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August 7, 1991

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Lawrence M. Noble
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

AOR 1991-26

Dear Mr. Noble:

This request for an Advisory Opinion from the Federal Election Commission is submitted pursuant to 2 U.S.C. § 437(f) on behalf of the Versatel Corporation of Santa Clara, California. Versatel is a privately held California Corporation in the business of providing a billing service to companies which have provided telephone services to individuals. Such companies hire Versatel to bill and collect payment for these services, rather than utilizing the billing and collection services of local telephone companies. Versatel seeks an Advisory Opinion concerning the applicability of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-455 ("Act") to Versatel's provision of this billing service to long distance carriers, or to telephone service bureaus, for the collection of contributions to candidates for federal office made through "900 numbers".

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Versatel's Proposed Billing Service

Versatel would be commissioned by a long-distance carrier or carriers, or in some instances perhaps directly by a service bureau, to bill individual callers directly for charges incurred for telephone calls made to 900-line telephone numbers sponsored by service bureaus on behalf of political candidates. Traditionally, the service bureaus provide the equipment and telephone numbers to which 900 number calls are placed and record the incoming numbers of callers, along with any other caller identification that is ascertained from audio taped messages. As described below, the "long distance provider" (or "interexchange carrier") bills the callers along with other long distance charges.

Long distance providers typically sell their receivables to a local exchange carrier (LEC), subject to certain "holdbacks" and later adjustments for non-payment. The LEC in turn bills the calling party for the charges along with other monthly telephone service charges. (See attached diagram at Exhibit A.) The long distance provider, having sold its 900-line receivables, would deduct its charges from the proceeds and forward the remaining funds to the 900-line service bureau for distribution to the telephone service, charity, or in this case, political committees. In this scenario, the LEC doing the billing advances funds to the long distance provider when it purchases the receivables. The long

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distance provider deducts its fees and pays its outstanding obligations to the service bureau which, in turn, subtracts its fees and forwards the remainder to the political committee. However, not all local exchange carriers will bill 900-line calls for long distance carriers. Further, in the past some local exchange carriers have abruptly ceased billing such calls once it became apparent that the billing activity on behalf of particular candidates had become controversial. Accordingly, Versatel believes there is a role to be played in the billing and collection of 900-line telephone charges by an independent company such as Versatel.

Versatel's billing service would put Versatel in the billing chain in the place of the LEC, with the important exception that Versatel would not advance funds to the long distance carrier prior to payment by the telephone customer. (See attached diagram at Exhibit B.) Versatel would contract with a long-distance carrier and in some circumstances directly with a service bureau to bill and collect 900-line charges directly from the customer. Versatel would receive from the client (the party with whom Versatel contracts) the magnetic tapes of the telephone numbers from which calls were placed, along with a transcription of any taped audio messages which may have been made by the service bureau identifying

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the callers.^{1/} Versatel also, as part of its service package, would purchase the Billing Name and Address (BNA) information necessary to match the telephone numbers to the callers' names and addresses. Then Versatel would directly bill the callers.

The bill sent by Versatel would be addressed to the persons in whose names the telephone numbers are listed and from which the calls to the 900-line number were made. The bill would be in three parts, the first of which would include an account number, an amount charged for calls made, and a request that checks be made payable to "Versatel Campaign Billing Services," which is the name Versatel will use for political accounts. The account number, unique to each bill, would include a code identifying the campaign to which the contribution is being made, and the telephone number

^{1/} If Versatel contracts with the long distance provider directly then the long distance provider provides the magnetic tapes to Versatel. As discussed further below, Versatel's fees are subtracted from the accounts received through the billing process and the net amount is then forwarded to the long distance provider.

If Versatel contracts with the service bureau then the service bureau arranges for Versatel to be provided with the magnetic tapes either directly from the long distance provider or from the service bureau itself. As when it contracts with the long distance provider, Versatel subtracts its fees from the amounts collected and forwarded to the service bureau. This contractual arrangement may also require Versatel to pay the long distance provider the fees owed to it by the service bureau. In the alternative, Versatel may only deduct its fees, forwarding the net amount to the service bureau. In this situation the service bureau pays the long distance provider its fees pursuant to a contractual arrangement between those two entities.

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from which the call was made. This will enable Versatel to record every contribution billed by Versatel made to a particular campaign from any given telephone number. If a caller makes a contribution to more than one campaign for which Versatel is billing, a separate bill will be sent for each campaign.

The second portion of the bill will clearly identify the call as a political contribution, and the name of the campaign or candidate. It will also include the date, time, number, minutes and amount of each call. It will include an "800" telephone number the recipient may call for assistance or information about the bill. This number will be answered by Versatel's billing department.

The third section of the bill will contain information useful or necessary for the service bureau and/or the candidate to comply with the requirements of the federal election laws. This section, headed "IT IS IMPORTANT THAT THE FOLLOWING INFORMATION BE COMPLETED," asks for the address of the contributor (if different from that of the recipient of the telephone bill), and the name of the contributor's employer. It also asks the contributor whether or not he or she is a U.S. Citizen or Green Card holder. The contributor is directed to return this section with the contribution check. The bill will be accompanied by a separate short summary brochure explaining the nature of the services being

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billed (again including the statement that they are political contributions), and a listing of certain applicable provisions of federal election law. (Copy attached at Exhibit C.)

Upon receiving payments from callers, Versatel deposits the receipts pursuant to its agreement with its client, and accounts for the receipts to each political committee by recording the amount and identification of the individuals making the contributions. For any contribution received which is incomplete, or raises a question concerning whether it may be accepted (failure to complete form, indication of non-citizenship, etc.) the Versatel system will separate the contribution for individual attention (follow up letters or telephone calls, etc.). Versatel will then forward the list of accounts received, along with the cash collected (minus Versatel's fees), to the long distance provider. Versatel's fees will be on a per invoice mailed basis (on a volume-sensitive sliding scale, so that the cost will be less per invoice the greater the number of invoices sent). In developing a per invoice charge, the number of anticipated calls will be considered. Versatel will also charge flat fees for each additional service rendered (such as a follow-up letter or telephone call where contributor information is incomplete, etc). Contributions about which questions have been raised will be separately identified and forwarded. The accounting forwarded will identify the source of

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all receipts. If an individual does not respond to a bill after a period of time, they will be sent a reminder.

Versatel believes its proposed billing service for 900-line contributions to political candidates would play an important role in safeguarding the integrity of the federal political process. Through the Versatel billing process, contributors will be asked to provide the information necessary for campaigns and their agents to comply with the reporting provisions of the federal election laws. Versatel will forward this information, in addition to the actual physical documentation, to the long distance carriers, for delivery to the service bureaus and then to the candidates and their campaigns. Thus, the campaigns will have evidence of the source and nature of the actual contribution in their possession for future reference. This procedure will also serve as a positive screen for foreign nationals not qualified for permanent residence in the United States. Most importantly, no funds will be provided by Versatel to any carrier, service bureau or candidate until contributions have actually been received and processed.

Previous FEC Opinions

In FEC Advisory Opinion 1990-14, Fed. Election Camp. Fin. Guide (CCH) ¶ 66003 (1990), the Commission addressed the request of AT&T regarding the role of the long distance provider in the 900

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network. The Commission in that advisory opinion concluded that long distance providers are "vendors" because they neither contract directly with a candidate or committee, nor is the candidate or political committee liable directly to the long distance service for its charges. Id.^{2'}

Accordingly, the FEC determined that the long distance provider is not an agent of the campaign. Instead, the long distance provider is considered like any other vendor engaged in arm's length transactions with an agent of a committee. Id. It makes available the use of its long distance lines and passes along funds whose ultimate destination is a political committee. It must deal with the service bureau in the usual and normal manner of its commercial dealings. As a vendor, it does not incur the reporting requirements of the Act, nor does it need to segregate funds for each political committee. The long distance provider need not require a deposit from the service bureau. It may advance funds to the service bureau, and it must provide its usual and normal services at its usual and normal charges. Id.

^{2'} This Advisory Opinion differed from FEC Advisory Opinion 1990-0, Fed. Election Camp. Fin. Guide (CCH) ¶ 5980 (1990), in which the commission held that service bureaus, which contract directly with campaigns, and advance money to candidates must, as fundraising agents of campaigns, comply with all FEC disclosure, and recordkeeping requirements for the campaign.

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Application of FEC Opinions to Versatel

Versatel's proposed service would replace the Local Exchange Carrier in the 900-line service network. However, Versatel would not advance funds to the long distance provider prior to payment by the telephone customer. As noted previously, the Commission has never characterized the role of a LEC in the 900-line network, although we believe it is analogous to that of a long distance carrier who is a vendor.

Several factors suggest Versatel should be viewed as a "vendor," as AT&T was in AO 1990-14. First, Versatel would have no direct relationship (contractual or otherwise) with any political committee, nor would it exercise any control over the access of committees to 900-line services. Its role would simply be to bill contributors and forward those funds to long distance providers for subsequent distribution to service bureaus and then to the recipient committees.

Second, unlike any other entity with whom the Commission has heretofore dealt in the provision of 900 services, Versatel, as a bill collector, will not be advancing any funds to candidates, or to any other person or corporation which would transmit such an advance to a candidate. Instead, Versatel will contract with a long distance carrier (or perhaps with a service bureau) to provide

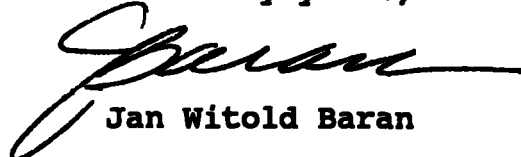
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a specific service: collection. It will do so, and then, after deducting its own fees, forward the sums collected to its' client.

We believe Versatel can play a useful role as a vendor of billing services because, as detailed herein, the information it gathers will substantially assist the service bureaus and their campaign clients in meeting their reporting requirements under the federal election laws. Accordingly, Versatel's services should serve to assist in the maintenance of the integrity of the system of full disclosure of contributions to federal campaigns.

If we can provide you with further information or assistance concerning the facts of this matter, please do not hesitate to contact us.

Sincerely yours,

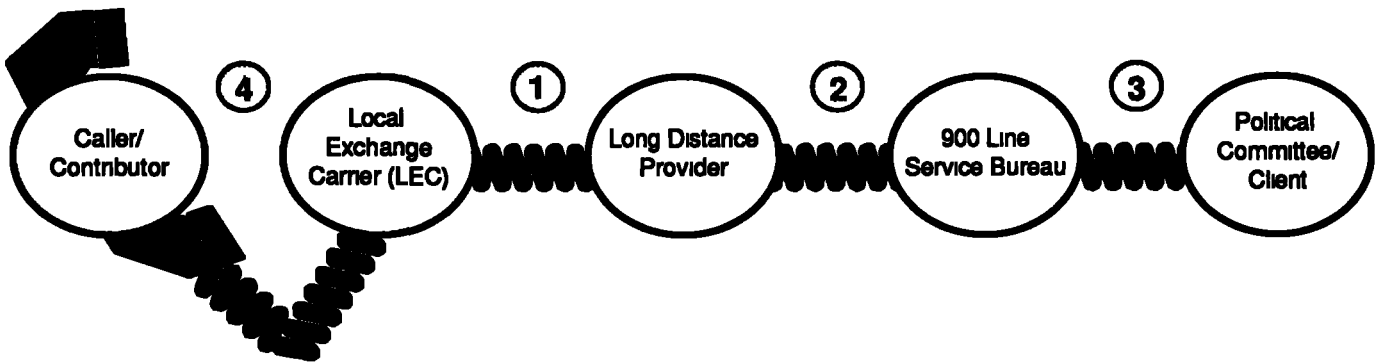


Jan Witold Baran

JWB/smr

Attachments

Exhibit A: Typical 900 Services Arrangement



Typical Payment Sequence

- ① Long distance provider sells its receivables to the Local Exchange Carrier
- ② Long distance provider takes its fee and forwards remaining proceeds to the 900 Line Service Bureau
- ③ The 900 Line Service Bureau takes its fee and forwards balance to political committee
- ④ Caller pays phone bill including 900 service charges to Local Exchange Carrier as much as 60 to 90 days after the call was made

Exhibit B: Versatel's 900 Billing Service Proposal

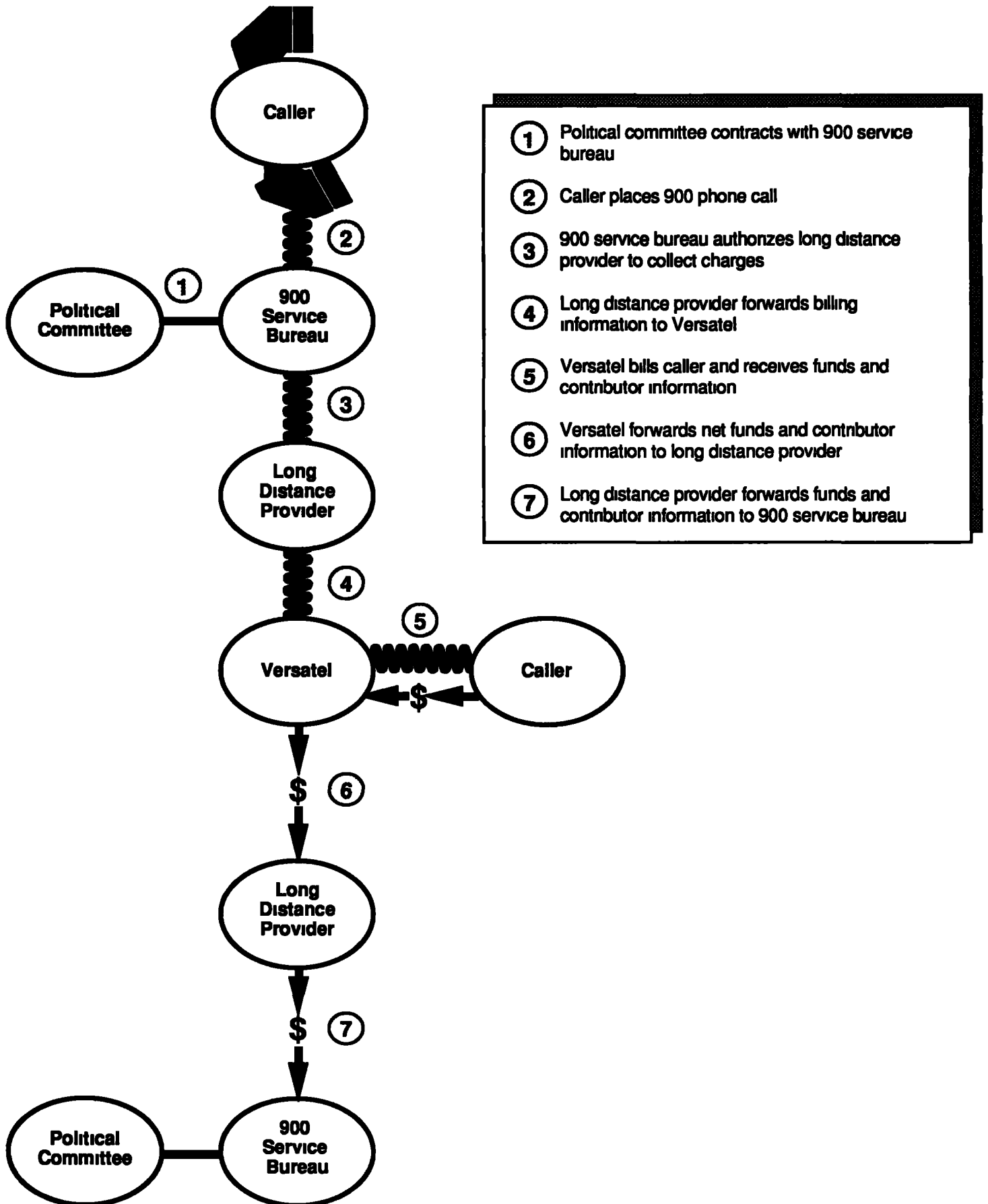


Exhibit C: Summary Brochure



VERSATEL CORPORATION

on behalf of XYZ Candidate

CAMPAIGN BILLING SERVICES

The phone calls listed on the enclosed invoice are for calls placed from your telephone number to XYZ Candidate (or XYZ Committee) who has authorized and is paying for the 900 service *VERSATEL* Campaign Billing Services has contracted with MCI (the long distance carrier) to provide billing services for these phone calls

You will not receive a bill from your local telephone company for this service. If you placed the call(s) and are the billpayer, you are considered a contributor. Your contribution is subject to the limits and prohibitions of the Federal Election Campaign Act. The following rules apply to your contribution:

A Corporate and Labor Union Contributions Prohibited *It is unlawful for a corporation or a labor union to make a contribution or expenditure in connection with any election to any federal political office. This means that your contribution must come from your personal bank account, and not from corporate or labor union funds.*

B Reimbursed Contributions Prohibited *No person shall make a contribution in the name of another or knowingly accept a contribution made by one person in the name of another person. This means that you may not be reimbursed by someone else for your contribution.*

C Contributions from Foreign Nationals Without a Green Card Prohibited *You may not contribute to a candidate unless you are a United States citizen, or admitted to permanent residence in the United States (Green card holder).*

D Individual Contribution Limits *No person may contribute more than \$1,000 per election to any federal candidate.*

E Political contributions are not tax deductible as charitable donations for Federal Income Tax purposes

In order to process your contribution, you must fill out all items on the return coupon and return with your payment.

Please make check payable to:

**VERSATEL Campaign Billing Services
P O Box 111030
Campbell, CA 95161-9011**