



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 1, 1991

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1991-26

Jan Witold Baran
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20008

Dear Mr. Baran:

This responds to your letter dated August 7, 1991, as supplemented by your letter dated August 26, 1991, on behalf of the Versatel Corporation concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the billing for 900 line telephone services provided for political committees and candidates.

Versatel is a privately held California corporation in the business of providing a billing service to companies which have delivered telephone services to individuals. Rather than utilizing the billing and collection services of local telephone companies, companies such as long distance carriers sometimes hire Versatel instead. Versatel expects to provide its billing service to long distance carriers, or to service bureaus, for the collection of contributions to Federal candidates made as a result of 900 line calls.

Versatel's proposed arrangement for billing and collecting 900 line charges differs from the usual arrangement. Typically, long distance providers (or "interexchange carriers") sell their receivables to a local exchange carrier (LEC) subject to certain holdbacks and adjustments for non-payment. The LEC in turn bills the calling party for the charges along with other monthly telephone charges. The long distance provider, having sold its 900 line receivables, would deduct its charges from the proceeds received from the LEC and forward the remaining funds to a 900 line service bureau for distribution to the political committee. You note, however, that not all local exchange carriers will bill 900 line calls for long distance carriers. Furthermore, some LECs have ceased billing such calls "once it became apparent that the billing activity on behalf of particular candidates had become controversial." Under the proposal, Versatel would replace the LEC in the billing process, except Versatel would not advance funds to the long distance

provider prior to payment by the caller. Versatel would enter into a contract with a long distance carrier and, in some circumstances, directly with the service bureau, whereby Versatel would bill and collect 900 line charges directly from the caller.¹

The long distance provider or service bureau with whom Versatel contracts (i.e., the client) would provide to Versatel the magnetic tapes of the telephone numbers from which calls were placed, and would indicate the amount to be billed for each call. If Versatel contracts with the long distance provider, the provider will provide the tape directly. If the contract is with the service bureau, the bureau will arrange for the tape to be provided directly by the provider or from the bureau itself.

As part of its service package, Versatel would purchase the Billing Name and Address (BNA) information necessary to match the telephone numbers to the callers' names and addresses; you state that Versatel already has negotiated and has in place agreements with local telephone companies whereby Versatel can obtain this service. The cost of such purchase is included in the billing charge to clients. The agreements allow Versatel to obtain the name and address of the billing customer at each telephone number served by the local company, including "unlisted" numbers. In return, Versatel agrees to pay a fee to the local company for each use of the service, to abide by certain confidentiality provisions, and only to use the service for the billing of calls made through a long distance carrier.² Versatel will only bill for those calls contained on the tape.

In the event that a service bureau has transcribed audio or touchtone responses from callers, Versatel "anticipates that it may receive" the tapes of the transcriptions. Versatel does not require such tapes to render its service but if Versatel contracts with a service bureau, the service bureau will have the option of providing the transcription to Versatel. If, as anticipated, Versatel contracts directly with the long distance carrier, the service bureau could provide the transcription tape to the carrier pursuant to an agreement between those two entities, and the long distance carrier would then provide it to Versatel. If the long distance carrier does not have access to such tapes or the service bureau did not use audio recording, Versatel will render its services without this "supplemental" material. Because of the use of BNA and information to be provided on Versatel's billing form sent to callers (described below), such material would only be used to enhance the amount and quality of other available data concerning the contributors.

The bills sent by Versatel would be addressed to the persons in whose names the telephone numbers are listed and from which the calls were made. The bill would be in three parts. The first part would include an account number, an amount charged for the calls made, and a request that checks be made payable to "Versatel Campaign Billing Services," which is the name Versatel will use for political accounts. The account number, unique to each bill, would include a code identifying the campaign to which the contribution is being made and the telephone number from which the call was made. This will enable Versatel to record every contribution billed by Versatel and made to a particular campaign from any given phone number. If a caller is to be billed by Versatel for more than one campaign, a separate bill or invoice will be sent for each campaign.

The second portion will clearly identify the call as a political contribution, and the name of the campaign or candidate. It will also include the date, time, number, duration, and amount of each call. In addition, that portion will include an 800 number the recipient may use to call the billing department for assistance or information about the bill.

The third portion of the bill contains information useful or necessary for the service bureau or committee to comply with the Act. This section, headed "IT IS IMPORTANT THAT THE FOLLOWING INFORMATION BE COMPLETED," asks for the contributor's address, if different from that of the bill's recipient, and the name of the contributor's employer. It also asks whether the contributor is a U.S. citizen or a green card holder. The contributor is directed to return this portion with the contribution check.³

The bill will be accompanied by a separate brochure that briefly summarizes the nature of the services being provided and states certain prohibitions and limitations of the Act, i.e., those found at 2 U.S.C. 441b, 441f, 441e, and 441a(a)(1)(A). Included in a statement as to corporate and labor union contributions, the brochure explains that "[t]his means that your contribution must come from your personal bank account, and not from corporate or labor union funds." For contributions in the name of another, the brochure states the Act's prohibition and explains that "[t]his means that you may not be reimbursed by someone else for your contribution."

Upon receiving payments from callers, Versatel deposits its receipts, and accounts for the receipts to each committee by recording the amount and identification of the individual contributors. For any contribution for which information is incomplete or which raises a question of acceptability (e.g., failure to complete the form, indication of non-citizenship), Versatel will separate the contribution for "individual attention," e.g., follow-up letters or telephone calls. Versatel will then forward the list of accounts received, including information and documentation identifying the sources of all receipts, along with the cash collected minus Versatel's fees, to the long distance provider. This will then be delivered to the service bureau and then to the campaigns. Contributions about which questions have been raised will be separately identified and forwarded. You also note that if an individual does not respond to a bill after a period of time, he or she will be sent a reminder.

Versatel's fees will be on a per invoice mailed basis. As stated above, there will be separate invoices for each campaign that receives calls from the particular telephone number. (This may include more than one call to the particular campaign.) The fees will be on a "volume-sensitive sliding scale" meaning that the greater the number of invoices sent, the lesser the cost per invoice. In developing a per invoice charge, the number of anticipated calls will be considered. Versatel will also charge flat fees for each additional service rendered, such as a follow-up letter or telephone call where contributor information is incomplete.

You ask whether Versatel's proposed operations are permissible under the Act.

The Commission has considered requests from different types of participants in the provision of 900 line services to political committees. The Commission has addressed the responsibilities of long distance providers in Advisory Opinions 1991-2 and 1990-14 and the responsibilities of

service bureaus in Advisory Opinions 1991-20 and 1990-1. The responsibilities of such entities have included two principal areas.

First, such entities must provide their services 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). This includes the payment by the service bureau of the usual and normal charges to the long distance provider for the access and services provided to the bureau in order to ensure that there would not be corporate contributions to the committee in the form of greater proceeds as a result of reduced charges by the long distance provider. See Advisory Opinions 1991-2 and 1990-1.

Second, such entities must perform certain functions related to identifying contributions and preventing the receipt and use by the committee of prohibited or excessive contributions. In addition to performing its usual and normal billing and collection services, including the delivery to the service bureau of caller phone numbers and net proceeds, long distance providers had to take steps to ensure against a situation in which callers refused to pay their 900 line phone charges because of an adverse campaign event, thus resulting in the forwarding of large sums of corporate funds without corresponding payment by callers. Advisory Opinion 1990-14. In order to obtain contributor identity and screen for impermissible contributions, service bureaus must provide call transcription, touchtone response, and database services of the type and quality described in Advisory Opinion 1991-20 or obtain certification from its committee customer that the committee is obtaining comparable or superior services elsewhere. That opinion indicated that the committee could not use the net proceeds, which it receives as a result of unidentified contributions, for purposes related to a Federal election campaign or candidate, and had to promptly dispose of such proceeds. Advisory Opinion 1991-20.

Subject to conditions stated below, the Commission approves the proposed operations of Versatel. You have stated that the fees retained by Versatel will be on a per invoice basis with a reduction in charge per invoice the greater the number of invoices sent. You have also explained that, in developing this charge, the number of anticipated calls will be considered. In addition, there will be flat fees for additional services. This method of charging is permissible assuming it is in the ordinary course of business of Versatel and represents its usual and normal charges for these services. 11 CFR 100.7(a)(1)(iii).⁴

In your proposal, Versatel is performing many of the identification and screening functions that might otherwise be performed by the service bureau or by a company that is certified by the campaign as offering comparable services. See Advisory Opinion 1991-20. The information obtained by Versatel would be forwarded to the service bureau either directly or through the long distance carrier. It appears from your representations that, through the use of BNA and the proposed billing form, you will be able to identify all of the contributors. Your proposed invoice form plus the proposed separation and follow-up on incomplete forms or contributions raising questions will perform the screening function.

The Commission notes that, unlike the call transcription and touchtone functions discussed in Advisory Opinion 1991-20, the invoice form does not ask for a designation of someone calling on behalf of or using the phone of a corporation or labor union, or calling from a phone that is

not in the name of an immediate family member (for the purpose of minimizing or preventing contributions in the name of another). See 2 U.S.C. 441b(a) and 441f. The invoice form and the fact that Versatel actually sees the contribution check appear to address these issues. With respect to contributions in the name of another, the brochure accompanying the invoice contains an explicit admonition against reimbursement, and the invoice denotes when the address of the contributor differs from the recipient of the phone bill. The Commission assumes that Versatel would separate the contribution received for individual attention and follow-up and would separately forward such contribution with the appropriate information. With respect to corporate and labor organization contributions, Versatel should review the check and the information on the invoice and, if there is a question as to the source, Versatel should separate the contribution for more particular attention and separate forwarding with the appropriate information.

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)

John Warren McGarry
Chairman for the Federal Election Commission

Enclosures (AOs 1991-20, 1991-18, 1991-2, 1990-19, 1990-14, and 1990-1)

1/ If Versatel contracts with the long distance provider directly, then Versatel's fees are subtracted from the amounts received in the billing process and the net is forwarded to the provider. If Versatel contracts directly with the service bureau, it would forward the net amounts to the service bureau. This contractual arrangement may also require Versatel to pay the long distance provider the fees owed to it by the service bureau. Alternatively, the service bureau may pay the long distance provider its fees pursuant to a contractual arrangement between those two entities.

2/ You state that the BNA service, "in which a local telephone company provides a name and address for all numbers in an area," is different from other methods for obtaining names and addresses (such as reverse directory) which use different data bases than the local company's billing records. Reverse directory and similar sources are used by service bureaus and other entities that are not billing services for long distance providers and, therefore, do not have or cannot obtain BNA agreements with local telephone companies.

3/ The Commission assumes that, when Versatel receives the detached third portion of the bill, along with the payment, it is able to link that portion with the first two portions of that particular bill.

4/ The Commission assumes, based on the facts presented, that the charges will cover all of Versatel's expenses and a reasonable profit with respect to each campaign. See Advisory Opinions 1991-18, 1990-19, and 1990-1.