



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 4, 2012

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2012-30

Joseph E. Sandler, Esq.
Neil P. Reiff, Esq.
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1025 Vermont Avenue, NW
Washington, DC 20005

Dear Mr. Sandler, Mr. Reiff, and Ms. Howard:

We are responding to your advisory opinion request on behalf of Revolution Messaging, LLC (“Revolution Messaging”), concerning the application of the Federal Election Campaign Act (the “Act”) and Commission regulations to your proposal to process contributions by text message. The requestor asks whether its proposal (1) 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, and (2) to enable political committees to share a premium short code to process contributions by text message, complies with the Act and Commission regulations. The Commission concludes the proposal complies with the Act and Commission regulations.

Background

The facts presented in this advisory opinion are based on your letter received on August 6, 2012 and your email received on August 7, 2012. Certain facts have also been incorporated from Advisory Opinion 2010-23 (CTIA – The Wireless Association) (“CTIA I”) and Advisory Opinion 2012-17 (Red Blue T LLC, ArmourMedia, Inc., and m-Qube, Inc.) (“m-Qube I”).

Revolution Messaging is a limited liability company organized under District of Columbia law that has elected to be treated as a partnership for income tax purposes. It is a full-service digital technology and strategy company that specializes in providing 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 through a proprietary web-based platform that allows them to obtain common short codes and customized keyword associations;¹ send customized messages to wireless users; and maintain, analyze, and manage data provided by wireless users and data relating to actions taken by wireless users in the course of text messaging programs. Revolution Messaging also advises its clients in creating websites, mobile applications, and outgoing text messages.

As an application provider of text messaging services, Revolution Messaging administers the mobile communications programs of various political committees.² In this role, Revolution Messaging is responsible for collecting and maintaining wireless user data, including the name, address, employer and occupation of specific wireless users. Revolution Messaging gathers this information through maintenance of the records that it processes regarding members of membership organizations with connected Federal political committees and supporters of nonconnected Federal political committees who have participated in the political committees' mobile programs. It uses other various methods to collect and maintain wireless user data, including a mobile-friendly webform completed by the wireless user when opting in to receive text messages. Ensuring the accuracy of this data is an integral component of Revolution Messaging's services.

Contributions Aggregating More Than \$50 Per Billing Cycle or \$200 Per Calendar Year or Election Cycle

Revolution Messaging proposes to process contributions by text message that aggregate in excess of \$50 per month and \$200 per calendar year (or, in the case of contributions to authorized committees of candidates, \$200 per election cycle) for its political committee clients. Each political committee that receives contributions under the proposal will contract exclusively with Revolution Messaging, and Revolution Messaging will contract with a connection aggregator that has agreed to provide the factoring service approved by the Commission in Advisory Opinion 2012-17 (m-Qube I).

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, which Revolution Messaging describes as "containing the same information contained in the affirmation statement

¹ A common short code is the five- or six-digit number to which a wireless user can send text messages to access mobile content, and a keyword is a word associated with a specific contribution amount and/or a specific recipient. For example, in the aftermath of the earthquake in Haiti, individuals pledged \$10 donations to the Red Cross by texting the keyword "HAITI" to the short code "90999."

² Application providers such as Revolution Messaging convert text messages received through common short codes into data that can be interpreted and used by content providers. Other commercial entities typically involved in text message transactions include The Common Short Code Administration, a component of CTIA –The Wireless Association, which oversees the technical and operational aspects of common short codes and leases common short codes to content providers; content providers, which are entities, such as vendors, charitable organizations, and political committees, that use common short codes to disseminate content to, or collect information or funds from, wireless users; wireless service providers, which are the companies from which subscribers purchase their mobile phone service; and connection aggregators, which link content providers, service providers, application providers, and users together.

proposed by m-Qube in AO 2012-17, Supplemental Information (June 6, 2012) at 4.” Revolution Messaging provides the following example of an affirmation statement: “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, then the contribution will be processed by the wireless carrier, connection aggregator, and application provider.

As the application provider, Revolution Messaging will send a confirmation text thanking and asking the contributor to provide the information required pursuant to the recordkeeping and reporting requirements of the Act and Commission regulations via a series of text messages or by completing a form on the website of Revolution Messaging.³ The text message script and webform will include attestation statements similar to those proposed in Advisory Opinion 2010-23 (CTIA-I);⁴ collect the contributor's name, address, employer name, occupation, and cellular telephone number; notify the contributor that the political committee recipient is required to use best efforts to collect the first four of these items of information in accordance with 11 CFR 104.7(b); and contain any necessary disclaimers. Revolution Messaging states that, as a general rule, it will already have the information required by the reporting and recordkeeping requirements of 2 U.S.C. 432(c) for text message contributors because of its ongoing work for and with political committee clients. Due to the \$10 and \$20 per transaction limitations imposed by wireless service providers (*see* Advisory Opinion 2012-17 (m-Qube I)), a wireless user's initial contribution will not be permitted to exceed the threshold above which identifying information must be collected and, given this initial limitation, will be allowed to proceed even if the user does not provide the requested identifying information.

Revolution Messaging will use the information provided on the webform or by text message and the information that it already has to identify wireless users. Revolution Messaging will allow users for whom it has, at a minimum, a name and address to make aggregate contributions exceeding \$50 per monthly billing cycle and \$200 or more per election cycle or calendar year (as applicable). Revolution Messaging will provide this information to its political committee clients.

Revolution Messaging will work with the connection aggregator to block all

³ Revolution Messaging proposes the following language for its confirmation texts:

- (1) “Thanks for contributing! To make best efforts to comply with fed law we need more info. Visit <http://rev.ms/info> or reply OK.”
- (2) “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.”

⁴ The confirmation webform and text script will include the following:

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.

contributions that aggregate more than \$50 per billing cycle or \$200 per election cycle or calendar year from any wireless user whose name and address Revolution Messaging does not have. Revolution Messaging will inform the wireless user, via text, that additional contributions are not permitted unless the user completes the webform or responds to the appropriate text message. Once the user completes the webform or text message script, Revolution Messaging will enable the user to make additional text message contributions.

Revolution Messaging also will work with its political committee clients to combine contributor information obtained through text message contributions with information already in the committees' possession to ensure that contributors whose contributions aggregate in excess of \$200, whether made by text messaging or in other forms such as check or credit card, are properly disclosed on the political committees' reports to the Commission. This will also enable the political committees to track contributors' aggregate contributions (whether made by text messaging or in other forms) with respect to the contribution limits. Revolution Messaging represents that there will be "more than sufficient time" to merge text message contributor information with other contributor information for its political committee clients to file accurate and timely reports with the Commission and to ensure that a contributor does not make excessive contributions.

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

Shared Premium Short Codes

Revolution Messaging also proposes to offer a service that would allow multiple Federal political committees to share one premium short code for receiving contributions by text message. Wireless users pay a premium charge for premium short codes, usually on a monthly basis, in order to receive certain content.⁵ Examples of premium messaging programs include those for the purchase of ringtones, wallpaper or screensavers, and for subscriptions to weather alerts, sports scores, daily horoscopes, and pornography. A premium short code must be used for receipt of message when contributions are made by text message.

The additional capability of a premium short code results in increased costs to the entity leasing the short code, as well as the wireless user. Revolution Messaging estimates that the total cost of leasing, setting up, applying, connecting, programming, testing, and registering a premium short code ranges from \$6,000 to \$10,000. Premium short codes can also be time-consuming to obtain. Revolution Messaging estimates that it takes eight to 12 weeks to obtain a premium short code, and states that campaigns will thus be unable to raise contributions by text messaging for a large part of the campaign cycle. Revolution Messaging posits that the time and cost associated with premium short codes reduce their effectiveness for all but major party presidential campaigns and national party committees.

⁵ Premium short codes are distinct from standard short codes. Standard short codes involve the 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.

For a contribution via text message to be processed when a shared premium short code is utilized, it must use both a keyword and a short code in combination and include a reply to an exact keyword. Additional steps based on the keyword attached to a shared premium short code include (1) the use of a unique keyword to identify the political committee to which a contribution is to be attributed and the amount of the contribution; (2) a message to the contributor seeking confirmation that the contributor is eligible to make the contribution and verifying that funds will be charged to the contributor's phone bill; and (3) a reply text message from the contributor confirming eligibility and acknowledging that the contribution will come from the contributor's own funds. Under Revolution Messaging's proposal, this full keyword and premium short code process and confirmation will be used for all contributions by text message. The wireless user's message initially providing the keyword will be time- and date-stamped for auditing purposes.

To ensure that contributions are associated with only one political committee when a premium short code is shared, Revolution Messaging will assign each political committee one or more unique keywords. Keywords may be associated with specific contribution amounts and specific political committees sharing a common short code. For example, a wireless user may be asked to "Text DONATE to 675309 to give \$20 to the Shoemakers Federal PAC," where 675309 is the shared premium short code and DONATE is the unique keyword. Upon receiving the text from the wireless user, Revolution Messaging will immediately generate an affirmation statement, such as the one described above, that includes the amount of the contribution and the name of the recipient political committee based on the unique keyword. If the wireless user confirms the information, a charge will be added to the contributor's wireless bill.

Revolution Messaging and the connection aggregator receive this information in real time and will immediately assign each transaction to an individual political committee's account based on the unique keyword. Revolution Messaging represents that it and connection aggregators regularly employ this funds-sorting mechanism for all of their customers to ensure that funds are properly accounted for and transmitted to their intended recipient.⁶ Trailing payments made by the connection aggregator to a political committee, *see* Advisory Opinion 2012-17 (m-Qube I), will be determined based on the outcome of individual transactions associated with a unique keyword on a shared premium short code and not the short code itself. Revolution Messaging will also be able to use the unique keyword to block a phone number from making excessive contributions to a political committee, even if the political committee shares a premium short code.

Questions Presented

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,*

⁶ Revolution Messaging will sign exclusive contracts with each political committee client in order to be the only provider of text messaging fundraising services to that political committee. During any period in which a political 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, and will not, as a practical matter, have access to any premium short code other than the one used by Revolution Messaging.

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?*

Legal Analysis and Conclusion

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?*

Yes, 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, complies with the recordkeeping and reporting provisions of the Act and Commission regulations.

The Act and Commission regulations impose certain requirements on treasurers of political committees. A treasurer of a political committee must “keep an account of (1) all contributions received by or on behalf of such political committee; (2) the name and address of any person who makes any contribution in excess of \$50, together with the date and amount of such contribution by any person; [and] (3) the identification of any person who makes a contribution or contributions aggregating more than \$200 during a calendar year, together with the date and amount of any such contribution.” 2 U.S.C. 432(c)(1)-(3); *see also* 11 CFR 110.4(c). A political committee must also file regular reports with the Commission that include, among other information, the identification of each person who makes a contribution to the committee during the reporting period, “whose contribution or contributions have an aggregate amount or value in excess of \$200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office) . . . together with the date and amount of any such contribution.” 2 U.S.C. 434(b)(3)(A); *see also* 11 CFR 104.8(b). Treasurers of political committees must “examin[e] all contributions received for evidence of illegality and for ascertaining whether contributions received, when aggregated with other contributions from the same contributor, exceed the [Act’s] contribution limitations.” 11 CFR 103.3(b).

In Advisory Opinion 2012-17 (m-Qube I), the Commission concluded that the requestors’ proposal for processing contributions to political committees via text messages complied with the Act and Commission regulations. The m-Qube proposal limited aggregate contributions to \$50 per month from each wireless user to each political committee. Although m-Qube, the connection aggregator, would not transmit contributor names and addresses to the political committee recipients, it would provide the 10-digit phone number associated with each contribution as well as (1) the amount and date of the contribution, (2) the fact that the contributor clicked “YES” or “Y” in response to a question regarding whether the contributor agreed to have the contribution charged to the contributor’s wireless bill, and (3) the fact that the contributor clicked “YES” or “Y” in response to an affirmation question indicating eligibility to contribute. m-Qube also represented that it could keep a running, real-time tally of the dollar amount of contributions made via text message from a

particular telephone number. Recipient political committees would then have real-time secure access to the aggregator's gateway where the contribution tally would be maintained, allowing political committees to identify phone numbers associated with contributions aggregating \$200 or more. In approving the proposal, the Commission noted that other proposals could provide equally permissible methods of raising contributions through text messaging.

Here, Revolution Messaging's proposal would enable a wireless user to make aggregate contributions exceeding \$50 per month and \$200 per calendar year or election cycle to a single political committee, so long as the user provides to Revolution Messaging his or her name and address. Revolution Messaging will also request the user's occupation and name of employer, which the recipient political committee may need to comply with the recordkeeping and reporting requirements of the Act and Commission regulations, as well as the user's cellular telephone number. Revolution Messaging will then transmit this identifying information to the political committee. Although a wireless user may make initial contributions aggregating up to \$50 per month to a political committee, any user failing to provide at least his or her name and address will be blocked by Revolution Messaging, working with the connection aggregator, from making any further contributions to the same political committee.

Revolution Messaging will also work with its political committee clients to combine the information that Revolution Messaging collects regarding contributions with the information that the political committee itself collects in connection with contributions made by means other than text message. Combining these two sources of information will enable political committees to disclose contributor information for all contributors whose contributions aggregate in excess of \$200 per election cycle or per calendar year, as applicable, and to refuse or refund excessive contributions, regardless of the means of contribution.

The Commission concludes, therefore, that the proposal described above complies 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?*

Yes, the proposal to use shared premium short codes by multiple Federal political committees to process contributions by text message complies with the Act and Commission regulations.

In Advisory Opinion 2012-17 (m-Qube I), the Commission concluded that a connection aggregator using common short codes to track contributions made via text messages to political committees ensured that contributions would be properly accounted for and that the connection aggregator's treasury funds would not be inadvertently transmitted to political committees. *See* Advisory Opinion 2012-17 (m-Qube I). There, the trailing payments that the connection aggregator proposed to receive from service providers and forward to political committees were linked to common short codes that were unique to each political committee. The proposal therefore satisfied the requirements of the Act and Commission regulations. *Id.*

Like the requestor in Advisory Opinion 2012-17 (m-Qube I), Revolution Messaging proposes a mechanism to ensure that contributions will be properly accounted for and that corporate funds will not be inadvertently transmitted to political committees. Revolution Messaging will assign each of its political committee clients one or more unique keywords to ensure that each contribution will be associated with only one political committee. In order for a contribution to be completed, the wireless user must send an initiating text message to the correct shared common short code and include the political committee's assigned keyword in the message. Revolution Messaging states that "no funds will ever be drawn without this full keyword to short code process." Revolution Messaging and the aggregator receive the information about a contribution in real time, and immediately assign the transaction to a political committee's account based on the unique keyword used. All contributions are thus attributed to their intended recipient political committees from the time they are made. Trailing payments made by the aggregator to the political committees will then be determined based on the unique keyword assigned to each political committee.

The unique keywords assigned to individual political committees under Revolution Messaging's proposal will perform the same function that unique short codes performed in the proposal considered in Advisory Opinion 2012-17 (m-Qube I). Accordingly, the Commission concludes that the proposal complies with the Act and Commission regulations.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law, including, but not limited to, statutes, regulations, advisory opinions, and case law. The cited advisory opinions are available on the Commission's website, www.fec.gov, or directly from the Commission's Advisory Opinion searchable database at <http://www.fec.gov/searchao>.

On behalf of the Commission,

(signed)
Caroline C. Hunter
Chair