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March 18, 1999

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W. - 6th Floor
Washington, D.C. 20463

AOR 1999-09

Re: Request for Advisory Opinion

Dear Mr. Noble:

Pursuant to 2 U.S.C. § 437f, this letter requests an advisory opinion from the Federal Election Commission on behalf of Bill Bradley for President, Inc. ("the Committee"), Bill Bradley's principal campaign committee as he seeks the 2000 nomination of the Democratic Party for President of the United States.

INTRODUCTION

The Committee asks the Commission to interpret the Presidential Primary Matching Payment Account Act, 26 U.S.C. § 9031 et seq (the "Act") to permit the matching of credit card contributions received by the Committee through the Internet.

The Internet has created an immense opportunity for millions of average Americans to participate in the political process. Citizens can contribute to a campaign as easily as they can order a book, make an airline reservation, or buy computer software -- actions taken thousands of times each day over the Internet.¹

¹ For example, some of the more popular web sites for Internet commerce include BarnesandNoble.com and Amazon.com (books); Travelocity and Microsoft Expedia (airline tickets); CD Now (compact discs); and Reel.com (videotapes).

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citizen participation, reduce the influence of large contributions, and restore confidence in democracy -- as Congress originally intended. Including the contributions citizens make over the Internet as matchable under the Act would be among the most powerful steps yet taken by the Commission to strengthen the Presidential public financing system.

FACTUAL DISCUSSION

Bill Bradley has filed the candidate agreements and certifications and threshold submission necessary to receive Federal matching funds under the Act. He is raising funds for his campaign from the broadest possible base of Americans, consistent with the intent of Congress when it passed the Act.

Toward this end, the Committee will solicit and accept contributions from supporters through its World Wide Web site. Prospective donors visiting the Committee's web site will be able to contribute by filling out and transmitting to the Committee an electronic form like that approved by the Commission in Advisory Opinion 1995-9.

The donor will then directly provide credit card, debit card or other electronic fund transfer information to the Committee through the electronic form. The Committee will send a confirmation of the contribution to the donor via electronic mail, and will submit the information for payment through the appropriate card issuer. To avoid the receipt of corporate contributions, the Committee will pay all applicable processing fees.

The Committee will observe disclaimer and best efforts requirements and will screen for prohibited contributions in the manner endorsed by the Commission in Advisory Opinion 1995-9. The Committee will also retain all information related to the contributions as required by Commission regulations.

The Committee wishes to submit these contributions for matching under the Act. The Committee will submit to the Commission copies of the electronic forms submitted by the donors both in hard copy and electronic form, along with documentation which indicates that the contributions were deposited into a designated depository.

The Committee believes these contributions should be matchable in recognition that the Internet has brought a sea change in American commerce and society.

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The IRS is hoping to make the entire electronic filing experience more convenient while simultaneously trying to meet a congressional mandate to increase the number of electronically filed returns. The pilot responds to a long-standing request to the IRS from both individual taxpayers and tax practitioners to accept credit cards. It also expands IRS payment options beyond the traditional paper payment process.

LEGAL DISCUSSION

The issue of matching Internet credit card contributions has taken on an urgency absent from the 1992 and 1996 Presidential elections, if only because consumers have only very recently become comfortable with sending their credit card information over the Internet. Compare Advisory Opinion 1995-9 (committee uses elaborate online holding company to facilitate Internet contributions) with Stephen Pounds, Internet Commerce Is Booming as Consumers Lose Fear of the Web, Palm Beach Post, Dec. 21, 1998, at 7.

The Commission has not hesitated to interpret the Act in the context of emerging technologies. Very early on, it acknowledged the capacity of the Internet to reach large numbers of people, noting the "rapid expansion of services available on the Internet, a sizable increase in the number of persons using it, increased ease of accessing the Internet, and a decline of the costs of hardware and software needed to do so." Advisory Opinion 1995-9.

Also, the Commission has long permitted political committees to raise funds by credit card and other electronic means. See Advisory Opinions 1995-34, 1994-33, 1991-1, 1990-4, 1984-45, 1978-68. It has specifically permitted political committees to accept credit card contributions through the World Wide Web. See Advisory Opinion 1995-9.

The Commission last considered the issue of whether Presidential campaigns could submit credit card contributions for matching in 1983, 16 years ago. See Presidential Primary Matching Fund, 48 Fed. Reg. 5224, 5228 (1983). The Commission then offered three reasons to prohibit such matching: (1) the "contributions could be made by phone and therefore lack the contributor's signature"; (2) it may be difficult to "determin[e] the source of funds contributed as many cards that appear to be personal accounts are paid for by incorporated businesses"; and (3)

contribution," and accordingly held that "contributions made by credit card would be reportable by the Committee as of the date the proceeds of the transaction are received by the Committee, provided they are received within the same reporting period when the credit card was used." Id.

However, the Commission later rejected this characterization in Advisory Opinion 1990-4. Considering the request of the American Veterinary Medical Association ("AVMA") to collect contributions made via credit card by its members to its separate segregated fund, the Commission held:

Contributions by credit card are considered as received upon the date that AVMA receives the member's authorization to charge his or her AVMA dues and AVMAPAC contribution to the member's credit card account. Inasmuch as such authorizations may be presented to AVMA's bank in order to credit AVMA's account, the receipt of such an authorization is the equivalent of the receipt of a check that may be deposited and, thus, the date this occurs is the date upon which AVMA obtains possession of the contribution . . . Therefore, to the extent that Advisory Opinion 1978-68 states that the date of receipt for credit card contributions is the date when the donee committee receives a credit or deposit of proceeds from its depository bank, that opinion is hereby superseded.

Id. (emphasis added).

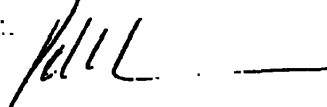
Moreover, the Commission has the necessary discretion to interpret the Act and its regulations to permit matching of credit card contributions without resorting to the rulemaking process. "It is a well-settled principle of administrative law that the decision whether to proceed by rulemaking or adjudication lies within the broad discretion of the agency." Wisconsin Gas Co. v. FERC, 770 F.2d 1144, 1166 (D.C. Cir. 1985) (citing SEC v. Chenery Corp., 332 U.S. 194, 202-03 (1947)). While an agency must employ the rulemaking procedures of the Administrative Procedure Act to enact substantive rules implementing a statute, it need not engage in formal rulemaking simply to construe the statutes and rules it administers. See American Min. Congress v. MSHA, 995 F.2d 1106, 1109 (D.C. Cir. 1993).

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broaden the base of financial support for all Presidential campaigns and encourage renewed public confidence in American democracy. The Commission should act promptly to encourage the broad base of citizen participation that Congress intended when it passed the Act.

Very truly yours,



**Robert F. Bauer
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**General Counsel to Bill Bradley for
President, Inc.**

**cc: Chairman Thomas
Vice-Chairman Wold
Commissioner Elliott
Commissioner Mason
Commissioner McDonald
Commissioner Sandstrom**