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November 2, 1994

Bradley Litchfield, Esquire
General Counsel's Office
Federal Election Commission
999 E Street, NW
Washington, D. C. 20463

RE: AOR 1994-33

Dear Mr. Litchfield:

Supplement To
AOR-1994-33

This letter is issued for your information and consideration in response to issues presented to me by your staff relative to the above referenced advisory opinion request. This letter is a supplement to previous correspondence submitted to the commission involving this matter.

In response to a general question raised by your staff, the fundraising mechanism proposed by VITEL in this request is a technique which VITEL is marketing not only to political committees, but also to other profit and not-for-profit companies. VITEL has made presentations and is presently in negotiations with various for-profit corporations proposing the project as a traditional affinity program which provides not only financial benefits but also promotional and advertising benefits to the companies. In addition, the program is being presented to foundations which qualify as such pursuant to IRC §501(c)(3) for fundraising and general advertising and promotional purposes. This is in addition to the political committees and the trade association markets referenced in the original correspondence.

The terms and conditions of the contract VITEL tenders to a for-profit corporation, a not-for-profit corporation, foundation, or political committee will entail the same type of financial analysis and consideration to determine cost and profits to VITEL. In short, VITEL is not offering a special program to political committees. Rather it is the same arms-length business agreement which it anticipates offering to other non-political entities.

At page 2 of the original opinion request, there is a discussion of the debit of the customer's credit card relative to the purchase of the telephone time and political contribution, if

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any is made. To clarify that point, when the individual calls to refresh the calling card, the amount of time purchased and the political contribution made by the individual is immediately debited against the individual's credit card. The operator will be instructed to request as to whether or not the individual wishes to make a voluntary political contribution. If the answer is yes, the amount designated by the contributor will be debited against the identified credit card and credited to the political committee in accordance with the merchant bank services. For example, the operator receiving the request from the individual, would note that \$90 is being used to refresh the calling card and \$10 is being contributed to the identified political committee. VITEL utilizes a merchant bank for purposes of providing the credit card debit services. The operator information is passed on to the respective merchant bank and \$90 is debited to the appropriate calling account and in a separate transaction the \$10 contribution is credited to the identified political committee. VITEL does not control nor will it be in possession of the funds debited against the credit card. The services of the merchant bank are included in the contract price which VITEL charges to the respective client.

The political contribution is indicated to the operator at the time the individual calls to make an initial purchase of calling card time or when the individual calls to "refresh" the calling card. The political contribution may only be made to the respective entities' political committee. For example, using the trade association as the ongoing example, a member may indicate he or she wishes to contribute \$10 to the trade association's separate segregated fund. That is the only political committee to whom the individual could contribute. Since the calling card contract is with that particular trade association, it is only to that trade association's separate segregated fund political contributions would be able to be made. Though earmarking of contributions through the segregated fund may be permissible in accordance with 2 U.S.C. §441a(8), it is not anticipated at this time that such earmarkings would be part of the program menu of available services. Similarly, the individual would not be able to make a contribution to any federal candidate or other federal committee since the operator receiving the call for refreshing the card is authorized under the contract with that trade association to only accept contributions for the trade association's separate segregated fund. Therefore, there is not an opportunity for an individual to contribute to any federal committee he or she desires, but rather is limited to contributing to the specific committee identified with the calling card contract.

The various long distance platform services and menus which VITEL is able to offer to its clients are primarily through subcontracts with those professional vendors. In the factual summary in the original opinion request, VITEL represents its ability to provide a variety of services in the telecommunications platform and long distance product development area. The expenses for the operators, interactive voice response menu platforms, on-line card validations, etc. are all expenses built into the contract price which VITEL reaches with the respective clients.

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The VITEL client is able to elect which of the various menu products it desires to offer to its audience. Our previous correspondence reference the ability of callers to punch particular numbers on the telephone and receive various messages, information, or the ability to purchase additional time on the calling card. The various message opportunities need not be purchased by each client. For example, one trade association may wish to have a legislative message made available to its membership whereas another trade association may not elect to have that option. If the option is chosen by the association, then the VITEL contract with that group will reflect the increased cost for selecting that particular menu item. As noted in earlier correspondence, it is this rather broad and versatile menu of available services which precludes citing a specific fee for each client of VITEL. The cost will be driven, in part, by the amount of service variables which the association elects to purchase under the VITEL contract. However, all such costs are included in the contract price which VITEL negotiates with the client.

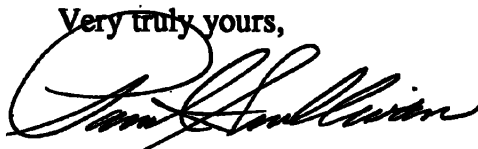
As to the last item of inquiry by your staff, this basic format is proposed to be utilized by various types of federal committees. For example, an authorized committee, may contract with VITEL and through the committee's direct mail program promote to potential contributors, the VITEL calling card services. If the person desires to subscribe to the calling card service, they would purchase the calling card time and, similar to the trade association model, identify an amount, if any, which they desire to contribute to the candidate. VITEL envisions that the calling card for the authorized committee may have a caricature of the candidate and the name of the committee on the card. The selection menu may include a message from the candidate to the caller or the opportunity for the caller to leave a message for the candidate committee. However, as with the trade association model all, services utilized by the authorized committee would be paid for by the authorized committee under the contract with VITEL.

This model would be similar for non-connected committees and party committees. The fact that these three type of federal committees are not restricted relative to "membership" as is the case with the trade association and that there is not the possibility of utilizing prohibited FECA funds for underwriting the contract for these committee activities, the issues presented are far less complicated. In essence, it is envisioned that these three type of political committees would, through direct mail, offer the phone card services and include a 1-800 number to which the individual could call for purposes of ordering the calling card. Contributions received would be subject to the FECA limits and the prohibitions and the appropriate notice requirements to the potential contributors would be provided in the direct mail piece or by the operator at the time that the call is received. Transactions would be carried out through credit card debits utilizing the merchant bank as detailed in the trade association model above.

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I trust this is responsive to your inquiries, however should you have further questions please contact me at my office.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Paul E. Sullivan". The signature is written in black ink and is positioned above the printed name.

Paul E. Sullivan