign’s rates and terms.<sup>5</sup> Although the rates and terms in  
7 these agreements are confidential, the wireless service providers plan to charge political  
8 committees their normal and usual commercial rate. These rates are determined by commercial  
9 factors, including, among other things, the dollar amounts of the transactions and the number of  
10 transactions made. Wireless service providers also incorporate into their agreements with  
11 connection aggregators industry standards for consumer best practices and each wireless service  
12 provider’s own consumer protection standards. CTIA and wireless service providers monitor  
13 compliance with these contracts throughout the course of a text message campaign. CTIA and  
14 wireless service providers intend to use these same standards and requirements in connection  
15 with text message campaigns used to process political contributions and not to deviate from  
16 those standards.<sup>6</sup>

17 In a typical “mobile-originated” short code transaction, a wireless user who wishes to  
18 initiate a transaction texts a predetermined word or phrase to a short code. For example, in the

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<sup>5</sup> A connection aggregator typically enters into a single contract with each service provider that governs many or all of the text message campaigns that the aggregator services.

<sup>6</sup> CTIA monitors text message campaigns’ compliance with the industry’s consumer best practice standards. It reviews advertising materials used by content providers to promote their campaigns and also signs up for text messaging campaigns to review the text messages themselves. If it discovers that a campaign has failed to comply with these standards, CTIA issues a “Program Violation Notice” to the connection aggregator and content provider. If unresolved, CTIA may freeze the campaign’s account. Wireless service providers also monitor compliance with industry standards and their own contracts.

1 aftermath of the 2010 earthquake in Haiti, individuals pledged \$10 donations to the Red Cross by  
2 texting “HAITI” to code “90999.” The connection aggregator sends a reply text message to the  
3 wireless user, requesting confirmation that the user wishes to engage in the transaction. Once a  
4 user has confirmed his or her intent to conduct the transaction, the user has completed the “opt-  
5 in” process, and the user’s wireless service provider will place a charge on the next bill  
6 associated with that user’s phone number.

7 Some of CTIA’s member wireless service providers plan to enter into agreements with  
8 connection aggregators that plan to operate consistent with the plan of m-Qube set forth in  
9 Advisory Opinion 2012-17. Because wireless service providers propose to use only their  
10 customary business practices, they cannot guarantee that users will contribute only \$50 or less  
11 per month to a single political committee or otherwise account for mobile phone numbers that  
12 have incurred \$200 in charges to a political committee in a calendar year. Moreover, although  
13 wireless service providers maintain records of their subscribers’ names, addresses, and the phone  
14 numbers of the wireless users associated with each account, they do not organize or process  
15 subscriber information based on a subscriber’s status as an individual, corporation, or other type  
16 of organization or entity, or by the subscriber’s nationality. Wireless service providers do not  
17 propose to alter these business practices when processing contributions made by text message  
18 because, they assert, doing so would not be practicable or workable.

19 Wireless service providers typically forward payments to connection aggregators about  
20 seven to ten days after receiving payments from subscribers. Connection aggregators  
21 accumulate all funds designated for a specific recipient from all wireless service providers over a  
22 30-day period before forwarding the collected funds to the content providers. Wireless service  
23 providers and connection aggregators deduct fees from these payments; thus, the amount

1 ultimately received by content providers is smaller than the amount paid by the wireless  
2 subscriber.

3 In general, wireless service providers and connection aggregators reconcile their accounts  
4 with each other every 30 days. Each financial transaction is associated with the mobile phone  
5 number that completed the opt-in resulting in the charge. During the reconciliation process,  
6 wireless service providers deduct fees owed to them by connection aggregators and any refunds  
7 that the wireless service providers may have made to their subscribers.<sup>7</sup> A wireless service  
8 provider may also delay or suspend a disbursement to a connection aggregator for commercial  
9 reasons provided for in its contract with the connection aggregator. Once a wireless service  
10 provider disburses funds, the connection aggregator will have access to information detailing the  
11 amounts associated with the reconciliation of each financial transaction and the accompanying  
12 mobile phone number.

13 ***Questions Presented***

- 14 1. *Who is responsible for determining the eligibility of a contributor?*
- 15 2. *Who is responsible for ensuring compliance with (1) the \$50 monthly limit on*  
16 *contributions; (2) the recordkeeping obligations for contributions in excess \$200; (3) the*  
17 *limitation of one short code per campaign?*
- 18 3. *Would deviations from normal business practices constitute "in-kind" political*  
19 *contributions?*
- 20 4. *May wireless service providers establish criteria for determining eligibility for these*  
21 *campaigns or are wireless service providers obligated to make these programs available*  
22 *to every political candidate and/or committee?*
- 23 5. *Does anything in Advisory Opinion 2012-17 (m-Qube) require changes in the way*  
24 *wireless service providers process payments to connection aggregators?*

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<sup>7</sup> Wireless service providers typically maintain "liberal repudiation policies" and may refund payments "as business reasons warrant (e.g., claim that a payment was not properly authorized by the wireless subscriber)." Advisory Opinion 2012-17 (m-Qube).

1    ***Legal Analysis and Conclusions***

- 2    1. *Who is responsible for determining the eligibility of a contributor?*
- 3
- 4    2. *Who is responsible for ensuring compliance with (1) the \$50 monthly limit on*
- 5    *contributions; (2) the recordkeeping obligations for contributions in excess of \$200;*
- 6    *(3) the limitation of one short code per campaign?*

7

8       CTIA and the wireless service providers are not responsible for determining the

9       eligibility of a contributor or for ensuring compliance with (1) the \$50 monthly limit on

10      contributions; (2) the recordkeeping obligations for contributions in excess of \$200; or (3) the

11      limitation of one short code per campaign. Such responsibilities rest with political committees.

12       The Act and Commission regulations impose certain requirements on treasurers of

13      political committees. A treasurer of a political committee “must keep an account of (1) all

14      contributions received by or on behalf of such political committee; (2) the name and address of

15      any person who makes any contribution in excess of \$50, together with the date and amount of

16      such contribution by any person; [and] (3) the identification of any person who makes a

17      contribution or contributions aggregating more than \$200 during a calendar year, together with

18      the date and amount of any such contribution.” 2 U.S.C. 432(c)(1)-(3); see also 11 CFR

19      110.4(c). Commission regulations also state that “[t]he treasurer shall be responsible for

20      examining all contributions received for evidence of illegality and for ascertaining whether

21      contributions received, when aggregated with other contributions from the same contributor,

22      exceed the [Act’s] contribution limitations.” 11 CFR 103.3(b). The Act and Commission

23      regulations impose comparatively fewer obligations on persons who receive and forward

24      political contributions than on political committees. Compare 2 U.S.C. 432(b) (requiring

25      persons who receive contributions for political committees to forward the contributions and

26      certain information to the political committees’ treasurers within either ten or 30 days) with 2

1 U.S.C. 432(c) (recordkeeping requirements) *and* 2 U.S.C. 433 (filing requirements) *and* 2 U.S.C.  
2 434(a)-(b) (reporting requirements).

3 The connection aggregator in Advisory Opinion 2012-17 (m-Qube) planned to (1) limit  
4 contributions to the political committee from any mobile phone number to \$50 per month, (2)  
5 provide each political committee with access to information that would permit it to identify  
6 phone numbers associated with contributions aggregating \$200 or more, and (3) require the  
7 political committee to agree to receive contributions through a single short code per election  
8 cycle.

9 CTIA and the wireless service providers do not propose to monitor the activity of  
10 connection aggregators to ensure that such activity conforms to Advisory Opinion 2012-17 (m-  
11 Qube). Instead, CTIA proposes to issue short codes for use by political committees just as it  
12 assigns short codes for use in comparable commercial text message campaigns. The wireless  
13 service providers also propose to use their normal and usual commercial practices when  
14 processing political contributions by text message. These practices do not include organizing or  
15 processing subscriber information based on a subscriber's status as an individual, corporation, or  
16 other type of organization or entity, or by the subscriber's nationality. Nor do they enable  
17 wireless service providers to guarantee that mobile phone users will not contribute to a particular  
18 committee more than \$50 per month or \$200 or more in a calendar year or election cycle.

19 The Commission has considered similar plans in prior advisory opinions. Advisory  
20 Opinion 1978-68 (Seith for Senate Committee), for example, was the first advisory opinion in  
21 which the Commission concluded that contributions by credit card are permissible under the

1     Act.<sup>8</sup> The Commission predicated its conclusion on two explicit assumptions: first, that the  
2     credit card issuers “will follow their usual and normal collection procedures with respect to  
3     obtaining payment from persons who used their credit cards to make political contributions”; and  
4     second, that the credit card issuers would render their services “in the ordinary course of business  
5     and receiv[e] the usual and normal charge for their services.” Advisory Opinion 1978-68 (Seith  
6     for Senate Committee).

7                 More recently, in Advisory Opinion 2009-32 (Jorgensen), the Commission concluded  
8     that a vendor could provide emails to political committees to use in fundraising without making a  
9     contribution, so long as the vendor performed the service at a commercially reasonable rate.  
10                Although the vendor provided the political committees with the means to raise contributions, the  
11     vendor was not responsible for ensuring that the political committee complied with the Act and  
12     Commission regulations when doing so. The Commission stated that the “*political committee*  
13     *will bear the burden* of ensuring that solicitation emails are not sent to prohibited sources, such  
14     as foreign nationals, corporations, labor organizations, or federal contractors, and that all  
15     required disclaimers are included in the text of the emails.” Advisory Opinion 2009-32  
16     (Jorgensen) (emphasis added). Even when the vendor collected contributions on behalf of the  
17     political committee, the Commission concluded that “the political committee, *not the vendor*, is  
18     responsible for determining the legality of contributions, as well as determining whether  
19     contributions, when aggregated with other contributions from the same contributors, exceed the  
20     contribution limit.” *Id.*

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<sup>8</sup> The processing of contributions by text message for political committees is “similar to how credit card contributions are handled.” Advisory Opinion 2012-17 (m-Qube).

1       The Commission stated in Advisory Opinion 2010-23 (CTIA I) that wireless service  
2 providers had certain responsibilities for ensuring the permissibility of contributions made by  
3 text message, such as the responsibility to forward to a recipient political committee the  
4 information required by 2 U.S.C. 432(b) and (c) to ensure that the political committee could meet  
5 its obligations under the Act and Commission regulations if evidence in the wireless subscriber's  
6 monthly bill contradicted the user's certification of eligibility to make contributions. The  
7 Commission determines here that these requirements do not apply when contributions by text  
8 message are processed by a connection aggregator pursuant to the terms of Advisory Opinion  
9 2012-17 (m-Qube I). *See also* Advisory Opinion 2012-26 (m-Qube II) ("As between m-Qube [a  
10 connection aggregator], the [wireless] carriers, and the Committee [an authorized committee  
11 receiving contributions via text message under contract with m-Qube], the Committee is solely  
12 responsible for determining the eligibility of its contributors.").

13       In sum, CTIA and the wireless service providers provide political committees with the  
14 means to raise contributions by text messaging, but it is political committee that are solely  
15 responsible for ensuring that the contributions are lawful under the Act and Commission  
16 regulations. CTIA and the wireless service providers are therefore not responsible for  
17 determining the eligibility of a contributor or for ensuring compliance with (1) the \$50 monthly  
18 limit on contributions; (2) the recordkeeping obligations for contributions in excess of \$200; and  
19 (3) the limitation of one short code per campaign.

20

1

2       3. *Would deviations from normal business practices constitute “in-kind” political  
3 contributions?*

4

5           Yes, deviations from normal business practices could constitute “in-kind” contributions,  
6 where CTIA and the wireless service providers provide such a discount to a political committee  
7 as a result of preferential treatment outside of a business relationship; CTIA and the wireless  
8 service providers’ proposal, however, would not result in their making an in-kind contribution.

9           The Act and Commission regulations prohibit corporations from making a contribution in  
10 connection with a Federal election. *See* 2 U.S.C. 441b(a); 11 CFR 114.2(b)(1). A contribution  
11 includes “any gift, subscription, loan, advance, or deposit of money or anything of value made  
12 by any person for the purpose of influencing any election for Federal office.” 2 U.S.C.  
13 431(8)(A)(i); 11 CFR 100.52(a); *see also* 2 U.S.C. 441b(b)(2); 11 CFR 114.2(b)(1). “Anything  
14 of value includes all in-kind contributions,” including the provision of goods or services without  
15 charge or at a charge that is less than the usual and normal charge. *See* 11 CFR 100.52(d)(1).

16           “Usual and normal charge” is defined as the price of goods in the market from which they  
17 ordinarily would have been purchased at the time of the contribution, or the commercially  
18 reasonable rate prevailing at the time the services were rendered. *See* 11 CFR 100.52(d)(2).

19           Each wireless service provider determines the rate it will charge to process payments  
20 made in text messaging campaigns based on its own usual and normal commercial criteria.  
21 These factors can include, for example, the dollar amounts of the transactions and the number of  
22 transactions made. Wireless service providers intend to charge their normal and usual  
23 commercial rates when processing political contributions by text message and not to deviate  
24 from those rates.

1       Wireless service providers also incorporate in their agreements with connection  
2 aggregators the industry standards for consumer best practices and other consumer protection  
3 requirements. CTIA monitors compliance with these standards. CTIA and the wireless service  
4 providers intend to enforce the same standards and requirements against text message campaigns  
5 used to process political contributions and not to deviate from those standards.

6       The Commission concludes that the requestors' proposal to charge their usual and normal  
7 commercial rates for processing contributions by text message would not result in the provision  
8 of services at less than the usual and normal charge or the provision of a "gift . . . of . . . anything  
9 of value" to political committees that receive contributions by text message. The Commission  
10 reaches the same conclusion with respect to the requestors' proposal to apply and enforce the  
11 same standards and requirements against political committees that they apply and enforce against  
12 other commercial campaigns.

13       A change in business practices or rates would not necessarily result in an in-kind  
14 contribution. A political committee's "purchase of goods or services at a discount does not result  
15 in a contribution if the discounted or complimentary goods were available to others on equal  
16 terms or as part of a pre-existing business relationship." Advisory Opinion 1994-10 (Franklin  
17 National Bank); *see also* Advisory Opinion 2006-01 (Pac for a Change) (approving a bulk  
18 purchase of books at a discount because "the items [were] made available in the ordinary course  
19 of business and on the same terms and conditions offered to the vendor's other customers that are  
20 not political committees"). A corporation may not, however, provide a discount to a political  
21 committee "where a political committee [is] accorded preferential treatment different from other  
22 customers, or the treatment [is] outside of a business relationship." Advisory Opinion 1994-10  
23 (Franklin National Bank); *see also* Advisory Opinion 1991-23 (Retail Druggists) (corporation

1 may not provide a car for a political committee to use as a raffle prize because doing so would  
2 violate 2 U.S.C. 441b).

3       4. *May wireless service providers establish criteria for determining eligibility for these*  
4 *campaigns or are wireless service providers obligated to make these programs available*  
5 *to every political candidate and/or committee?*

6  
7       The eligibility criteria proposed by the wireless service providers are consistent with the  
8 Act and Commission regulations.

9       Wireless service providers propose “to establish objective business criteria that are  
10 specific to political contribution text messaging campaigns.” They may decide, for commercial  
11 reasons, to accept only proposals from political committees with the potential for a large volume  
12 of transactions, such as presidential campaigns and political committees that can “demonstrate  
13 significant fundraising ability (e.g., candidates with approval ratings over a certain threshold or  
14 with a strong record of past fundraising).”<sup>9</sup>

15       A vendor may establish and apply eligibility criteria to political committees in order to  
16 protect the commercial viability of the vendor’s program. In Advisory Opinion 2006-34  
17 (Working Assets, Inc.), the Commission approved an affinity program that a corporate vendor  
18 proposed to make available to any political party committee and nonconnected committee that  
19 asked to participate, “without regard to party affiliation or ideological orientation, ‘but subject to  
20 each particular program’s commercial viability, determined by common commercial principles,’  
21 including, for example, size of membership and hence number of potential customers, potential  
22 for long-term customer commitment, strength of trademark, and credit rating of membership.”  
23 Further, in finding the program to be commercially reasonable, the Commission “assume[d] that  
24 *the commercial viability of the vendor’s relationship with each political committee would stand*

1     *or fall on its own,*" and thus that the vendor "would not depend on profitability from its  
2     relationship with other [non-political committee] clients to sustain the arrangement with a  
3     particular [political] committee sponsor." *Id.* (emphasis added).

4                 Similarly, just as in Advisory Opinion 2006-34 (Working Assets, Inc.), where Working  
5     Assets proposed to develop eligibility criteria based upon "common commercial principles,"  
6     CTIA and the wireless service providers also propose to develop eligibility criteria based upon  
7     commercial considerations, such as projected volume of transactions or demonstrated approval  
8     ratings. Accordingly, the wireless service providers may establish the proposed eligibility  
9     criteria.

10                 5. *Does anything in Advisory Opinion 2012-17 (m-Qube) require changes in the way  
11     wireless service providers process payments to connection aggregators?*

12                 No, nothing in Advisory Opinion 2012-17 (m-Qube) requires changes in the way that  
13     wireless service providers process payments to connection aggregators.

14                 In their ordinary course of business, wireless service providers typically issue refunds to  
15     wireless service subscribers if business reasons warrant (such as if the subscriber disputes a  
16     charge on a bill), and these refunds may reduce the service providers' payments to connection  
17     aggregators. Wireless service providers may also terminate, delay or suspend payments to  
18     enforce their agreements with connection aggregators.

19                 In Advisory Opinion 2012-17 (m-Qube), the Commission acknowledged that wireless  
20     service providers have "liberal repudiation policies" for text message charges disputed by their  
21     subscribers, and could "adjust" (reduce) their payments to aggregators after the aggregators have  
22     made factored payments to political committees. The Commission nonetheless approved

1 m-Qube's proposal to make factored payments to a political committee, because of the  
2 safeguards against corporate contributions that m-Qube had built into its business model. *Id.*  
3 The Commission sees no reason to reconsider that determination here. Thus, nothing in  
4 Advisory Opinion 2012-17 (m-Qube) requires wireless service providers to change the way that  
5 they process payments to connection aggregators including when aggregators employ factoring  
6 arrangements with participating political committees. *See also* Advisory Opinion 1978-68 (Seith  
7 for Senate Committee).

8 This response constitutes an advisory opinion concerning the application of the Act and  
9 Commission regulations to the specific transaction or activity set forth in your request. *See*  
10 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or  
11 assumptions presented, and such facts or assumptions are material to a conclusion presented in  
12 this advisory opinion, then the requestors may not rely on that conclusion as support for its  
13 proposed activity. Any person involved in any specific transaction or activity which is  
14 indistinguishable in all its material aspects from the transaction or activity with respect to which  
15 this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B).  
16 Please note that the analysis or conclusions in this advisory opinion may be affected by  
17 subsequent developments in the law, including, but not limited to, statutes, regulations, advisory  
18

1   opinions, and case law. The cited advisory opinions are available on the Commission's website,  
2   www.fec.gov, or directly from the Commission's Advisory Opinion searchable database at  
3   <http://www.fec.gov/searchao>.

4

**On behalf of the Commission,**

**Caroline C. Hunter  
Chair**

10  
11