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*Attorney-at-Law*

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**Mr. Trevor Potter, Chairman  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463**

**Dear Mr. Chairman:**

On behalf of VITEL International, Inc. ("VITEL"), I have been retained to request an advisory opinion from the Commission pursuant to 2 U.S.C §437f based upon the factual scenario as set forth below.

**Factual Summary**

VITEL is a domestic corporation which specializes in interactive voice response and operator services in the telecommunication network field, and provides long distance product development and marketing services. VITEL uses a variety of telecommunication platforms to meet the unique requirements of its clientele. These services include, utilization of 24 hour live operators, interactive voice response menu platforms, online card validation and activation, refreshable on line cards by live operators, automated voice response capabilities, in addition to a Personal Identification Number (PIN) to uniquely identify the card holder. A new area which VITEL is exploring is the use of a prepaid calling card which can be utilized to make telephone calls. VITEL is an authorized distributor for AT&T, MCI, LCI, Cable and Wireless Network Services and it has additional agreements with specialized interactive and operator service

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**providers.**

**The typical use of the prepaid calling cards involves the consumers calling a 1-800 number which connects them with a live operator. For first time users, an operator is able to capture the various demographic information which may be necessary for the VITEL client. For purposes of the Federal Election Campaign Act of 1971, as amended, ("FECA" or "Act") the operator, is able to capture the name, address, employer, credit card number and the date on which the customer purchased time on the calling card. Subsequently, a customer who wishes to purchase additional time on the card, provides the operator with a unique P.I.N number and requests that the calling card be "refreshed" with a certain dollar value. That consumer has a preregistered credit card number on file and the amount which the customer desires to purchase on his calling card is verified by the operator. The customer's credit card is immediately debited thus enabling the calling card to be used immediately.**

**VITEL is able to purchase long distance telephone platform time at a discount based upon the quantity of its purchase. Therefore, VITEL is then able to pass on those savings to corporations, trade associations, and similar type entities. This calling card program enables the individuals associated with the corporation or trade association to make calls at a below commercial market rate by using this calling card. The price per minute charged to a corporation's employee participant, or a trade association member, provides a marketplace contract rate for VITEL, providing VITEL with all revenues necessary to cover the administration and overhead for the program, while still maintaining a profit for VITEL.**

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**Proposed Application of VITEL Program**

**VITEL desires to offer these prepaid calling services to corporations, trade associations, and political committees, as those terms are utilized in the context of the FECA. Specifically, as an incentive for such entities to purchase the prepaid calling card service, VITEL wishes to offer the authorized solicitable class of each entity the ability to purchase and utilize the prepaid calling card system of VITEL and earmark a percentage of the amount purchased, to be utilized as a contribution to the respective entities' federal political committee.**

**VITEL requests the Commission's opinion as to the permissibility of this system for (1) separate segregated funds; (2) authorized committees; (3) non-connected committees; (4) national party committees; (5) convention committees and the related host committees<sup>1</sup>.**

**By way of example, VITEL proposes to approach a trade association to secure a contract to provide the use of the prepaid calling card to its membership. The card for the particular trade association would be unique to that association, comparable to an affinity credit card. The name and logo of the association would appear on the face of the card. The back of the card would contain dialing instructions and a unique personal ID number for the participant.**

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<sup>1</sup> **These VITEL services will also be anticipated to be offered to corporations, trade associations, and national and state political parties as a means of raising additional treasury funds or "Soft Dollar" contributions at the national and state levels. Since these type of transactions are not specifically within the jurisdictions of the Commission, VITEL will not present a detailed discussion of those components in its proposal.**

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The trade association would then mail to its members and other individuals included in the association's solicitable class<sup>2</sup>, a fund raising proposal which would present the prepaid calling card system. The letter would describe in detail the use of the calling card and the price per minute for the calling card. The expenses for such a mailing would be paid from the association's treasury funds as is permitted by the Act<sup>3</sup>. If the member chooses to participate in the prepaid calling card system, the member would be able to (though not required) designate a certain portion of the amount of the purchase be earmarked and designated as a voluntary contribution to the association's separate segregated fund. The association would include the standard disclaimer notices regarding volunteer contributions in accordance with 11 C.F.R §114.5(a).

The member is offered various options when the call is initially placed. For example, after the caller dials the phone and PIN number, he could dial "2" and be offered to hear the "Message of the week" promoting a candidate<sup>4</sup> or a legislative issue. By dialing "3" the caller could leave a message for the association, or by dialing "4" the caller could purchase additional time on the calling card, by using his credit card.

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<sup>2</sup> In accordance with 11 CFR §114.8(c)

<sup>3</sup> 2 U.S.C. §441b (b)(2)(C)

<sup>4</sup> The requestor recognizes that if this message, expressly advocates the election or defeat of a federal candidate, the association would be required to comply with the provisions of 11 C.F.R. §114.3 including the corresponding disclosure requirements at 11 C.F.R. §104.6.

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### Legal Analysis

A review of the FECA, Commission's regulations, and the various advisory opinions on related areas, indicates that this process of using a prepaid calling card is essentially analogous to the use of a credit card for making contributions and does not present the problems or complexity addressed in the various opinions involving "900" numbers.

In several opinions, the Commission has acknowledged that the use of credit cards is a permissible vehicle for making contributions to political committees. (See advisory opinions: 1978-68 (CCH<sup>5</sup> ¶5357); Advisory Opinion 1989-26 (CCH ¶5974); Advisory Opinion 1984-45 (CCH ¶5786); Advisory Opinion 1990-4 (CCH ¶5983)). In this situation, VITEL is utilizing its own fulfillment and merchant bank services and the cost for those services is included as part of its contract price with the respective trade association, corporation, political committee, etc. Therefore, there is not an issue relative to the use of VITEL corporate funds or those of the merchant bank to process the credit card contribution.

A review of the line of advisory opinions<sup>6</sup> involving the 900 line service demonstrates that this proposed calling card service is distinguishable and avoids the primary concerns expressed by several Commissioners.

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<sup>5</sup> 1 Federal Election Campaign Financing Guide (Commerce Clearing House, Inc.)

<sup>6</sup> Specifically Advisory Opinion 1991-2 (CCH ¶6010); Advisory Opinion 1990-14 (CCH ¶6003) Advisory Opinion 1991-20 (CCH ¶6027) Advisory Opinion 1990-1 (CCH ¶5980) and Advisory Opinion 1991-26 (CCH ¶6030).

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**As underscored in those opinions, VITEL will here be charging its usual and normal charge to the respective trade associations, corporations, political committees, etc. for providing the prepaid calling card services. This includes administrative cost and profit margins for VITEL. In addition, by using the live operator to capture information about the contributor, VITEL is able to assure the association that they will secure the identity of the contributors, along with the itemization information of address, occupation, and employer<sup>7</sup>. VITEL will be able to verify that the credit card being used by the contributor is that of an individual and not that of a corporation. This eliminates an additional concern previously expressed by the Commission involving "900" phone line charges. In this case, when an individual calls to refresh the calling card, the individual's credit card is on record with the operator and is debited for the amount. There is no issue as to whether or not a corporation is paying for the telephone call on the "900" line.**

**In addition, unlike the "900" line opinions, there is an immediate debit to the credit card and this method avoids the Commission's concern expressed with the 900 numbers that the individual will deny the phone charges or refuse to pay the particular bill, thereby creating a potential excessive or prohibited contribution by the carrier.**

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<sup>7</sup> 11 C.F.R. §104.8; in addition, the initial solicitation letter informing the member of this opportunity would comply with the notice requirements of 11 C.F.R. 114.5 (a).

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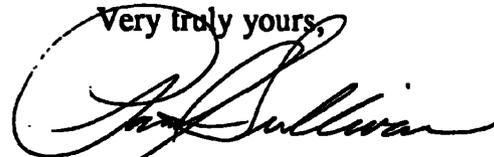
The individual using the calling card benefits by obtaining calling minutes at a rate less than usually available through retail long distance subscribers. This is due to VITEL's ability to pool a large amount of time and purchase it at a discounted rate. Enabling individuals to obtain less expensive phone calling minutes and making a contribution to a favored political committee is the marketing approach which VITEL desires to pursue with the various FECA entities noted in the introduction to this request.

Conclusion

Based upon these set of facts, VITEL requests an opinion from the Commission as to its permissibility in whole or in part.

Should you have further questions, please contact me and I will secure from VITEL the necessary information.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Paul E. Sullivan".

Paul E. Sullivan

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*Attorney-at-Law*

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SECRETARY

September 28, 1994

Mr. Bradley Litchfield, Esq.  
General Counsel's Office  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

AOR 1994-33

Dear Mr. Litchfield:

This letter constitutes a follow-up to the September 2, 1994 advisory opinion request submitted to the Commission on behalf of VITEL International, Inc. ("VITEL").

During a telephone conversation, subsequent to the submission of the advisory opinion request, you posed several questions to me to clarify several components of the request. Specifically, you inquired about (1) a clarification as to what individual or entity would in fact be making the contribution to the political committee; (2) clarification as to the potential recipient audience of the candidate message or other such messages which would be expressly advocating the election or defeat of a candidate; and (3) specifics regarding a standard agreement, if any, which VITEL anticipates using with potential clients.

To clarify your first point, contributions to political committees will be only from those individual funds of the contributor and will not consist of any direct or indirect funds from VITEL, any of the long distance carriers or associate vendors. The amount of the contribution will be left solely to the discretion of the contributor. For example, if the contributor purchased or refreshed the calling card for \$100, the contributor could elect to have none or a certain amount of the \$100 purchase designated as a contribution to the federal committee. There would be a maximum amount eligible to be designated by the contributor to the federal committee since VITEL must make certain that administrative expenses, operational costs, and a profit margin is maintained. However, there is not a specific quantifiable amount or a given percentage of the amount of the purchase which VITEL would state is the maximum amount permitted for a contribution. That amount will be determined on a client by client basis depending upon the services, and the associated costs for operating the program. However, under no situation will the amount contributed represent any fees or profits which otherwise represent VITEL's interest or that of the carrier.

The second question you raised involves the potential messages which would be made available to the contributor from the trade association, or the participating political committee. This is referenced at page 4 of the original opinion request. The "message of the week" which could address legislative issues,

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**General Counsel's Office**  
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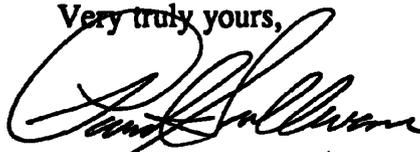
trade association issues, political party issues or the expressed advocacy of a federal candidate. This would only be made available to those members of the trade association who constitute permissible individuals or entities of the solicitable class in accordance with 11 CFR 114.8(c). Therefore, notwithstanding the fact that a corporation may be a member of the trade association, the expressed advocacy message promoting a particular candidate would not be made available to such corporate members. With regard to an authorized committee, a comparable concern does not present itself since the VITEL services would be purchased by the authorized committee. In the event a non-connected or party committee used such a message, it would be the responsibility of those committees to determine and report an appropriate in-kind contribution.

The last issue which you raised involves the standard agreement which VITEL would tender to clients. VITEL does not have a "standard" contract in view of the fact that each contract with a potential client will vary depending upon the client's requirements, the types of services requested and the negotiated price. However, for the Commission's information and consideration, there are several general categories that are envisioned to be included in such contracts. First, VITEL will negotiate a price per minute cost with the particular client based upon the quantity of the purchase by the client. As the relationship continues, and the client elects to purchase a greater number of minutes, or in the event of a trade association where the individual members purchase a greater number of minutes, this rate per minute may fluctuate. The rate negotiated, however will provide VITEL and all associated vendors with compensation for all of its associated expenses, the purchase of the air time and a profit. As noted above, should a particular individual desire to make a contribution as a portion of the amount which he pays for the purchase of the air time, it will be in such an amount which will still enable VITEL to cover all expenses, and to ensure a profit for itself.

VITEL will maintain transaction records of all purchases of air time and provide quarterly transaction reports to the client. These transaction reports, which would also reflect the contributions by individuals to the political committee, are also adaptable to the client's requirements for purposes of compliance with FECA.

I trust this is responsive to your inquires. Should you need further clarification, please contact me at my office.

Very truly yours,



Paul Sullivan