



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: The Commission

FROM: Commission Secretary's Office *Reef*

DATE: August 8, 2012

SUBJECT: Late Comment on Draft AO 2012-26
(Cooper for Congress, ArmourMedia,
Inc., and m-Qube, Inc.)

Attached is a late submitted comment from Craig Engle, counsel, on behalf of the requestors Cooper for Congress, ArmourMedia, Inc., and m-Qube, Inc.

Attachment

Arent Fox

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August 7, 2012

Anthony Herman
General Counsel
Federal Election Commission
999 E Street NW
Washington, DC 20463

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Re: Comments to Draft Advisory Opinion 2012-26 (m-Qube 2)

Dear Mr. Herman:

On behalf of the requestors of Advisory Opinion 2012-26, we agree with the comments offered by CTIA, that the Opinion should be clear that treasurers are solely responsible for compliance with the Federal Election Campaign Act and that Advisory Opinion 2010-23 (CTIA 1) is overruled or superseded.

We also agree that our candidate's campaign committee requestor can avoid receiving an "in-kind" contribution if aggregators and wireless service providers create criteria for political committees to participate in raising funds by text messaging.

We believe the best way to resolve any question is to simply delete "so long as the criteria are based on commercial, rather than political, considerations." Draft Advisory Opinion 2012-26 (m-Qube 2) at page 15, line 6; and the words "so long as the requirements are based on commercial, rather than political, considerations." Id. At page 14 lines 11-12. Safeguarding consumer phone bills is a core duty of aggregators and carriers, whether charges are for commercial providers, charities or now -- political committees. To do their job, the carriers and aggregators need discretion to exclude charges.

The Commission has a long series of Advisory Opinions allowing vendors to set standards for allowing customers access to their services. The Commission also has regulations that allow organizations to set eligibility requirements for candidates to participate in debates and other appearances. 11 C.F.R. § 110.13 (b),(c); 114.4 (c).

We believe a simple citation to prior opinions and the analogous regulations will be sufficient for the Commission to state a rule of law for this industry. After all, we are only seeking an Advisory Opinion on applying the Act to our own specific factual proposal. We can wait for a later day in a rulemaking for more guidance based on facts discovered during an expanded comment period.

Arent Fox

Accordingly, we suggest the Advisory Opinion be kept clear by making the slight deletions noted above, and corresponding changes to any advisory opinion to be issued in response to the CTIA's advisory opinion request 2012-28.

Sincerely,



Craig Engle