



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 20, 1995

CERTIFIED MAIL
RETURN RECEIPT RETURNED

ADVISORY OPINION 1995-34

Michael J. Kurman
Elliott I. Portnoy
Arent, Fox, Kintner, Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339

Dear Messrs. Kurman and Portnoy:

This responds to your letter dated August 28, 1995, requesting an advisory opinion on behalf of Politechs, Inc. ("Politechs") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the provision of 900-line services for fundraising by political committees.

Politechs, an information provider, will contract directly with authorized committees and other political committees that are not separate segregated funds for the delivery of 900-line services. You wish to know the permissibility of the proposed services under the Act and Commission regulations.

I. Politechs' Proposal

A. Description of Proposed Services

Politechs intends to offer political committees the following array of services:

(1) callers may obtain information about a candidate's position on various issues via "touchtone" prompts and responses, or by entering their fax number and requesting information via a faxback service;

(2) callers may express their support for, or opposition to, a candidate's position on various issues via touchtone prompts, and a summary of their responses will be provided to the political committee;

(3) callers may make political contributions to the political committee by selecting an amount and entering a credit card number and expiration date;

(4) callers may express an interest in contributing to the political committee by means other than credit card transactions, and that interest will be communicated to the committee (which will be solely responsible for contacting the individual to solicit and obtain the contribution); and

(5) political committees may obtain a list containing caller names, telephone numbers, addresses, and fax numbers.

A caller will be charged for the call itself on a per minute basis in an amount up to \$50. Politechs will retain the full amount of the caller's payment for the call; this is the charge to the political committee for the value of services rendered by Politechs and by the third-party vendors with whom Politechs will contract. If, in addition to the call itself, the caller also makes a credit card contribution, the political committee will receive the full amount of that credit card contribution minus the usual and normal service charges of the credit card issuers.

B. Preliminary Arrangements

Politechs has reserved certain 900 numbers under a licensing agreement with DialTone, Inc., a California corporation. Pursuant to a contract with a political committee, Politechs will authorize DialTone to enter into an agreement with a long distance carrier ("LDC") to receive 900 number access and services (including tariffed interstate network services and non-tariffed premium billing services). Politechs will also enter into agreements with a service bureau for operation of call termination equipment and various caller identification and screening systems (including automatic number identification, voice response units, and touchtone data capture services), and with various third party vendors for other necessary services (e.g., credit card authorization and processing, billing name and address services, etc.). The services described above will be obtained from the various vendors at the usual and normal charge for similar services; the rate will include expenses plus a reasonable profit.

In order to avoid any corporate contributions, Politechs will ensure that the political committees do not receive any services for which Politechs, or the third-party vendors with whom it contracts, remains uncompensated or is compensated below the usual and normal charge for all services received. All of the charges for programming the script, voice digitization, and other related set-up charges will be billed, in advance, directly to the political committees at the usual and normal rate. In addition, Politechs will require deposits from its political committee customers sufficient to cover the costs of the service and any losses. In order to ensure that losses do not exceed the deposit, Politechs will terminate its 900 number service for a particular political committee if the service fails to generate sufficient caller volume.

C. Content of the Calls

Callers to a 900 number will first hear a preamble on the audioscript informing them of the charges for the call, the purpose of the call, and the identity of the political committee. The audioscript will explain that the entire charge is considered a political contribution subject to the limitations and prohibitions of the Act. It will also inform callers about relevant contribution limits and prohibitions on contributions from corporations, labor unions, government contractors and foreign nationals, as well as contributions in the name of another, and a prohibition against a credit card cardholder receiving reimbursement for the charge to his or her card. At the conclusion of the preamble, callers will be provided an opportunity to disconnect without incurring any charges.

Those callers who remain on the line following the preamble will be prompted by an audioscript to enter responses to various questions, using an interactive touchtone response system.^{1/} These responses will include a caller's party affiliation, views about a candidate's position on a particular issue (e.g., affirmative, negative or numerical answers), fax number (if the caller wishes to receive information about a candidate's position), and credit card number and expiration date in the event the caller wishes to make a contribution. Callers will also have the opportunity to indicate that they wish to be contacted by the political committee directly in order to make a contribution by means other than a credit card. Database controls will monitor the length of individual calls and the number of times an individual may call the 900 number; this would limit the number of calls and the total contributions resulting from any one telephone number. The aggregate cost of calls from the same telephone number will be limited to \$50.

D. Caller Identity and Screening Procedures

The service bureau acting under contract with Politechs will have the technological capability to identify individual callers in order to ensure proper recordkeeping and to safeguard against the receipt of corporate and other prohibited contributions.^{2/} Using an automatic number identification ("ANI") system, as well as touchtone responses to prompts recorded by a voice response unit ("VRU"), the service bureau will record the incoming numbers of callers along with any other caller identification that is ascertained from the calls. This information will be provided by the service bureau to R.j. Gordon & Company ("RjGCo"), which will operate a data base management system for Politechs. RjGCo will contract with a third-party vendor to obtain billing name and address ("BNA") information for each call received at the service bureau. BNA information allows the service bureau to match the telephone numbers to the callers' names and addresses. The combination of caller identity and screening procedures will permit Politechs to identify in excess of 96 percent of individual callers. Only identified callers will be billed. Politechs, consistent with usual and normal practice, will be liable for all charges related to calls for which a caller cannot be identified.

With this information, the providers acting under contract with Politechs will perform a number of screening functions of the type and quality described in Advisory Opinion 1991-20 to identify contributions and prevent a political committee from receiving impermissible contributions from callers to the 900 number. In addition to the above screening activities, the vendors operating under contract with Politechs will block certain infodigits in order to accept only those calls placed from residential telephone numbers. Only those calls from verified residential telephones will be accepted for billing; calls from corporations or labor organizations

will be eliminated from the data collection and billing processes (although, as described below, Politechs will be obligated to pay for the tariff charges related to such calls). In addition, you explain that individuals calling from telephone numbers outside the United States are unable to access 900 numbers, thereby preventing the receipt of prohibited contributions from nonresident foreign nationals.

E. Billing Process

After the described caller identity and screening activities are completed, a billing company (not an LDC) operating under contract with Politechs will bill individuals for calls to Politechs' 900 number.

If a caller claims that a call was unauthorized or made by mistake, the billing company reserves the right to remove the disputed charges from a caller's bill. Politechs will be provided with a list of telephone numbers for which the charges were refused, and Politechs, consistent with usual and normal practice, will be liable for all charges related to such calls. The billing company and/or service bureau will provide Politechs with a monthly Call Detail Report (listing the total number of calls and a breakdown of each call by telephone number providing date, time, and charge) and Call Refund Report (listing the telephone numbers for which charges were refused successfully).

F. Delivery of Information to Political Committees

Politechs will provide the political committees with a list of callers, including their telephone numbers, addresses, and fax numbers generated from various screening systems. Politechs will also provide a summary of the touchtone responses of callers (e.g., affirmative, negative or numerical answers to the audioscripted questions) to political committees at regular intervals. The committees will pay Politechs the usual and normal rate for the lists and summaries.

G. Credit Card Contributions

In the event a caller wishes to make a contribution to the political committee, the information entered by the caller (credit card number, credit card expiration date, amount of desired contribution) will be provided by the service bureau to Electronic Authorization Systems, Inc. ("EAS"), a California corporation. EAS, operating under contract with Politechs, will take the information recorded by the VRU at the service bureau and obtain credit card authorization from callers. EAS will not authorize any non-U.S. issued credit card for collection or processing of the credit card charges.

After the processing and screening activities described above are completed by EAS, the information will be provided by EAS to Electronic Card Systems, Inc. ("ECS"), a California corporation, which will process the credit card transactions. Billing information will be transmitted by ECS to the credit card issuer (e.g., Master Card, VISA, etc.), which will bill credit card holders for their contributions. The credit card issuers will follow their usual and normal collection procedures to obtain payment from those using the cards to make contributions, and

will render its services in the ordinary course of business for the usual and normal charges. Proceeds from credit card contributions will be forwarded to the political committee within ten days of the date the credit card authorization is obtained. While the amount Politechs actually remits to the political committee will be reduced by the clearing, processing, and service charges deducted by EAS, ECS and the card issuer (which service charges will be considered expenditures by the political committees), the entire amount of the caller's credit card transaction will be treated as a contribution to the political committee.

H. Caller Faxback Service

As part of the audioscript, callers have the option to request that information relative to a candidate's positions on certain issues, fact sheets, or general background information be provided to them via a "faxback" service. These callers indicate the material they wish to receive and enter their fax number. This information is recorded by the VRU and is forwarded to the RjGCo for processing. The information is then delivered via a data feed to a third-party vendor operating under contract with Politechs that will fax the information to the caller. Callers will accrue an additional cost for the faxback service which will be included in the total cost of the call.

I. Advertising of Politechs 900 Number Service

The political committee will be expected to publicize the 900 number through various print and broadcast media. Politechs will advise its clients to include a disclaimer on all advertisements stating the name of the committee authorizing the activity, identifying the person or entity paying for the solicitation, informing potential callers that they will be contributors subject to the limitations of Act, and providing such other information as required by Commission regulations.

II. Legal Analysis

The Commission has considered requests from different types of participants who deliver 900-line services to political committees. The Commission has addressed the responsibilities of long distance providers in Advisory Opinions 1991-2 and 1990-14, of service bureaus in Advisory Opinions 1991-20 and 1990-1, and of a billing and collection company, which also performed some functions of a service bureau, in Advisory Opinion 1991-26. Politechs appears to combine the functions of the service bureau and the billing company. In addition, your proposal entails a broader range of services than previously discussed with respect to 900- line fundraising. Politechs' proposal raises issues pertaining to payment by the political committee for the delivered services, the identification of contributors (including the prevention of the receipt and use of excessive and prohibited contributions), the timely transmission of contributions, the solicitations for use of the service, and reporting of contributions and expenditures.

A. Payment by Political Committee

The advisory opinions cited above made clear that such entities must provide their services to each political committee customer at the usual and normal charge in order to avoid

corporate contributions to the political committee. 2 U.S.C. 441b(a) and 441b(b)(2); 11 CFR 114.2(b), 114.1(a)(1), and 100.7(a)(1)(iii)(A) and (B). You have stated that Politechs will ensure that the political committees do not receive any services for which Politechs, or the third party vendors with whom it contracts, remains compensated below the usual and normal charges for all services received. The Commission assumes that the charges paid by Politechs and the vendors will be included in the computation of the usual and normal charge to the political committee. The Commission further assumes that this usual and normal charge rule will be followed as regards the amounts charged in the arrangements between vendors contracting with Politechs and other vendors providing services, e.g., DialTone and an LDC, or RJGCo with the BNA information provider. Therefore, the amount that Politechs considers to be the usual and normal charge to the political committee would not be reduced by underlying costs lower than the usual and normal charge.^{3/} See Advisory Opinions 1991-26, 1991-2, and 1990-1. Your requirement for advance payment for set-up charges, a deposit sufficient to cover costs, and termination of services to prevent losses exceeding the deposit appear to ensure that the political committee does not receive an in-kind corporate contribution.^{4/} See Advisory Opinion 1990-1. Compare Advisory Opinion 1991-20.

B. Contributor Identification and Prevention of Unlawful Contributions

The payments by callers for the calls themselves will be contributions to the committee in the amounts they are charged. Advisory Opinion 1990-1; see 11 CFR 100.7(a)(2). Past 900-line opinions have required that the requester companies perform screening and other functions to identify contributors and ensure that impermissible and excessive contributions do not reach the committee. In Advisory Opinion 1991-20, for example, the Commission required the service bureau to offer certain services, based on capabilities described in its request, or to take steps to ensure that the committee is using comparable services. These services included touchtone or voice services to identify: calls being made from foreign nationals or from those calling on behalf of corporations and labor unions; calls on the phones of corporations, labor unions, or foreign nationals; and calls made by those who are calling from phones that are not billed in the name of an immediate family member (to minimize or avoid contributions in the name of another by reimbursement of the billed party). See 2 U.S.C. 441b, 441e, and 441f. Other required services were the use of audioscripts and call transcription on touchtone and rotary phones and reverse directories to obtain caller name and address; and use of the Call Detail and Call Refund reports (or comparable alternative means) to obtain the names and addresses of callers. In Advisory Opinion 1991-26, the Commission approved the proposal of the billing company because of the ability to identify callers and the source of the contributions, and the clear explanations and admonitions as to various types of prohibited contributions. The proposed arrangements included the provision of magnetic tapes (with caller telephone numbers) to the billing company, the optional use of transcription of audio or touchtone responses, and the use of BNA information. The proposal further included billing restricted to the numbers on the tape, the use of a billing form requiring information from the contributor, and the receipt by the billing company of the actual contribution check.

Politechs' proposal appears to entail a number of functions aimed at identifying contributors and preventing unlawful and excessive contributions. The audioscripted preamble will inform the callers of the prohibitions. The proposed use of ANI and BNA, along with VRU

and other caller identification obtained from the calls, will enable the subcontractors to obtain caller names and addresses. You represent that you will use a number of screening functions of the type described in Advisory Opinion 1991-20; the Commission assumes this includes obtaining similar types of touchtone or voice indications from callers aimed at preventing contributions from prohibited sources. You also state that certain infodigits would be blocked to limit access only to those calling from residential phones located in the United States; thus, only domestic residential phones would be billed.

Politechs' proposal avoids a number of the concerns discussed in Advisory Opinion 1991-20 as to contributor identity and unidentified contributions. Billing will be done by a billing company, instead of by a local exchange carrier; the billing company can only bill identifiable callers so there is no possibility of receiving revenues from unidentified sources. Accordingly, there would be no difficulty as to the disposition of such contributions.

While no part of the revenue from the call itself (as opposed to the credit card contributions) reaches the political committee, the amount the caller pays is still a contribution to the committee. Therefore, it remains necessary that Politechs obtain the name and address of the contributor along with the contribution amount and date, and forward that information to the committee. Although the \$50 ceiling for each call, or for multiple calls from the same phone number, would not trigger the recordkeeping requirement of 2 U.S.C. 432(c)(2) and 11 CFR 102.9(a)(1), the contributor may make other contributions to a committee, such as by credit card (as otherwise proposed herein); other contributions may occur pursuant to different solicitations, or a contribution may result from a caller's use of another residential telephone. In those circumstances, the same individual's contributions could aggregate in excess of \$200, triggering further recordkeeping requirements as well as the requirement to report the date and amount of the contribution and the name, address, employer, and occupation of the contributor. 2 U.S.C. 431(13), 432(c)(3), and 434(b)(3)(A); 11 CFR 100.12, 102.9(a)(2), and 104.3(a)(4)(i).

Your request does not explicitly provide for voice responses by the caller. In addition, the request does not discuss the information provided and requested on the bills sent to callers. The Commission suggests that the billing company request that the billed individual provide, on a form accompanying the check, his or her occupation and employer. In the alternative, Politechs may arrange with the committee to have the appropriate contributors contacted for that information. See Advisory Opinion 1990-1, n.7.^{5/} In addition, the invoice should make clear to the caller what political committee or committees he or she is contributing to and the amounts for each committee (i.e., not just the total if there is billing for more than one committee).^{6/} In this way, the contributor can monitor his or her contribution totals to a particular political committee. See 2 U.S.C. 441a(a)(1)(A) and (C).^{7/}

Since the billing company or service bureau will see the actual checks sent by callers (as opposed to the situation in which a caller is billed by a long distance or local exchange carrier), there appear to be certain capabilities under your proposal to ensure against prohibited contributions. The collecting entity will also have the opportunity to review a form accompanying the check, such as the form discussed in the previous paragraph, on which the contributor should be asked to provide name and address, if such information is different from that of the billed individual. The recipient of the checks should screen the checks and the forms

to separate out those instruments that appear to be drawn on corporate or labor union accounts, or contributions from persons other than the billed caller. Further inquiry may be made to the contributor by Politechs, the collecting entity, or the committee as to such contributions to enable the return of those contributions that cannot be determined to be lawful (e.g., those prohibited by 2 U.S.C. 441b or 441f). See Advisory Opinion 1991-26.

The committee will be determined to have received the contribution when the collecting entity, which is acting on its behalf, receives the check. Those entities responsible for processing these contributions, including the political committee, must comply with the time limits for the return of prohibited contributions set out in 11 CFR 103.3(b)(1). In addition, further inquiry should be made with respect to contributions made by persons other than the billed individual to obtain information relevant to the Act that would normally be obtained from voice or touchtone response but may be missing because a different person contributed.

C. Timely Transmittal of Contributions and Information

The Act and Commission regulations prescribe time limits on the transmittal of contributions by persons who receive them on behalf of a political committee. A contribution to an authorized committee must be forwarded to the treasurer no later than 10 days after the person's receipt. If the contribution exceeds \$50, the name and address of the contributor and the date of receipt must be forwarded with the contribution, and, if the contribution is over \$200, the employer and occupation must also be forwarded. The same rules apply to contributions in excess of \$50 to committees that are not authorized committees. Contributions of \$50 or under to non-authorized committees must be forwarded within thirty days (with no information forwarding requirement). 2 U.S.C. 432(b)(1) and (2); 11 CFR 102.8(a) and (b). These time limits for forwarding the contribution and the information do not apply to the contributions for the call itself since no part of the funds will be transmitted to the committee and the contributions are each \$50 or under.^{8/}

The time limits may apply, however, to the credit card contributions. A contribution by credit card is considered as received when the political committee receives the contributor's authorization; in this situation, that would be when EAS contacts the caller after the call and obtains the donor's authorization. See Advisory Opinion 1990-4. The caller can authorize any amount that would keep his or her contributions to the committee within the limits of 2 U.S.C. 441a. You state that the proceeds will be forwarded to the committee within ten days of the authorization. It is also necessary that appropriate information about the contributor be forwarded within the times set forth in 2 U.S.C. 432(b) and 11 CFR 102.8. If information as to employer and occupation are not obtained from the voice responses in the initial call itself, EAS should obtain this information when it contacts the caller for authorization.^{9/}

D. Solicitations for Use of 900-Line Service

Your proposed advice to your political committee clients as to the use of disclaimers and informing those reading or hearing the ads that they will be contributors is consistent with the Act, as set out in Advisory Opinion 1990-1.

E. Reporting of Contributions and Expenditures

The political committee has certain reporting obligations as a result of these transactions and should be advised of them. As you have indicated in your request, the full amount authorized by the caller on his or her credit card is a contribution in that amount to the committee and should be included in the committee's reports of contributions and, if appropriate, itemized contributions. See 2 U.S.C. 434(b)(2)(A) and (3)(A); 11 CFR 104.3(a)(2)(i), (3)(i), and (4)(i). Charges for credit card clearing, processing, and related expenses, which reduce the proceeds to the committee, are reportable as operating expenditures. See 2 U.S.C. 434(b)(4)(A) and (5)(A); 11 CFR 104.3(b)(3)(i) and (4)(i). See Advisory Opinion 1991-1.

The full amount paid by the callers for the calls themselves are also reportable as contributions (with itemization, if appropriate). These amounts are also included in the reportable operating expenditure amounts because they are being retained by Politechs (for payments to itself and subcontractors) for the services rendered to the committee. The committee's operating expenditures also include the amounts it pays to Politechs directly.^{10/}

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely,

(signed)

Danny L. McDonald
Chairman

Enclosures (AOs 1995-9, 1992-24, 1991-26, 1991-20, 1991-2, 1991-1, 1990-14, 1990-4, 1990-1, 1989-14, and 1987-24)

1 It appears from your request that your proposed service will not be available for calls from rotary-dial phones.

2 In addition to the screening activities undertaken under this proposal, you note your understanding that many businesses block access to all 900 services from telephones lines located on corporate premises or used by the corporation for business purposes.

3 The concept of usual and normal charge, as it relates to charges between vendors that are passed on to the principal vendor and to the committee, includes discounts, so long as those discounts are in the seller's ordinary course of business. See Advisory Opinions 1992-24, 1989-14, and 1987-24.

4 When you say that Politechs will be liable for all charges related to calls for which callers refuse to pay, the Commission assumes that those charges will be covered by the amounts paid by the political committee and the revenues from the paid calls (not including the credit card contributions or subsequent contributions). In addition, should there be unexpected losses due to a large amount of refusals by callers to pay, any payment by Politechs that is not covered by the

amounts charged to the committee or the revenues from paid calls must be paid by the committee within a reasonable period of time. See Advisory Opinion 1990-1, n.4.

5 The Commission also notes the requirement that the committee exert best efforts to obtain any required contributor identification information that it lacks. See 11 CFR 104.7; see also Advisory Opinion 1995-9.

6 Since the checks sent by the callers are contributions to the applicable political committees, the company depositing the checks should deposit them in a bank account separate from its other business receipts and set up especially for the political committee clients. See 2 U.S.C. 432(h)(1) and 11 CFR 103.2 and 103.3(a). Consistent with Advisory Opinion 1991-20, which took into account the potentially large number of political committee customers of a service bureau in a 900-line context, the company needs to set up only one separate account to contain the proceeds for all the political committees. Politechs should inform the committees of the identity of the depository so that each committee may disclose the depository on an amended statement of organization.

7 In addition, such information may be necessary for accurately interpreting the Call Refund Report. If the caller refuses to pay some or all the charges for a particular call but chooses to pay for other calls, the caller may designate which calls are being paid for and in what amounts.

8 Although the time limits for forwarding contributions and contributor information do not apply to each individual contribution for the call itself, the information must still be forwarded to the political committee for recordkeeping and reporting purposes as explained above in section II,B. Such information must be forwarded expeditiously enough to enable the committee to file complete disclosure reports in a timely manner and to fulfill other requirements such as the timely return of contributions that when aggregated with an individual's other contributions exceed the limits of 2 U.S.C. 441a. See 2 U.S.C. 434(a) and 11 CFR 103.3(b)(3).

9 You indicate that screening of credit card contributions will occur after EAS receives contributor authorizations; this may result in authorizations from impermissible sources. Although the committee has technically received a contribution from that source, your description indicates that screening will prevent the contribution from being credited to the committee. The Commission assumes that the amount authorized will instead be credited back, in full, to the contributor. This would be, in effect, a timely refund of the contribution. The Commission assumes that information as to this "return" will be sent to the committee and to the contributor.

10 While Politechs may provide its 900-line telephone services and affiliated services to both presidential and non-presidential authorized committees and certain other political committees as referenced above, this opinion does not address any issues that are uniquely related to the duties or requirements of presidential candidates who seek to qualify for primary matching funds or general election financing. See, e.g., 11 CFR 9034.3(c).