

Digital Corrections CORPORATION

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FEDERAL ELECTION COMMISSION

DEC -6 AM 11:47

December 5, 1989

Thomas J. Josefiak, Chairman
Federal Elections Commission
999 E. Street N.W.
Washington, D.C. 20463

Dear Mr. Josefiak,

This letter requests an advisory opinion pursuant to 2 U.S.C. section 473.F of the Federal Election Campaign Act of 1971 as amended and the Federal Elections Commission Advisory Opinion 1988-28 (AOR 1988-28).

Digital Corrections Corporation, a Florida Corporation, is actively engaged in providing 900/700 inbound telephone services to entities, including the Criminal Justice Market and Political Fund Raising Organizations. The 900/700 service allows individual callers to voluntarily dial into an informative and/or administrative digitalized voice program for a fee incorporated in the calling parties phone bill. This fee is set by the entities involved. Digital Corrections Corporation has agreements in place with AT&T and Cable & Wireless Communications, Inc., whereby, these companies provide the appropriate local and national circuits.

There has been a great deal written about the 900/700 market. Digital Corrections Corporation is knowledgeable regarding the earlier filing for approval of this type of service from another company, and the majority opinion denying such approval coupled with the logical reasons why such approval was denied. In our request for an advisory opinion, DCC will present the utilization of our technology which provides the basis, whereby, we are not in violation of prior laws and regulations.

Prior to addressing those issues it is crucially important that the Federal Elections Commission understand the 900 market and its limitations. The vast majority of companies involved in providing the 900 service afford a "listen only" capability to calling parties. Several companies allow the caller to input digits from a touchtone* phone in order to register a response. The vast majority of companies discriminate against individuals who have rotary phones, and those with this type of telephone are prohibited from accessing and registering any response on a 900/700 telephone number. The Digital Corrections Corporation technology is totally interactive and accepts calls from either touchtone or rotary telephone users. For a touchtone user, they may register their

* Touchtone is a registered trademark of AT&T.

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OFFICE OF THE CHIEF CLERK

opinion by pressing various buttons on their tone pad which signify a yes or no response. Those users of rotary phones may speak yes or no and/or speak the digits Zero (0) through Nine (9) in order to register this response. DCC affords voice certification for repeated callers and digitalizes and stores all touchtone responses and voice responses for permanent record retention.

In the rule 2 U.S.C. S441b(a), 11 CFR 114.2(b) which pertains to Corporate Contributions and I quote, "A contribution is 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 the federal office." The two key words are "Corporate" and "Person". Heretofore, companies were not able to identify and verify individual callers. DCC receives a feature defined as ANI (Automatic Number Identification). This identifies, while a call is in progress, the exact telephone number the call was placed from. Upon completion of the call, DCC cross references the calling number in order to identify the exact name, address, city, and state of the calling party. Only calls placed from verified, correct, residential telephones are allowed for billing purposes, all others are disregarded. DCC then generates receipts which are sent to the calling party and the appropriate campaign or candidate. Further, DCC will cooperate with the Commission, with the respect to campaign depository designations of a candidates committees (2 U.S.C. 432(h)(1), 11 CFR 103.3(a)); and the making and retention of accounting records of all campaign receipts (2 U.S.C. 432(c), 11 CFR 102.8, 102.9; 11 CFR 99033.1(b)(5), 99033.11(c)). The ANI feature, including the ability to take calls not only touchtone but rotary telephone, allows DCC to identify the "Person" or individual calling. This inbound call is a voluntary, individual act, with the DCC program providing full disclosure that there is a charge for this call, and providing the calling party the opportunity to hang up should they not wish to proceed further, at no charge. The caller is not influencing an election, but rather being informed by the candidate as to his/her views or issues (2 U.S.C. S441b(b)(2), 11 CFR 114.1(a)(1)).

Each respective campaign will be purchasing this service from Digital Corrections Corporation at its usual and normal charge. There is no discrimination between regional and/or national campaigns. Each campaign must place a deposit to cover the cost of the appropriate telephone number, programming charges, and a fee for minimum telephone company recurring charges. Since each caller is purchasing the candidates message and DCC can verify pertinent information regarding each caller, neither the campaign nor DCC will get paid until the respective telephone common carriers have received their payment via the telephone bill. Only the net revenue to the campaign, after all expenses are incurred, could be considered as a contribution, since the campaign or candidate is

contractually buying this service from DCC. The DCC tele-service should be treated as an election related expenditure by the respective campaigns/candidates.

In summary, Digital Corrections Corporation and the Federal Elections Commission are cognizant that several campaigns are already using 900 services without the approval of the Federal Elections Commission. DCC requests expeditious approval of our request, in order that we are in compliance with the rules and regulations of the Federal Elections Commission and may aggressively market our 900/700 service to campaigns with the approval of the FEC.

I personally invite Commissioners to our facilities in Riviera Beach, Florida, in order that you may ascertain first hand the aforementioned technologies in place at DCC. I have also forwarded a duplicate copy to Mr. N. Bradley Litchfield, Office of the General Counsel. Thank you for your time and courtesy.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott D. Roberts", with a horizontal line extending to the left.

Scott D. Roberts
President/CEO



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20543

December 15, 1989

Scott D. Roberts, President and
Chief Executive Officer
Digital Corrections Corporation
4152 Blue Heron Boulevard West
Suite 108
Riviera Beach, FL 33404

Dear Mr. Roberts:

This responds to your letter dated December 5, 1989, concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the use of candidate telephone programs to promote political messages.

You state that Digital Corrections Corporation ("DCC"), a Florida corporation, is engaged in providing "900/700 inbound telephone services" to various entities. Such services allow individuals to dial into a digitalized voice program for a fee included on the caller's phone bill. The fee is set by the entities for whom the service is provided. You state that the appropriate local and national circuits are provided pursuant to agreements with AT&T and Cable & Wireless Communications, Inc. You wish to provide 900 services for political campaigns.

You state that DCC has a mechanism for identifying various callers to ensure proper recordkeeping and to avoid corporate contributions. A feature used by DCC known as Automatic Number Identification identifies the exact telephone number from which the call was placed. Upon the call's completion, DCC cross references the phone number with the name and address of the calling party. You state that "[o]nly calls placed from verified, correct, residential telephones are allowed for billing purposes" and "all others are disregarded." DCC would then generate receipts to be sent to the caller and the appropriate committee or candidate. You state that DCC is able to identify the individual calling whether by touchtone or by rotary telephone, and that "DCC affords voice certification for repeated callers and digitalizes and stores all touchtone responses and voice responses for permanent record retention."

You state that each campaign will be purchasing this

service at its usual and normal charge, with no discrimination between regional and national campaigns. Each campaign will pay a deposit to cover the cost of the appropriate 900 number, programming charges, and a fee for "minimum telephone company recurring charges." Neither DCC nor the campaign will receive payment until the telephone common carriers involved have received payments on the telephone bills sent to the callers.

The Act authorizes the Commission to issue an advisory opinion in response to a "complete written request" from any person with respect to a specific transaction or activity by the requesting person. 2 U.S.C. §437f(a). Commission regulations explain that such a request "shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the transaction is made." 11 CFR 112.1(c).

In view of the cited requirements, you will need to provide information as to a number of relevant factors referred to in the questions set out below. All of these questions are based on the assumption that DCC proposes to make its services available to candidates for Federal office or to political committees that financially support their campaigns. Please confirm whether this assumption is valid.

- (1) State how the availability of the 900 number is to be publicized. Include in your response information as to who will bear the cost.
- (2) State whether the program will entail only sending messages to callers or whether it will include the receipt of contributions charged to phone bills.
- (3) You state that DCC can verify who is making the call whether by touchtone or rotary phone. In order to clarify this verification process, state:
 - (a) how DCC will be able to identify the actual caller as opposed to the person in whose name the phone is registered;
 - (b) how DCC will obtain the information necessary for full identification of the caller for reporting purposes, e.g., for callers whose contributions to the same political committee will aggregate in excess of \$200 for the calendar year;
 - (c) how DCC will ascertain whether the caller's phone is a residential phone as opposed to a business phone located in a residence; and
 - (d) how and by whom will the costs for "disregarded" calls be absorbed.

- (4) State who will absorb the costs if the revenue generated is insufficient to cover the costs of DCC and the other, subcontracting entities.
- (5) State whether DCC will be paying a sponsor fee or its equivalent to the campaign. If so, state the basis on which such fee will be determined.

In addition, please send a sample contract that DCC may propose to enter with a Federal candidate or political committee.

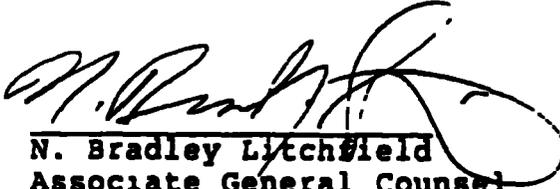
Upon receiving your responses to the above questions and the requested sample contract, this Office and the Commission will give further consideration to your inquiry as an advisory opinion request.

If you have any questions concerning the advisory opinion process or this letter, please contact the undersigned.

Sincerely,

Lawrence M. Noble
General Counsel

BY:


N. Bradley Litchfield
Associate General Counsel

Digital Corrections
CORPORATION

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FEDERAL ELECTION COMMISSION OFFICE OF
GENERAL COUNSEL

McDonald

JAN 27 AM 10:42

AOR 1990-1

January 3, 1990

N. Bradley Litchfield
Office of General Counsel
Federal Elections Commission
999 E. Street N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JAN -4 AM 11:27

Dear Mr. Litchfield,

Thank you for your letter dated December 15, 1989.

Digital Corrections Corporation (DCC) is pleased to confirm your assumption that it is proposing to make its services available to candidates for federal office or to political committees that financially support their campaigns.

The following are the questions you asked in your correspondence coupled with the answers:

1. State how the availability of the 900 number is to be publicized. Include in your response information as to who will bear the cost.

The 900 # is to be publicized by each perspective campaign at the sole cost of each campaign. We expect each campaign will include this 900 number on printed documents as well as publicized through TV, Radio media, etc.

2. State whether the program will entail only sending messages to callers or whether it will include the receipt of contributions charged to phone bills.

Each program, will not only entail a voice message to callers, but will also include a statement as to the cost of each call and provide each caller the opportunity to hang up and incur no charge. Those callers remaining on the line will additionally be informed that a receipt will be forwarded within thirty (30) days for the cost of the call.

3. You state that DCC can verify who is making the call whether by touchtone or rotary phone. In order to clarify this verification process, state:

- (a) how DCC will be able to identify the actual caller as opposed to the person in whose name the phone is registered;

DCC is able to identify the telephone number of each caller. Included in the message will be a request for the caller to provide his name, address, city, state and social security number. For all calls, regardless of whether a caller speaks the aforementioned information, the number the call is placed from is cross referenced with companies that specialize in providing the pertinent information, as to the individual who the phone number is in the name of. Each caller can, upon receipt of his telephone bill, elect not to pay the fee that is included in his phone bill simply by crossing it out. They are allowed by law to do this one time.

- (b) how DCC will obtain the information necessary for full identification of the caller for reporting purposes, e.g., for callers whose contributions to the same political committee will aggregate in excess of \$200.00 for the calendar year;

As previously stated DCC can effectively identify individual callers and the amount contributed. In our agreement with each campaign, there will be a requirement that the proper authorities be notified of any contributor who donates in excess of \$200.00 per year.

- (c) how DCC will ascertain whether the caller's phone is a residential phone as opposed to a business phone located in a residence;

Ascertaining the difference between a residential phone and a business phone is relatively straight forward. This is accomplished by two methods. All telephone companies have different NPA's and NNX-XXXX's set aside for business or residential telephones. The NPA is the area code and most important the NNX is the exchange code. Secondly, as previously stated there are companies that do nothing but provide name, address, city and state where telephone numbers are provided and conversely if a name is provided, they will provide the telephone number. By forwarding to them phone numbers that calls came in from, not only can we ascertain the NNX, whether it be business or residential, but equally as important we can ascertain again the name, address, city and state and that this is in fact a private phone and listed for residential use.

- (d) how and by whom will the costs for "disregarded" calls be absorbed.

In all cases telephone companies automatically impose a 6-10 % hold back provision in all our billing for "disregarded" calls or those where the calling party wishes not to follow through. This provision is included in the Agreement with each campaign.

4. State who will absorb the costs if the revenue generated is insufficient to cover the costs of DCC and the other, subcontracting entities.

Each campaign must by contract enter a deposit necessary to cover all costs associated with a 900 program. Each campaign is solely liable for these costs and the up front deposit will always be adequate to cover any losses. In the event that a campaign is a complete failure DCC and each respective campaign agrees to terminate the 900 program in order that losses will not exceed the initial deposit.

5. State whether DCC will be paying a sponsor fee or its equivalent to the campaign. If so, state the basis on which such fee will be determined.

DCC has not, nor will it contribute to any campaign or pay a sponsor fee.

Thank you for your continuing interest and the opportunity for Digital Corrections Corporation to provide the above clarifications to our original filing. I have enclosed a sample copy between DCC and those engaged in public office.

Sincerely,



Scott D. Roberts
President

This Agreement effective _____ date between Digital Corrections Corporation (DCC) located at 4152 Blue Heron Blvd. West, Suite 108, Riviera Beach, Florida 33404, and _____

herein called "Campaign" and is for the purpose of establishing a program utilizing DCC's computerized telephone 900/700 services.

Terms and conditions of this agreement are as follows:

1. LENGTH OF AGREEMENT

This agreement shall be for a period of () months commencing _____ 19__.

2. NOTICES

Notices required or permitted to be given under the terms of this agreement shall be in writing and shall be delivered by certified mail to each party at the following addresses:

CAMPAIGN: _____

DCC: Digital Corrections Corporation
4152 Blue Heron Blvd. West, Ste. 108
Riviera Beach, Florida 33404
Attn: Mr. Scott D. Roberts, President

3. HARDWARE

All hardware and software shall remain the property of DCC and/or its respective equipment suppliers. DCC and suppliers are solely responsible for the operation and maintenance of said equipment and software.

Initials: _____

Initials: _____

4. SOFTWARE AND PROGRAMMING

Title to any software used by DCC under this agreement shall remain with the title holder and shall remain the property of DCC. DCC retains the right to approve all computer generated scripts. Multilingual scripts and optional programs will be quoted separately.

5. CENTRAL SYSTEM OPERATION

DCC shall provide, maintain, and operate a fully redundant central system on a 24-hour continuous basis. DCC agrees that all persons having access to the central system database or records of persons for the Campaign under this agreement shall be employees of DCC and designated employees of Campaign.

6. ADVERTISING

Campaign is responsible for all advertising and any costs associated thereof for the DCC 900 service program.

7. NET PROCEEDS

The difference between the DCC cost per call, sales and operating costs, telephone costs, disregarded calls and the amount charged to the calling party, shall determine the net proceeds that the campaign shall receive. The charge per call for the _____ campaign shall be _____ () dollars per call. Net proceeds shall be payable to each campaign within ten (10) days of DCC's receipt of payment from the respective telephone common carriers. Telephone companies impose a hold back percentage that does not normally exceed 10% of the total calls made. This percentage is held indefinitely for disregarded calls, bad debt and is adjusted based upon results.

8. ASSIGNMENT

DCC shall have the rights to assign or license all or any part of this agreement to an affiliated marketing entity.

9. SUMMARY INFORMATION

DCC shall provide each calling party a receipt for each valid call and provide detailed summary information to each campaign for all callers including name, address, city, state, telephone number, and the total individual contributions per caller. DCC shall retain in its computer banks the identical information for reporting to proper authorities. Any individual that exceeds the prescribed maximum allowable contribution should be identified to the proper officials.

Initials: _____

Initials: _____

10. CONSIDERATION

Campaign shall enter a deposit of two thousand (\$2000.00) dollars for programming, initialization of a 900 number, ongoing monthly utilization of assigned number, and bad debt reserve. In the event that proceeds from the campaign are less than the deposit, DCC shall inform campaign and request either an additional deposit or at DCC's discretion commence with the termination of the 900 program.

11. INDEPENDENT CONTRACTOR STATUS

This agreement is not intended, and shall not be construed, to create the relationship of agent, employee, partnership, joint venture, or association, as between the Campaign and DCC.

12. DISCLOSURE, PROPRIETARY CONSIDERATIONS

DCC and its employees shall keep all information supplied by the Campaign confidential and shall employ reasonable safeguards against any disclosure of such information. Any materials or information which DCC considers to be proprietary and confidential shall be plainly marked as such, and the Campaign agrees to keep same confidential and to employ all reasonable safeguards to prevent any disclosure of such materials or information to any non-Campaign entities, including copying of same.

13. GOVERNING LAW

The validity, interpretation, and performance of this Agreement will be controlled and construed under the laws of the State of Florida. Failure of either party to enforce at any time any provision of this Agreement shall not be construed as a waiver thereof. If any provisions of this Agreement are declared by the court or other lawful authority to be unenforceable or invalid for any reason, the remaining provisions hereof shall not be affected thereby, and shall remain enforceable to the fullest extent permitted by law.

Initials: _____

Initials: _____

14. PRIMARY SERVICE PROVIDER

Campaign agrees that it will not enter into an agreement for similar service during the term of this project.

15. INDEMNITY

Campaign shall indemnify and hold DCC and its agents, officers, and employees harmless from and against any and all losses, damages, expenses and liabilities arising out of or in connection with acts or omissions of or on behalf of Campaign regarding the service provided under the terms of this agreement.

IN WITNESS WHEREOF, DCC's authorized representative and the Campaign's authorized representative have caused this Agreement to be executed:

Date _____, 19____

By: _____
Authorized Signature

Title: _____

Digital Corrections Corporation

By: _____
Authorized Signature

Title: _____