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November 29, 2012

MEMORANDUM

AGENDA ITEM

TO: The Commission

FROM: Anthony Herman *AH*
General Counsel

For Meeting of 12-6-12

Kevin Deeley *KDE*
Acting Associate General Counsel

Robert Knop *RNK*
Assistant General Counsel

Esther D. Heiden *EDH*
Attorney

Subject: AO 2012-35 (Global Transaction Services Group, Inc.) – Draft A

Attached is a proposed draft of the subject advisory opinion (Draft A). We have been asked to have this draft placed on the Open Session agenda for December 6, 2012.

Attachment

1 ADVISORY OPINION 2012-35

2
3 Michael R. Wofford
4 Global Transaction Services Group, Inc.
5 11235 Davenport Street, Suite 111
6 Omaha, NE 68154
7

DRAFT A

8 Dear Mr. Wofford:

9
10 We are responding to your advisory opinion request on behalf of Global Transaction
11 Services Group, Inc. (“GTSG”), concerning the application of the Federal Election Campaign
12 Act (the “Act”) and Commission regulations to the proposal to process credit and debit card
13 contributions to political committees by text message. GTSG asks whether it may process the
14 proposed anonymous contributions using the wireless user’s credit or debit card and forward
15 them to recipient political committees. The Commission concludes that GTSG’s proposed
16 process for receiving and forwarding anonymous contributions to political committees is
17 permissible under the Act and Commission regulations.

18 ***Background***

19 The facts presented in this advisory opinion are based on your letter and supplementary
20 information received on October 24, 2012.

21 GTSG is an incorporated technology company that provides services in a number of
22 areas, including mobile payments, transaction fraud security, and e-commerce. GTSG has
23 developed a process to allow wireless users to make contributions of \$50 or less using text
24 messages and the wireless user’s credit or debit card. GTSG currently offers a similar process
25 for donations to charitable organizations; this is the first time that GTSG proposes to make this
26 process available to candidates and political committees.

1 GTSG has credit and debit card transaction relationships with card processors. Under
2 GTSG’s proposed plan, GTSG will serve as an aggregator¹ and will act as manager for the
3 transaction between the contributor, the credit or debit card companies, and the recipient political
4 committees.

5 GTSG will offer its services to political committees and will enter into service contracts
6 with its political committee customers. The request states that the terms of these service
7 contracts will be the same as or similar to those approved by the Commission in Advisory
8 Opinion 2012-17 (Red Blue T LLC, ArmourMedia, Inc., and m-Qube, Inc.) (“m-Qube I”).
9 GTSG will only accept potential political committee customers if they are “in good standing”
10 with the Commission and with appropriate State election authorities. Additionally, GTSG may
11 develop eligibility criteria based upon commercial considerations and therefore may decide to
12 accept only proposals from some political committees and not others.

13 GTSG will charge its political committee customers a fee for using its services, to be
14 deducted from the total amount of the contribution before GTSG forwards the contribution to the
15 political committee. GTSG will evaluate market data to determine a competitive fee schedule
16 for its political committee customers. Although GTSG anticipates a lower fee for services
17 provided to political committees relative to its non-political or commercial customers, it does not
18 expect that the difference in fees will be substantial.

¹ The mechanics of the wireless industry are described in Advisory Opinion 2010-23 (CTIA I). As presented in that advisory opinion, content providers, application providers, connection aggregators, and wireless service providers work together to enable wireless users to access content through the use of mobile phone text messages. Content providers (such as the Red Cross) disseminate content to, or collect information or pledges from, wireless users. Application providers convert the text messages received into data that can be interpreted and used by content providers. Connection aggregators link application providers to wireless service providers’ networks. Wireless service operators are the companies from which wireless subscribers purchase their mobile phone service.

1 Once GTSG accepts a political committee as a customer, GTSG will assign the candidate
2 or political committee a unique keyword. The common short codes are country-specific and are
3 used only by U.S.-based wireless service providers. Therefore, only wireless users who obtain
4 service through U.S.-based wireless service providers will be able to use a short code to make a
5 contribution. GTSG also has the technical capability to selectively block specific phone
6 numbers, groups of phone numbers, and phone numbers with international codes. GTSG's
7 proposed process will reject any single contribution over \$50 and will reject a contribution of
8 any amount that will result in the wireless user making contributions that, in the aggregate,
9 exceed \$50. To initiate a contribution, a wireless user² will send a text message using a pre-
10 assigned "keyword" to a "common short code."³ After sending the text message, the wireless
11 user will receive reply text messages to verify that he or she intends to make the contribution, as
12 well as a certification of the wireless user's eligibility to make contributions.⁴ The wireless user
13 must reply affirmatively to both statements. The wireless user will also receive a text message
14 from GTSG containing a link to a contribution web page. The wireless user may access this
15 contribution page from his or her mobile device and enter his or her credit or debit card
16 information⁵ and the amount of the contribution onto a web form on the page. The credit or

² In Advisory Opinion 2010-23 (CTIA I), the Commission explained the meaning of the terms "wireless subscriber" and "wireless user." A "wireless subscriber" refers to an individual who a wireless service provider bills; a "wireless user" refers to all individuals who are included in the subscriber's billing plan, including, for example, a family or group plan, but who are not directly responsible for payment to the "wireless service provider."

³ For example, to make a contribution to U.S. Senate candidate John Smith, a wireless user would text the keyword "Smith" to a common short code. A common short code is a five- or six-digit number to which wireless users can send text messages to access mobile content, such as "313131." See Advisory Opinion 2010-23 (CTIA I).

⁴ The eligibility certification would be similar to the following: "Press Donate Now to process your contribution to the [candidate's name] campaign. This certifies you are at least 18 years, using your own funds, not a Federal Contractor and are not a foreign national. Terms at gtsgglobal.com/t."

⁵ The only credit or debit card information requested of the wireless user will be the card number, expiration date, and the three- or four-digit security code.

1 debit card information will then be transmitted securely to the card processor for authorization.
2 The contribution will appear on the wireless user's credit or debit card statement and will not
3 appear as a charge on the bill from the wireless user's wireless service provider. Because the
4 contributions will not exceed \$50 per transaction, the credit or debit card information and the two
5 contribution text message verifications described above are the only information that GTSG will
6 request from the wireless user. The name and address of the wireless user will not be requested
7 and will not be available to GTSG or the political committee.

8 After receiving the funds from the credit or debit card company, GTSG will place the
9 contribution in its general corporate treasury account. GTSG employs an accounting structure
10 that tracks funds as they are received. As part of its standard operating procedure, GTSG will
11 receive a data file that indicates which funds are designated for a particular project or political
12 committee. GTSG will match that file with the actual contributions received to determine the
13 distribution of funds to recipient political committees. The accounting structure will use the
14 keyword, short code, date-time stamp, and card verification data from the data file to complete
15 the match. GTSG will then transmit the contribution to the political committee customer, less
16 any associated fees (discussed above), along with the amount and date of the contribution, the
17 wireless user's ten-digit phone number, and the fact that the wireless user attested to his or her
18 intent and eligibility to make the contribution. GTSG will also maintain a tally of contributions
19 made from each mobile phone number, and will make this information available to the recipient
20 political committee customer.

21

1 ***Question Presented***

2 *Would the proposed process outlined in the request allow Global Transaction Services*
3 *Group, Inc. to process anonymous donations and distribute them to the recipient political*
4 *committee customers?*

5 ***Legal Analysis and Conclusion***

6 Yes, GTSG's proposal to receive anonymous donations and distribute them to recipient
7 political committee customers, as outlined in its request, is permissible under the Act and
8 Commission regulations.⁶

9 In considering the use of technology, including credit and debit cards, to make
10 contributions, the Commission has previously "interpreted the Act and its regulations in a
11 manner consistent with contemporary technological innovations . . . where the use of the
12 technology would not compromise the intent of the Act or regulations." Advisory Opinion 1999-
13 09 (Bradley for President) (approving Federal matching funds for contributions received over the
14 Internet through the use of a credit card). In a number of advisory opinions, the Commission has
15 specifically approved the use of credit cards to make contributions. *See, e.g.,* Advisory Opinion
16 1995-09 (NewtWatch); Advisory Opinion 1978-68 (Seith for Senate Committee); *see also*
17 *Explanation and Justification for Final Rules on Matching Credit Card and Debit Card*
18 *Contributions in Presidential Campaigns*, 64 FR 32394 (June 17, 1999).

19 The Commission understands GTSG's question to raise three issues under the Act and
20 Commission regulations relating to the receiving and forwarding of contributions for political

⁶ The Act and Commission regulations impose certain requirements on treasurers of political committees. For example, a "treasurer shall be responsible for examining all contributions received for evidence of illegality and for ascertaining whether contributions received, when aggregated with other contributions from the same contributor, exceed the [Act's] contribution limitations." 11 CFR 103.3(b). This advisory opinion does not address the recipient political committees' requirements under GTSG's proposal.

1 committees: (1) whether the contributions received for political committees are timely
2 forwarded; (2) whether contributor information must be forwarded for contributions of \$50 or
3 less; and (3) whether the requestor will properly account for political contributions deposited in
4 its corporate treasury account.

5 *Timeliness of Forwarded Contributions*

6 The Act and Commission regulations require every person who receives a contribution
7 for an authorized political committee to forward the contribution to the committee's treasurer
8 within ten days after receiving the contribution. 2 U.S.C. 432(b)(1); 11 CFR 102.8(a). The Act
9 and Commission regulations further require every person who receives a contribution of \$50 or
10 less for a political committee that is not an authorized committee to forward the contribution to
11 the committee's treasurer within 30 days after receiving the contribution. 2 U.S.C. 432(b)(2)(A);
12 11 CFR 102.8(b)(1).

13 The Commission considers contributions made by credit or debit card to be received as of
14 the date that the credit or debit card holder authorizes his or her card to be charged with the
15 contribution. *See* Advisory Opinion 2012-17 (m-Qube I) (citing Advisory Opinion 1990-04
16 (American Veterinary Medical Association)). GTSG states in its request that it will forward all
17 contributions, less applicable fees, to the political committee customer within seven days, along
18 with contribution totals and the supporting documentation discussed above. Because GTSG will
19 forward all contributions received within ten days, its proposal meets the forwarding timelines
20 required by the Act and Commission regulations.

21 *Contributor Information*

22 For any contribution over \$50, the Act and Commission regulations require that the
23 person forwarding the contribution forward to the political committee's treasurer the name and

1 address of the person making the contribution and the date of receipt of the contribution.

2 2 U.S.C. 432(b)(1), (2)(B); 11 CFR 102.8(a), (b)(2).

3 The requestor states that wireless users using its text message system to make credit and
4 debit card contributions will only be able to enter a contribution in the amount of \$50 or less, and
5 that the system will reject a contribution of any amount that would result in a wireless user
6 making aggregate contributions exceeding \$50.⁷ Because the proposed process will not allow a
7 contributor to contribute in excess of \$50, GTSG is not required to collect or forward the names
8 and addresses of contributors to recipient political committees. Accordingly, GTSG's proposal
9 to accept anonymous contributions of \$50 or less to be forwarded to political committees is
10 permissible under the Act and Commission regulations.

11 *Proper Accounting for Contributions*

12 Corporations and labor organizations are prohibited from making contributions. *See*
13 2 U.S.C. 441b; 11 CFR 114.2(b). In Advisory Opinion 2012-30 (Revolution Messaging, LLC),
14 the requestor proposed a process in which contributions are deposited in a general corporate
15 treasury account with an accounting method linking contributions to specific political
16 committees to assigned keywords texted to common short codes. The Commission concluded
17 that the proposed accounting method ensured that political contributions are properly accounted
18 for and that corporate treasury funds would not be inadvertently transmitted to political
19 committees. Advisory Opinion 2012-30 (Revolution Messaging, LLC). Similarly, in this
20 request, GTSG states that it currently has an accounting structure that will use keyword, common

⁷ GTSG also indicates that it can customize its system to allow contributions aggregating in excess of \$50 and to collect identification information from such contributors. Under GTSG's current proposal, however, neither single nor aggregate contributions exceeding \$50 will be accepted by GTSG. Therefore, the Commission need not consider whether any future plan to collect contributor information would be permissible under the Act and Commission regulations. *Cf.* Advisory Opinion 2012-30 (Revolution Messaging, LLC) (approving a proposal to process contributions to political committees in excess of \$50 per billing cycle and \$200 per year).

1 short code, date-time stamp and credit and debit card verification data to track contributions.

2 Therefore, GTSG's proposal satisfies the requirements of the Act and Commission regulations.

3 This response constitutes an advisory opinion concerning the application of the Act and
4 Commission regulations to the specific transaction or activity set forth in your request. *See*

5 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or

6 assumptions presented, and such facts or assumptions are material to a conclusion presented in

7 this advisory opinion, then the requestor may not rely on that conclusion as support for its

8 proposed activity. Any person involved in any specific transaction or activity which is

9 indistinguishable in all its material aspects from the transaction or activity with respect to which

10 this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B).

11 Please note that the analysis or conclusions in this advisory opinion may be affected by

12 subsequent developments in the law, including, but not limited to, statutes, regulations, advisory

13 opinions, and case law. The cited advisory opinions are available on the Commission's website,

14 www.fec.gov, or directly from the Commission's Advisory Opinion searchable database at

15 <http://www.fec.gov/searchao>.

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17 On behalf of the Commission,

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Caroline C. Hunter
Chair