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**Admitted in California only*

January 6, 2000

Ms. Rosemary C. Smith
Acting Assistant General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: Comments of eContributor.com, Inc. in
Response to Federal Election Commission's Notice of
Inquiry 1999-24

Dear Ms. Smith:

This firm represents eContributor.com, Inc. ("eContributor.com"), a corporate entity engaged in ecommerce, which provides services and internet technology necessary for online fundraising by political candidates, political parties, organizations, separate segregated funds and other entities subject to the provisions of the Federal Election Campaign Act of 1971, as amended (2 U.S.C. § 431 et seq.) (the "Act"). eContributor.com welcomes the opportunity for input regarding existing and potential regulation(s) of online political activity, including fundraising.

The Commission has invited comment(s) on the use of the Internet for fundraising purposes. In response, eContributor.com addresses its comments to the following issues:

- (1) Advisory Opinion(s) 1990-4 and 1991-1. Date of 'receipt' of credit card contributions
- (2) Advisory Opinion 1999-22, 1999-9. Matching funds for online contributions
- (3) Advisory Opinion 1999-9. Screening prohibited and excessive contributions

Date of 'receipt' of on-line contributions.

The Act and regulations require that contributions to a political committee must be forwarded to the treasurer within ten (10) days of receipt by any person on behalf of the committee. 2 U.S.C. § 432(b); 11 C.F.R. §102.8(a). For purposes of calculating the ten (10) days for credit card contributions, the Commission has defined 'date of receipt' as the date the donor

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authorizes the contribution via his credit card. AO 1990-4 and AO 1991-1. This definition of 'date of receipt' creates a serious compliance problem for online contributions. eContributor.com directs the Commission's attention to the practical impossibilities of this definition and urges the Commission to revise the definition as soon as possible to remedy the problem(s).

eContributor.com does not actually come into possession of the funds (contribution) on the date the contribution is authorized by the donor. Ten (10) days from the date of authorization may even occur *prior* to deposit of the funds into eContributor.com's account, which follows processing by the credit card company, the initial processing vendor and the merchant bank.

To require eContributor.com to forward to the client's account (i.e., candidate, political party, SSF, etc.) within ten (10) days of *authorization* is to suggest that eContributor.com forward funds not yet received from the donor.

This firm has advised eContributor.com that it is NOT permissible for eContributor.com to advance funds to a candidate, political party or other regulated entity in anticipation of receipt of the authorized contribution, due to the prohibitions against corporation contributions contained in the Act, which an advance could be construed to constitute. In other words, eContributor.com is faced with a real dilemma of which portion of the law it should consider violating. It has been our advice that eContributor.com forward the contribution as soon as possible upon receipt, notwithstanding the fact that ten (10) days or more may have elapsed since authorization by the donor. While this is technically a violation of the Commission's definition of 'date of receipt', it is not a violation of the more serious statutory prohibition against corporate contributions to a political committee.

eContributor.com offers the following description of the process by which online contributions are processed to illuminate the problems of the Commission's definition of 'date of receipt'.

- There are at least three (3) companies/entities involved in processing all on-line transactions besides eContributor.com and who have control over online contributions prior to the date when eContributor.com receives the contribution into its account. eContributor.com has no control over the amount of time these entities control a contribution. The entities include: the credit card companies, (Visa, MasterCard, Discover and American Express), iTransact (the on-line verification/batching company), the Merchant processor (tells the bank how much should be deposited in eContributor.com's account), and the Merchant Bank (deposits money in the account).

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- All of the entities identified above require processing time which must occur sequentially, as well as time for control and use of the funds for their profitability purposes. eContributor.com has no control over how long each step in the process actually takes.
- The total amount of time from the point when the contribution is *authorized* by the donor (defined as the date of receipt under current FEC decisions) to the time that it is *actually* received by eContributor.com can range from three (3) days to ten (10) days. It can take longer if there are problems.
- No money moves during non-working hours and no money moves over the weekends. It is not deposited into eContributor.com's account on the weekends even though everything is electronic.
- Transactions (for reasons unknown to eContributor.com and beyond its control) are sometimes not batched on the same day that they are made. Transactions tend to decline late in the day for some reason and may not be processed until the next business day. So, if a transaction occurs on Friday but does not get batched on Friday, then it won't be batched until Monday, which lengthens the amount of time by two days before a contribution is received by eContributor.com.
- eContributor.com's experience to date reveals that the average time to process credit card contributions made on line using American Express cards is 7.2 days. Visa and MasterCard average approximately 6+ days. This is calculated from the date of authorization until the date of deposit into eContributor.com's account. This allows eContributor.com less than five days for reconciliation, screening and processing, which is insufficient time to properly review and process all contributions of this nature. Were it not for the extensive restrictions regarding source(s) and limits on amount(s) of contributions, this would not be an issue. However, because of the compliance issues apart from the 'date of receipt', this definition is fairly onerous.
- The above average time for processing prior to deposit in eContributor.com's account has necessitated a bank wire transfer of funds from eContributor.com to the client's account, at an additional cost per wire transfer of approximately \$20 per wire, a cost incurred by eContributor.com and billed to clients. To transfer the funds using the industry software for such transfers without the bank wire costs substantially less but takes approximately two (2) additional days.

eContributor.com urges the Commission to review its definition of 'date of receipt' within current technological and practical applications and revise the definition accordingly. The definition should provide that the 'date of receipt' of funds by a fundraising processor

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such as eContributor.com is the date that the funds are, in fact, actually received (deposited) into eContributor.com's account.

This will have an important impact on the ability of eContributor.com to assist its clients with additional screening to ascertain impermissible or excessive contributions, reattribution issues, best efforts requirements, etc. eContributor.com is developing a program for instituting a holding queue for clients who wish to apply additional screening mechanisms, allowing time for more individualized review of pre-selected categories of contributions. Under the current system defining date of receipt as a date prior to eContributor.com's receipt of the funds, there is no time available for eContributor.com to place the funds in a holding queue for the application of additional processing safeguards.

eContributor.com would be pleased to work with the Commission staff to more fully amplify the issues regarding the procedures and systems required for online processing of contributions and to provide assistance in redefining the terms applied by the Commission to bring them in line with current technology and industry standards.

Matching funds for online contributions.

The Commission has required in AO 1999-22 that a separate merchant banking account must be established in order for a presidential candidate to be eligible to receive matching funds for online contributions.

Following issuance by the Commission of AO 1999-22, eContributor.com contracted to provide online fundraising processing for certain presidential campaign(s). The requirement for obtaining separate merchant bank account(s) for each campaign has been significantly burdensome, enormously costly and has raised issues related to other areas of the Act.

In order for the candidate's name to appear on the credit card invoice of the donor, a separate subsidiary corporation has to be established by a processing company such as eContributor.com. A campaign who processes the contributions in-house or which does not seek federal matching funds does not encounter these difficulties. The Commission should be advised that merchant banks will not allow an account to be established in any name other than that of the corporate entity that owns the account, in this case, the name of eContributor.com. Thus, for eContributor.com (or other similar entity) to provide online fundraising services to a presidential campaign seeking matching funds, eContributor.com must create a separate corporate entity (with the presidential campaign's name included in the name of the new corporate entity) in order to satisfy the merchant bank's requirements. This process is not similar to the ordinary course of business for merchant bank accounts and eContributor.com experienced enormous difficulties in establishing such an entity and collateralizing it to satisfy the merchant bank's requirements for this unusual account.

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The additional costs incurred by eContributor.com resulted from the requirement(s) contained in 1999-22 for separate merchant bank accounts for each presidential campaign, yet are wholly unnecessary for Commission audit and compliance purposes, the stated purpose of the requirement. There are ample records which can be made available for FEC Auditors to be able to trace internet contributions to presidential candidates. eContributor.com would urge the Commission to review its requirements for matching online contributions and documents, copies, records required for auditing such contributions. eContributor.com is more than happy to work with the Commission to assist in developing revised procedures for internet contributions to presidential campaigns, which will hopefully allow the Commission to comfortably delete its 'separate merchant bank account' requirement contained in 1999-22.

Screening prohibited and excessive contributions.

The Commission has asked if requirements in addition to or in lieu of those contained in AO 1995-9 and reiterated in AO 1999-9 for screening online contributions should be developed. eContributor.com would urge the Commission not to change the screening procedures at this time. We urge this for a variety of reasons.

First, this election cycle will mark the first time online fundraising will be utilized to any significant degree. eContributor.com, candidates, parties, donors and the Commission will all learn much during this cycle about the system, its pitfalls and any needed changes. It is premature to make changes in a system before it is given an opportunity to function through an entire election cycle. A review of the screening system one year from today will be more advisable because at that time, all concerned will have the experience and knowledge of the issues related to the system, about which we can only speculate at this time.

Also, it is important to bear in mind that there is no failsafe mechanism to eliminate impermissible contributions by persons who are intent upon violating the law. eContributor.com believes that most donors to political campaigns, particularly those who contribute via the internet, tend to be more cause driven and are not likely to deliberately violate the law. That is why the statements to which each donor must attest are important and, we believe, sufficient in most cases to insure compliance with the provisions of the Act. It is a fairly simple and straightforward system and educates donors as to the requirements and purposes of the law.

Further, we would reiterate our comments at the outset of this letter. eContributor.com is working to develop additional mechanisms – beyond the minimum requirements of the existing system – for screening against impermissible contributions. By redefining 'date of receipt' and allowing additional time for eContributor.com to establish for individual clients more stringent screening capabilities, we hope to develop some procedures

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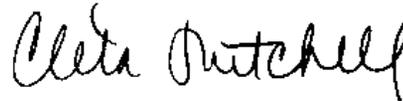
that may be beneficial to the regulated community and the Commission in a review and analysis after the 2000 election.

Conclusion

On behalf of eContributor.com, we wish to thank the Commission for its attention to these issues and to once again state our willingness to work with the Commission on these matters.

Please contact us (202) 861-5900 if you have further questions. We look forward to working with the Commission on these matters throughout the coming year and beyond.

Sincerely,
SULLIVAN & MITCHELL, P.L.L.C.



Cleta Mitchell, Esq.
For the Firm
Counsel for eContributor.com, Inc.

cc: Mr. Trey Richardson, President
eContributor.com, Inc.