

Supplement to AOR 2012-17

Arent Fox LLP / Washington, DC / New York, NY / Los Angeles, CA

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June 7, 2012

Anthony Herman
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Advisory Opinion 2012-17

Craig Engle

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Dear Mr. Herman:

As you know, during the Commission's open meeting today to discuss Draft C of Advisory Opinion 2012-17, Commissioner Walther requested additional information regarding our proposal to use text messaging to raise funds for political committees. We have consulted with our clients as well as other experts in the telecommunications field and are pleased to provide the following response to Commissioner Walther's questions. We believe that this additional information should resolve the concerns he expressed in today's open meeting and support the adoption of Draft C of Advisory Opinion 2012-17.

Pre-Paid Cell Phones

In response to a late comment filed by a payment processing vendor, Commissioner Walther wanted to know if it would be possible for a connection aggregator to block text message contributions made using a pre-paid cell phone. After consulting with our clients and other experts in the telecommunications field, our understanding is that most wireless carriers already block premium SMS (short code) service to pre-paid cell phones for economic reasons. Moreover, connection aggregators like m-Qube can block phone numbers associated with pre-paid carriers from making text message contributions to political committees. To that extent, it is technologically possible to block pre-paid cell phone numbers from being used to make political contributions.

Reporting of Aggregate Contributions from a Single Cell Phone Number

In the supplemental material that we provided to the Commission yesterday, we indicated that under our proposal m-Qube would provide a political committee with all of the specific information it receives or processes regarding each text message contribution, including the 10-digit phone number of the cell phone used to make the contribution, the amount of the contribution, the date and time of the contribution, the wireless carrier used and the contents of all text messages, including the wireless user's affirmation that they are eligible to contribute

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under the Federal Election Campaign Act ("the Act"). Furthermore, m-Qube proposes that it "cap" each phone number at a maximum of \$50 of contributions during each billing cycle. In achieving this, m-Qube keeps a running tally of how much each phone number has contributed.

Commissioner Walther wanted to know if it would be possible for a connection aggregator to provide a political committee with aggregate contribution data for a specific cell phone, i.e., the total number of contributions made to a political committee from a specific cell phone and the total amount of money contributed to a political committee from the same cell phone over a specified period of time. M-Qube informs us that since it keeps a running tally each month in order to enforce its \$50 cap, it is simple for m-Qube to continue the tally past each billing cycle, and provide the political committee with access to that tally, so that it will be aware once the amount has exceeded \$200.

Either m-Qube, or its political committee customers who would have real-time secure access to the m-Qube gateway, could block a phone number from making additional contributions once they have already contributed \$200 during an applicable period (e.g., calendar year or election cycle.)

Blocking Subsequent Contributions From a Specific Cell Phone

Finally, Commissioner Walther wanted to know if it would be possible for a political committee to request a connection aggregator to block subsequent text message contributions from a specific cell phone to prevent a contributor from exceeding the \$200 limit that would require the political committee to report an itemized contribution. m-Qube has confirmed that either it, or its political committee customer by using the m-Qube gateway, can block text message contributions from any cell phone at any time for any reason or for reasons specified by the political committee.

We hope that this additional information is useful to the Commission as it completes its deliberations regarding Advisory Opinion 2012-17. We are, of course, available to answer any additional questions the Commission may have.

Sincerely,



Craig Engle



Brett G. Kappel

cc: Chair Caroline C. Hunter
Vice Chair Ellen L. Weintraub
Commissioner Steven T. Walther
Commissioner Donald F. McGahn II
Commissioner Cynthia L. Bauerly
Commissioner Matthew S. Petersen