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October 6, 2006

Lawrence Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Advisory Opinion Request – Working Assets, Inc.

Dear Mr. Norton:

Pursuant to 2 U.S.C. § 437f, on behalf of our client, Working Assets, Inc., and its subsidiaries ("Working Assets"), we request an advisory opinion confirming that Working Assets' newly planned affinity program is permissible under the Federal Election Campaign Act of 1971, as amended (the "Act") and the Commission's regulations.

I. Background: Working Assets' Existing Business and Affinity Programs

A. Working Assets' History and Core Businesses

Working Assets is a closely-held, privately owned for-profit corporation specializing in donation-linked telecommunications and credit card services. The company began more than 20 years ago offering an affinity credit card program, under which 10 cents of each of the cardholder's purchases were donated to a fixed pool (chosen by the company, not the cardholder) of nonprofit organizations tax-exempt under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code. Soon thereafter, the company began to offer long distance service to customers, under an arrangement in which the company donates 1% of each customer's monthly long distance charges to a fixed group of nonprofit organizations. In addition, customers are offered the opportunity voluntarily to "round-up" their monthly telephone bill, with the difference between the actual bill and rounded up amount being donated to the same pool of nonprofits.

In 2000, Working Assets began to offer wireless telephone service on the same basis. The company purchases wireless service on a wholesale basis from Sprint and resells that service to consumers at competitive retail rates, with the added attraction that 1% of the consumer's monthly cellular telephone charges are donated to the fixed pool of nonprofit organizations. The "round up" feature is also offered for wireless service.

In 1991, Working Assets created its "Citizen Action" program to provide its long-distance and wireless customers with information about current issues and an opportunity to communicate their views on legislative and policy issues to elected and appointed officials. Each month, each customer's telephone bill highlights national issues and state

issues in certain states, and sets forth "action alerts" indicating what action can be taken on those issues and what officials should be contacted. The customer can call the targeted decision-makers free of charge (on their regular phone or cell phone), or can have Working Assets send a letter on their behalf for a fee, providing an additional source of revenue for the company.

A related program, ActForChange, offers a website providing similar information about current issues and the opportunity for users to contact officials free of charge, online. The company's "workingforchange" website (www.workingforchange.com) is an online publication offering links to articles and blogs of interest to progressive citizens.

Working Assets' business model relies on attracting a certain group of consumers to purchase its long-distance and wireless services by reason of the interest of those consumers in supporting the group of nonprofit organizations, and in having an opportunity for ongoing citizen activism. The links to donations and activism are the company's competitive advantage: these features draw customers to Working Assets and keep those customers purchasing the company's services, in a highly competitive telecommunications market with many options for consumers.

B. Current Affinity Programs

In a variation of its core businesses, the company, beginning about eight years ago, began to offer affinity long-distance programs to non-profit organizations. Under that arrangement, the company partners with a non-profit organization to market long-distance services to members and supporters of that organization. If a customer signs up, 1% of the customer's long-distance charges are donated to the non-profit organization. These affinity programs have proven to be as profitable to the company as its core businesses.

Recently, Working Assets has extended its affinity program to encompass wireless service. The company partners with a section 501(c)(3) organization to market wireless service specifically to supporters and members of the organization. When such supporters and members sign up to receive the service, 10% of their monthly charges are donated to that non-profit organization. The ability to offer a 10% donation has turned out to be a highly effective marketing tool. For that reason, this program, too, has proven highly profitable because of the volume of additional sales generated by the affinity marketing.

II. Proposed Expanded Affinity Program

Based on the commercial success and profitability of its current affinity programs, described above, Working Assets desires further to expand its wireless affinity program to include arrangements with 501(c)(4) organizations (including qualified non-profit

corporations) and federal political committees. The prospective federal political committee sponsors are hereinafter referred to as "Political Affinity Sponsors".

The expanded affinity program would be made available to *any* federal political committee that requests the chance to participate, including authorized candidate committees, separate segregated funds, non-connected political committees, and party committees, without regard to party affiliation or ideological orientation but subject to each particular program's commercial viability determined by common commercial principles, including, for example, size of membership(i.e., number of potential customers for Working Assets), potential for long-term customer commitment, strength of trademark, and credit rating of membership. While the program would be made available to all types of political committees, commercial criteria make it unlikely that Working Assets would enter into agreements with candidate committees or separate segregated funds, the former due to the short-term nature of election-related fund-raising and the latter due to the small size of membership.

Under the expanded affinity program, Working Assets would obtain from the Political Affinity Sponsor its membership/supporter list and permission to market a mobile phone, together with a subscription to Working Assets' wireless service, as an affinity package, i.e., using the Sponsor's name and trademark[1]. Working Assets would pay the costs of this marketing, which would include direct mail and online solicitations. The marketing materials would include a message from the Political Affinity Sponsor soliciting support. That message might refer to past elections and electoral results, but would not refer to current or future elections or current federal candidates.

Customers who purchased the wireless service would be offered an automatic rebate of 10% of their monthly charges. Customers would be given the option to receive the rebate (in the form of a credit on their next bill), or to direct it as a contribution to the Political Affinity Sponsor. This option would be offered at time of initial signup and annually, thereafter, and customers could change their option at any time. In addition, the customer would be offered the opportunity to make an additional voluntary contribution to the Political Affinity Sponsor by "rounding up" their monthly bill, thereby specifying as the amount of the voluntary contribution, the difference between the actual bill and the rounded-up amount.

The donation form portion of the bill would set forth all the disclaimer language required by the Commission's regulations to be set forth in connection with solicitation of contributions subject to the limits and prohibitions of the Federal Election Campaign

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[1] Example text of Political Affinity Sponsor marketing: Calling All Vegetarians: With Vegetarian Wireless powered by Working Assets, you can turn your phone into a tool for pro-vegetarian change. Every time you use your phone, you earn a 10% rebate on your wireless charges. With Vegetarian Wireless, you can keep that rebate or you can send to Vegetarian PAC, the group that helped elect Congressman Joe Brown – our nation's first vegetarian Congressional representative.

Act of the 1971 as amended (the "Act"), plus appropriate disclaimers that describe the prohibitions on contributions from corporations, labor organizations, national banks, Federal contractors and foreign nationals. The bill's donation form would require customers who donate to provide their name, address, occupation and employer. The donation form portion of the bill would also include a statement of the applicable limits on contributions to the Sponsor and in the aggregate. All of this information would be transmitted to the Political Affinity Sponsor in time to meet the Sponsor's recordkeeping and reporting requirements under the Commission's rules.

All rebates directed to the Political Affinity Sponsor would be credited to the Political Affinity Sponsor through an automated clearinghouse transaction within 24 hours after receipt of the written designation by Working Assets. All contributions received by way of "rounded up" amounts or additional voluntary donations would be forwarded to the Political Affinity Sponsor within 24 hours of receipt by Working Assets.

Working Assets would charge or obtain payment from the Political Affinity Sponsor for any expenses related to processing the rebates directed to the Sponsor, related to processing any additional voluntary contribution including any "rounding up" of a bill and related to transmitting the proceeds and contributor information to the Sponsor.

Political affinity sponsors will be offered an opportunity to insert issue advocacy "Citizen Action" alerts in affinity customer bills. The program will function as it does for non-Political Affinity customers: customers can call the targeted decision-makers free of charge, or can have Working Assets send a letter on their behalf for a fee, providing an additional source of revenue for Working Assets. Although non-Political Affinity Sponsors bear no expense related to their "Citizen Action" alerts, Working Assets would charge or obtain payment from Political Affinity Sponsors for all expenses related to the customer calls and the provided bill space under this program.

The bill sent to customers may also include advertising space for content created by the Political Affinity Sponsor. The Sponsor, however, would be required to purchase that advertising space at fair market value, and that portion of the bill representing paid advertising space would carry the Sponsor's disclaimer as required by 11 C.F.R. §§110.11(b) & (c)(2).

III. Legal Discussion

We ask the Federal Election Commission (the "Commission") to confirm that Working Assets' proposed affinity program is permissible under the Act.

A. Commission Treatment of Affinity Programs

The Act prohibits corporations from using their general treasury funds to make contributions or expenditures in connection with federal elections. 2 U.S.C. § 441b(a). A "contribution" includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. 431(8)(A)(i); see also 2 U.S.C. 441b(b)(2). "Anything of value" is considered to include all in-kind contributions, including the provision of goods or services without charge or a charge that is less than the usual and normal charge for such goods or services. 11 CFR 100.52(d)(1). Section 100.52(d)(2) defines "usual and normal charge for goods" as the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution.

In addition, the Act bans contributions by foreign nationals, and government contractors and imposes limits on the contributions that political committees and national committees of political parties may receive from any individual contributor. 2 U.S.C. §§ 441a(a), 441c, 441e.

The Commission has examined various affinity programs in prior advisory opinions, including affinity credit cards, telemarketing services, and certain pay-per-call services known commonly as "900-lines." *See, e.g.*, Advisory Opinions 2003-16, 1995-34, 1994-33, 1991-26, 1991-20, 1990-14, 1990-1, 1988-12, and 1979-17. In essence, the Commission's rulings have established that, while it is not permissible for a corporation or bank to sponsor an affinity program in which a portion of the revenues charged and collected by the corporation or bank are donated to a federal political committee, e.g., AO 1988-12, AO 1979-17, it *is* permissible for a corporation to offer an affinity program in which (i) the customer has the option to direct some portion of the customer's own funds, that would otherwise be under the customer's exclusive personal control, to a federal political committee; and (ii) any services provided to the political committee are either paid for by the committee or received in exchange for fair, bargained-for consideration.

For example, in AO 1994-33, the Commission considered a program under which a company offered prepaid phone cards co-branded with the name and logo of federal political committees. The purchaser had the option to designate a portion of the purchase price of the card as a contribution to the committee, in which case the value of the minutes credited to the purchaser was reduced by the amount of the donation. The Commission approved the program on the grounds that the funds being contributed belonged to the customer, not the company, and the beneficiary committee paid all the costs associated with processing the contribution transactions.

Again, in AO 2003-16, the Commission considered a proposal in which a bank would offer a co-branded, affinity credit card with a national party committee sponsor.

The bank (Providian) proposed to market the card, at the bank's own expense, to lists of party supporters identified by the national party committee.

The national party committee had the opportunity to receive contributions from affinity cardholders in the form of customer rebates and bonuses that customers would receive through using their credit cards. Specifically, Providian proposed a rebate card that allowed cardholders to earn rebates by charging their purchases on their credit card. Providian would provide the national party committee with contributions from cardholders who authorized the Bank to forward their rebates to the national party committee. If a cardholder did not wish to forward his or her rebate to the national party committee, the rebate would be sent to the cardholder instead. Providian stated that it would charge the national party committee for any transactional expenses related to forwarding the contributions.

In addition, there was a proposed bonus feature consisting of a payment to the cardholder from Providian of a certain fixed dollar amount once a cardholder charged a certain number of purchases or a certain dollar amount on the affinity credit card. Providian would give cardholders the option to have Providian forward the value of their bonuses to the national party committee. If any cardholder did not wish to contribute his or her bonuses to the national party committee, Providian would instead send the bonuses to the cardholder.

Finally, Providian proposed that the national party committee would pay for advertising space in Providian's communications to cardholders or prospective cardholders, even though the bank's other affinity sponsors were generally not required to pay for such advertising space.

The Commission determined, first, that the marketing of the card by the bank to lists of Party supporters provided by the Party, at the Bank's own expense, would not constitute an impermissible in-kind contribution but rather would be "equal exchanges of bargained-for consideration" if two conditions were met:

(i) the value of the list to be provided by the national party "is sufficient to cover the costs of the services provided by the Bank under the proposed Affinity Program," ; and

(ii) the arrangement to provide the services "will be similar to most affinity programs between the Bank and non-political entities."

Second, the Commission determined that, because the proposed program "will permit cardholders to choose whether or not to contribute part or all of their rebates to the national party committees," the contributions of rebates "would be treated as contributions from the cardholders' personal funds" and "the Bank will not be making an

impermissible contribution." The Commission reached the same conclusion with respect to the bonus feature, for the same reasons.

Third, the Commission found that the bank would not be improperly facilitating the making of contributions because the national party committee would be charged the normal and usual rate for these services.

Finally, the Commission ruled that the bank would not be making an impermissible contribution when the national party committee purchased advertising space in mailings to cardholders and prospects because the bank would charge the normal and usual fee for such advertising and no additional processing expenses would be associated with the communications or promotional materials.

B. Analysis of Proposed Working Assets Expanded Affinity Program

The proposed expanded affinity program Working Assets plans to offer meets all of the requirements established by the Commission to ensure that such affinity programs do not result in the making of any impermissible in-kind corporate contribution.

First, as in AO 2003-16, the value of the list and trademark provided by a political committee to Working Assets to be used in marketing the affinity phones and wireless service, would clearly be equal to or greater than the value of the services to be provided by the company. The arrangement is exactly the same as that which Working Assets is currently using with non-profit organizations. The increased response to an offer co-branded by an affinity sponsor offsets the costs to Working Assets not only of the services but also of the rebate. The avoided costs include free use of the affinity sponsor's list, deployment of e-mail by the sponsor, avoided postage through use of existing sponsor communications to communicate offers and free placement on the sponsor's website. Furthermore, it is Working Assets' business practice to only incur program expenses that maintain customer profitability. This customer profitability model is applied to Working Assets' current non-profit affinity program and will be strictly applied to our expanded affinity program.

Second, as in AO 1994-13 and AO 2003-16, the proposed program will "permit [the customer] to choose whether or not to contribute part or all of their rebates to" the political committee. Exactly as in AO 2003-16, customer rebates would be the property of the customer at the time the rebates are issued. The proposed affinity program would permit customers to choose whether or not to contribute their rebates to their designated Political Affinity Sponsor.[2] The same would be true of any amounts that the customer

[2] The 10% rebate constitutes a premium that is issued in the ordinary course of business for Working Assets as a proven, revenue-enhancing marketing tool. In its non-political affinity program, the premium is offered as a 10% contribution to the non-profit partner made from Working Assets' treasury funds.

chooses to contribute to a Political Affinity Sponsor through the "rounding up" option. Consequently, as in AO 2003-16, contributions of customers' rebates and "rounded up" bill payments constitute contributions from the individual customer's personal funds. Thus, Working Assets would not be making any impermissible contributions. Individual customers would be able to make these contributions as long as they do not exceed the applicable limits to the authorized committee, PAC or party committee or the applicable aggregate limit, and provided, of course, that such donating customers are not foreign nationals, or government contractors under 2 U.S.C. 441e and 441c, respectively.

Third, as in AO 2003-16, the company would not be facilitating the making of contributions, because the Political Affinity Sponsor would pay Working Assets all of the costs of processing rebates and "round-ups," and all of the costs of transmitting those funds to the political committee.

Fourth, Working Assets would not be making an impermissible contribution when a political committee purchases advertising space in the monthly bills sent to customers because the company would charge the normal and usual fee for such advertising and no additional processing expenses would be associated with the communications or promotional materials. It should be noted, in that regard, that Working Assets routinely provides advertising space in its customer bills to its Non-Political Affinity Program sponsors; accordingly, the advertising opportunity available to Political Affinity Sponsors would be within the ordinary course of Working Assets' business. *See* Advisory Opinions 1988-25, 1978-45. As required by AO 2003-16, Working Assets would ensure that it does not incur any additional processing expenses if such advertising is included in the bills sent to customers brought in through the Political Affinity Sponsor.

Finally, Working Assets understands that its forwarding of contributions to Political Affinity Sponsors does not relieve the sponsors from obtaining and disclosing contributor information, such as the contributor's address, occupation, and employer information. See 2 U.S.C. 431(13), and 434(b)(3)(A); 11 CFR 100.12 and 104.3(a)(4)(i). In accordance with Advisory Opinion 2003-16, Working Assets would collect and provide the customer's current address, occupation, and employer, and would forward the information to the Political Affinity Sponsor at the same time that the customer authorizes a contribution to be made through the rebate or rounding-up programs.

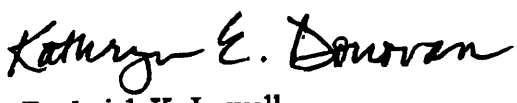
However, to ensure that contributions directed to political affinity partners conform to the standards set forth in AO 2003-16 the premium will be offered as a rebate, with the customer choosing to either contribute it or to keep it.

CONCLUSION

Based on the foregoing, we respectfully request the Commission to confirm that Working Assets' proposed Political Affinity Program is permissible under the Act and the Commission's regulations.

If you have any questions or need any further information, please contact the undersigned.

Sincerely yours,



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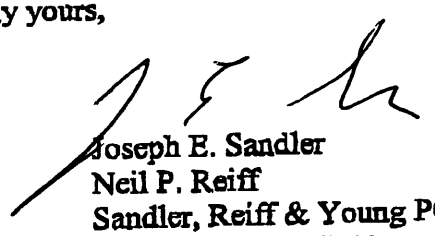

Joseph E. Sandler
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50 E Street, S.E. #300
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October 27, 2006

Via E-Mail

Jonathan Levin, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20003

Re: Advisory Opinion Request Submitted On Behalf of Working Assets, Inc.

Dear Mr. Levin:

This responds to the questions raised by you and Ms. Rothstein during our telephone conversation on October 18, 2006, regarding the Advisory Opinion Request submitted on behalf of Working Assets, Inc. on October 6, 2006. We address your questions in turn:

Question 1: Under the proposed new expanded affinity program, will affinity partners include separate segregated funds or authorized committees of federal candidates?

Answer:

No. Under the new expanded program, Political Affinity Sponsors that are federal political committees will include only non-connected PACs and party committees.

Question 2: Please address what is being exchanged for what in the context of the Commission's prior rulings on list rental and exchange; and clarify exactly what is being provided by Working Assets in this case in exchange for use of a Political Affinity Sponsor's contributor list.

Answer:

A. Legal Framework

By way of background, in general, when a federal political committee "sells" any kind of asset, the presumption is that the committee is engaged in fundraising and that the funds received by the committee constitute a contribution. If the asset is sold to, and funds are received from, a corporation, union or other impermissible source, such receipt of funds constitutes an unlawful contribution to the committee. (*E.g.*, Advisory Opinions 1983-2, 1981-7, 1980-70). As an exception to this general rule, however, the Commission has determined that the sale, lease or exchange by a political committee of its contributor or mailing list does not result in a contribution under certain circumstances. (*E.g.*, A.O. 1981-46). As summarized by the Commission in A.O. 1988-12:

> The Commission has recognized a narrow, limited exception,...where the asset involved was a political committee's mailing or contributor list which had a unique quality and was developed by the political committee in the normal course of its operations primarily for its own use, rather than as an item to be sold to others as part of a campaign fundraising activity....These latter opinions have also reiterated the requirement set forth in the Commission's regulations that, to avoid causing a contribution, the "compensation" given to the political committee in return for its unique list may not exceed the "usual and normal charge."

In A.O. 2002-14, as we discussed with you, the Commission confirmed that this "contributor list" exception was not affected by the enactment of the Bipartisan Campaign Reform Act of 2002 ("BCRA"). In that A.O., the Commission ruled that the Libertarian Party of the U.S., a national political party, could lease its membership list to other entities, including for-profit corporations, "without a contribution resulting if the following conditions are met. First, the list, or the leased portion thereof, must have an ascertainable fair market value. Second, the list must be leased at the usual and normal charge in a bona fide, arm's length transaction and the list must be used in a commercially reasonable manner consistent with such an arms-length agreement."

The Commission has also had occasion to apply this framework in the context of affinity programs. In A.O. 1988-12, the Commission considered a proposal under which a local Democratic Party would contract with a Bank to provide the Bank with the party's membership list which basically consisted of a voter file that could be purchased for a nominal amount by any member of the public. In exchange, the Bank would solicit Democratic voters for affinity credit cards and would provide a portion of the annual credit card membership fees to the party committee. The Commission held that this arrangement was *not* permissible, for several reasons: (1) the list was had no significant value because it was publicly available for a nominal charge; (2) the amount of value received by the local party committee—that is, a portion of annual membership fees

charged to cardholders—was variable and unpredictable and therefore could not be tied to or compared to the value of the list; and (3) the funds given to the committee were from the Bank's own funds and therefore constituted a corporate contribution in any event.

In A.O. 2003-16, a national party committee was to provide the Bank issuing affinity credit cards with the national party's mailing list, in exchange for certain services. Those services consisted of the Bank itself paying to contact Democratic Party supporters in the first instance to solicit them for the credit cards and to solicit those supporters, in those initial offers, to authorize that rebates be contributed to the national party committee. The Advisory Opinion Request explained that the national party committee would provide the Bank with the use of the national party's lists and a license to use the national party committee's name; that "once Providian receives the mailing list, it will edit the list based on whether individuals are sufficiently creditworthy....;" and that "[a]fter performing other customary list edits, *Providian will send offers to the individual prospects to offer them an affinity credit card.*" A.O.R. 2003-16, May 6, 2003, p. 3 (emphasis added). Thus it was clear that the Bank (Providian) was to market the card to the national party committee's list of supporters at Providian's own expense. The Commission, after citing the criteria from A.O. 2002-14 discussed above, stated that, "This Advisory Opinion assumes that your statement that value of the mailing list alone is sufficient to cover the costs of the services provided by the Bank under the proposed Affinity Program is correct."

B. Application to Working Assets Expanded Affinity Program

In the case of the proposed expanded Working Assets affinity program, the Political Affinity Sponsor would provide Working Assets with the Sponsor's contributor list in exchange for certain services being provided to the Sponsor. The questions presented, then, are (1) will the Sponsor's list meet the criteria set forth in A.O.'s 1988-12 and 2002-14 for rental of a list without resulting in a contribution; and (2) will the value of the services being provided in exchange for the list be equal to or less than the value of the list, A.O. 2002-14, A.O. 2003-16.

The list that the Political Affinity Sponsor would provide Working Assets would meet the two criteria set forth in A.O.'s 1988-12 and 2002-14, namely, (i) that a list be "developed by the political committee in the normal course of its operations primarily for its own use, rather than as an item to be sold to others as part of a campaign fundraising activity," A.O. 1988-12; and (ii) that the list "have an ascertainable fair market value." A.O. 2002-14. The list that the Sponsor would provide to Working Assets would be the Sponsor's list of contributors to the Sponsor. In all cases, the list provided by the Sponsor would be a list developed by that committee for its own use, *i.e.*, for re-soliciting proven donors—not for purposes of fundraising by selling or leasing the list. Further, in all cases, the list would have an established, definitive, ascertainable value. As these contributor names are not publicly available except on the Sponsor's FEC reports, the list

has a substantial value, by contrast with the voter file being provided in A.O. 1988-12. There would be no legal way to obtain and use the names of the committee's contributors other than by obtaining the rights to use the committee's list. Further, in every case, the Sponsor's list would have a recognized rental value in the list brokerage market.

The next issue is whether the value of the services being provided in exchange for the list would be equal to or less than the value of the list. In exchange for use of the list, Working Assets would pay the costs of soliciting the committee's contributors to purchase a mobile phone together with Working Asset's wireless phone service, including the rebate feature. As explained in the AOR, Working Assets would pay the costs of the solicitation through direct mail and/or online solicitation. Customers who purchase the wireless service would be offered an automatic rebate of 10% of their monthly charges, with the option to receive that rebate as a credit or to direct it as a contribution to the Political Affinity Sponsor.

The question presented, then, is whether the value of these services to the Political Affinity Sponsor would be equal to or less than the "usual and normal" rental charge for the list. A.O. 1988-12; A.O.2002-14. In making this determination, the threshold issue is exactly how to value the services being received by the Political Affinity Sponsor. Of course, the Political Affinity Sponsor is not receiving value equal to the full costs Working Assets would be expending to make the solicitation, because most of that value will accrue to Working Assets—not to the Political Affinity Sponsor. That is because 90% of what the customer pays if she signs up for the phone and wireless service goes to Working Assets—*not* to the Political Affinity Sponsor. Therefore, the value of the services to the Political Affinity Sponsor is equal to 10% of the costs expended by Working Assets in making the solicitations.

The valuation of the exchange can be illustrated by the following examples.

1) Assume that non-connected Alpha PAC has a membership list of 200,000. The one-time rental for Alpha's list for commercial use is $150/thousand, or $30,000.

A direct mail campaign soliciting Alpha members to join the Alpha affinity cell phone program, costs 50 cents/piece, or $100,000. The maximum possible contribution to Alpha PAC from the Alpha affinity cell phone program would be 10% of customer charges, delivered in the form of the customer rebate. The contribution to Working Assets will be 90% of customer charges. Accordingly, the cost allocation for the direct mail campaign is 10% Alpha, and 90% Working Assets. In this instance, the services to Alpha cost $10,000, while the value of Alpha's list is $30,000.

Additional marketing of the program may be accomplished through the use of Alpha's pre-existing communications to its members, at *no* cost to Working Assets.

2) Assume that on-connected Beta PAC has a membership list of 200,000. The one-time rental for Beta's list for commercial use is $40/thousand, or $8,000.

A direct mail campaign soliciting Beta members to join the Beta affinity cell phone program costs 50 cents/piece, or $100,000. The maximum possible contribution to Beta PAC from the Beta affinity cell phone program would be 10% of customer charges, delivered in the form of the customer rebate. The contribution to Working Assets will be 90% of customer charges. Accordingly, the cost allocation for the direct mail campaign is 10% Beta, and 90% Working Assets.

In this instance, the services to Beta cost $10,000, while the value of Beta's list is $8,000 – therefore, Working Assets will not conduct a direct mail campaign to Beta members. Instead, Working Assets would market the Beta affinity cell phone program through email, at a cost of 4 cents per email, or $8,000.

Additional marketing of the program may be accomplished through the use of Beta's pre-existing communications to its members, at no cost to Working Assets.

It should be noted that the same cost analysis is applied to Working Assets' non-profit affinity partners; direct mail is used only when the value of the list justifies the cost of the marketing. If the list value is lower than the cost of direct mail, email marketing and pre-existing partner communications are used instead.

Question 3: Please explain exactly how the political affinity program would be made available to any federal political committee that wishes to participate.

Answer:

As explained above, the proposed affinity program would not be made available to SSF's or authorized committees of federal candidates. The program would be made available to any non-connected PAC or political party committee meeting the applicable financial criteria, without regard to party affiliation or ideology. There will be information on the Working Assets website that any group can access, with contact information enabling a group to approach Working Assets about an affinity partnership. All groups will be evaluated on exactly the same basis in terms of financial criteria, as explained in the AOR.

Question 4: Does the example text in footnote #1 refer to a federal candidate who is running for reelection?

Answer:

No. The sample text refers to a current officeholder who is *not* running for re-election or for any other federal office. Political affinity marketing may refer to past

elections and electoral results, but will not refer to current or future elections or to current federal candidates.

Question 5: Please explain how the 10% rebate feature is in the "ordinary course of business" for Working Assets.

Answer: As explained in the AOR, the company has been offering affinity programs for non-profit organizations for more than eight years, for long-distance service. Recently Working Assets has expanded that program to include wireless service. Under that expanded non-profit program, 10% of a customer's wireless charges are automatically donated to the non-profit affinity sponsor. This expanded non-profit program began fairly recent but already two major non-profit organizations have signed up: Amnesty International and the Humane Society of the United States. The non-profit affinity program represents a major component of the company's growth strategy. Two senior-level positions with the company's management are dedicated exclusively to marketing and managing the non-profit affinity partnerships. Negotiations are under way with several other major non-profit organizations. The company projects that non-profit affinity partnerships—all of them including the 10% contribution feature--will represent 29% of Working Assets' wireless revenue by the end of 2007.

It should be noted that the reason you did not find the non-profit affinity program with the 10% contribution feature on the company's website is that the program is marketed to *sponsoring organizations*, not directly to consumers. Information for members of the sponsoring non-profit is then provided to those members on a separate website—for an example in the case of Amnesty International, see http://www.workingassetswireless.com/amnesty/ .

The test for whether a rebate is in the ordinary course of business for a corporation is whether that rebate is what is usual and normal in terms of being offered by the company uniformly and consistently to non-political clients. *See, e.g.*, A.O. 1985-28 (rebate on dinners not a contribution to authorized federal candidate committee when same rebate would be offered by a racetrack to "all *prospective* fundraising organizations...."). That is clearly the case here. The 10% contribution feature is being offered to all non-political, non-profit clients, including two major national non-profit organizations that have already signed up and to whose hundreds of thousands of members the 10% feature is being offered. The only difference is that, in the case of federal political committees, the 10% cannot be automatically directed by the company, but must be in the form of a rebate that can be kept by the customer or voluntarily directed by the affinity sponsor to the Member.

For these reasons, the 10% feature is in the "ordinary course" of Working Assets' business.

Question 6: Describe the content of and cost allocation for the Citizen Action program that would be offered to Political Affinity Partners.

Answer:

Political Affinity Sponsors would be offered an opportunity to promote "Citizen Action" alerts in affinity customer bills. These alerts would allow customers to contact elected and appointed officials about current pending legislative and policy issues. The Political Affinity Sponsor would pay the usual and normal rate to Working Assets for the space used, in the bill, for the Sponsor's "alert" message. The Political Affinity Sponsor would also pay for the cost of any calls made by customers to legislators or officials under the program. Affinity customers would pay themselves for any letters sent to legislators or officials.

For example, non-connected Alpha PAC proposes a Citizen Action alert urging Alpha affinity customers to support issue A. Alpha affinity customers are offered an opportunity to send a letter to their state representatives in support of issue A. Alpha affinity customers are charged $3 for each Citizen Action letter. Alpha affinity customers are also offered an opportunity to call their representative for free to discuss issue A. Alpha PAC will be charged for the cost of those calls as well as for the cost of the bill space advertising the Citizen Action alert.

Question 7: Explain whether QNC's could be political affinity program sponsors and, if so, under what conditions.

Answer:

Qualified non-profit corporations, of course, are non-profit organizations exempt from tax under section 501(c)(4) of the Internal Revenue Code. To be treated as such an organization, a 501(c)(4) non-profit corporation must meet all of the following requirements:

- Its purpose must be the promotion of political ideas including issue advocacy;
- It cannot engage in business activities;
- It has no shareholders or others with a claim on the organization's earnings; and
- It does not accept any contributions from business corporations or labor unions—*only* from individual U.S. citizens or legal permanent residents.

11 C.F.R. §114.10(c).

Normally, a 501(c)(4) nonprofit organization would be included in Working Assets' regular affinity program for non-profit organizations—*not* in the political affinity

program. In those cases where a non-profit c-4 organization is a QNC, however, Working Assets simply wants to be able to ensure the organization can participate in an affinity program without risking loss of its QNC status by reason of receipt of corporate contributions. For that reason, Working Assets proposes to treat QNC's like political committees and have them covered by this AO.

Any funds directed by customers to a QNC will not be used for electioneering communications or independent expenditures, but rather will be used for the general operating funds of the QNC sponsor. Thus, the provisions of section 114.10(f) of the Commission's rules will be inapplicable and if the QNC does maintain a segregated bank account under section 114.10(h), any funds resulting from rebates directed to the QNC under the affinity program will *not* be placed in such a bank account.

We trust that the above information is responsive to your questions. If you have any further questions or need any additional information, please do not hesitate to contact us. Thank you very much for your time and attention to this request.

Sincerely yours,

/s/

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November 14, 2006

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COUNSEL

2006 NOV 15 P 12: 11

Via E-Mail

Jonathan Levin, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20003

Re: Advisory Opinion Request Submitted On Behalf of Working Assets, Inc.

Dear Mr. Levin:

This responds to the questions raised by you and Ms. Rothstein during our telephone conversation on November 9, 2006, regarding the Advisory Opinion Request submitted on behalf of Working Assets, Inc. on October 6, 2006 and the supplemental submission made on behalf of the company on October 27, 2006. We address your questions in turn:

Question #1: Please explain the type and timing of the customer rebate notice. Also, if a customer elects to retain his/her rebate, can the customer still elect to use the program's round-up feature?

Answer:

At time of enrollment, customers would be given the option either to receive the ten percent (10%) rebate in the form of a credit on their next bill, or to direct it as a contribution to the Political Affinity Sponsor. Customers would be informed that they can change their rebate designation at any time by contacting customer service via a toll-free 800 number, or by email. Political Affinity customers would then receive an annual notice in their bill allowing them to affirm or change their rebate designation. The notice would appear in the bill sent during the 11th month following the month in which the customer enrolled.

A customer who elects to retain her rebate as a bill credit can still use the program's round-up feature to direct contributions to the Political Affinity Sponsor .

Question #2: Is Working Assets' non-profit affinity program limited to 501(c)(3) organizations?

Answer:

No. Working Assets' non-profit affinity program is available to any 501(c)(3) *or* 501(c)(4) organization, subject to the organization's commercial viability for the program determined by common commercial principals.

Question #3: Will the political affinity program include a webpage similar to the non-profit affinity webpage provided as an example in your October 27, 2006 response?

Yes. It is important to understand, however, that this webpage is *not* part of the solicitation of and marketing to the Political Affinity Sponsor's members/supporters; it is a sign-up page allowing customers to choose their handset and rate plan when they enroll in the program. There are no links from or promotion of this sign-up page on Working Assets' website. No banner advertising is run for this sign-up page. Indeed, the page is not accessible from the Working Assets web site, but can only be accessed via a specific URL provided in the marketing solicitation. Thus, this page is intended to be accessed by a customer only *after* she has decided to sign up for the service. The sign-up page is simply a mechanism to allow a customer to sign up for the program online rather than filling out and mailing in a paper form. The sign-up page thus benefits only Working Assets and the end-user/customer—*not* the Political Affinity Sponsor, in any way.

Further, the costs of developing the affinity sign-up page were previously incurred in Working Assets' creation of its Non-Profit Affinity program. Its underlying architecture is the same across all of Working Assets' programs; graphics and text are added for the purpose of confirming to the customer that they are enrolling in the specific program offered in the solicitation.

A link from the sign-up page to the Non-Profit Affinity Sponsor's website (e.g. "about Amnesty") is routinely provided by Working Assets at no cost to its Non-Profit Affinity Sponsors. However, this additional benefit will *not* be provided free of charge to the Political Affinity Sponsor; rather, every Political Affinity *will* be charged if the sign-up page includes a link to its own website.

Question #4: Will the Working Assets website be the only means of marketing the Political Affinity Program to prospective Political Affinity Sponsors?

Answer:

No. Just as with its Non-Profit Affinity program, Working Assets will actively approach potential Political Affinity Sponsors, as well as making the program information available on its website to enable any group to approach Working Assets about an affinity partnership.

Question #5: Will Working Assets produce only one marketing solicitation for each Political Affinity Sponsor or will Working Assets' program marketing be ongoing?

Answer:

While the examples provided in our October 27, 2006 supplemental response discuss only a single use list exchange, ongoing marketing solicitations may be conducted provided that, in all cases, the value of use of the Sponsor's list for whatever number of times it is used will be equal to or greater than the total cost of all marketing solicitations put together.

We trust the foregoing is responsive to the questions raised during our most recent discussion. If you have any questions or need any additional information, please do not hesitate to contact us.

Thank you for your time and attention to this request.

Sincerely yours,

/s/

Joseph E. Sandler
Counsel for Working Assets, Inc.