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August 28, 1995

BY MESSENGER

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Federal Election Commission
Room 657
999 E Street, N.W.
Washington, D.C. 20463

QOR 1995-34

Re: Politechs, Inc. -- Request for Advisory Opinion

Dear Mr. Noble:

On behalf of Politechs, Inc. ("Politechs"), we hereby request, in accordance with 2 U.S.C. § 437(f) and 11 C.F.R. § 112.1, that the Federal Election Commission ("Commission") issue an advisory opinion concerning Politechs' proposal to provide certain 900 number telephone services and affiliated services to authorized committees (both Presidential (i.e., 11 C.F.R. § 9002.1) and non-Presidential (i.e., 11 C.F.R. § 100.5)) and other political committees.¹

Politechs, as an information provider, will contract directly with authorized committees and political committees for the delivery of certain 900 number and affiliated services. Though not identical, the services that Politechs will offer are similar to those considered by the Commission in previous advisory opinions concerning the provision of 900 number technology by long distance carriers, telephone service bureaus, and third-party billing vendors.² Politechs requests the Commission's opinion regarding the applicability of the Federal Election Campaign Act of 1971, as amended ("the Act"), and the Commission's regulations to Politechs' proposed services as specified herein.

¹ Politechs does not intend to provide services to separate segregated funds as defined in 11 C.F.R. § 114.1.

² See, e.g., Advisory Opinions 1988-28, 1990-1, 1990-14, 1991-2, 1991-20, and 1991-26.

Arent Fox

Lawrence M. Noble, Esq.

August 28, 1995

Page 2

OVERVIEW OF POLITECHS' PROPOSED SERVICES

Through the use of interactive 900 number technology, Politechs, a privately held Florida corporation, intends to offer authorized committees and 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;
- (2) callers may also obtain information about a candidate's position on various issues by entering their fax number and requesting information via a faxback service;
- (3) callers may express their support for, or in opposition to, a candidate's position on various issues via touchtone prompts, and a summary of their responses will be provided to the authorized committee or political committee;
- (4) callers may make political contributions to the authorized committee or political committee by selecting an amount and entering a credit card number and expiration date;
- (5) callers may express an interest in contributing to the authorized committee or 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
- (6) authorized committees and political committees may obtain a list containing caller names, telephone numbers, addresses, and fax numbers (if available).

A caller to the Politechs 900 number service will be charged for the call itself on a per minute basis, the total cost of which will not exceed \$50. The caller will be advised that the entire amount of the charge for the call will be considered a political contribution subject to the limitations and prohibitions of the Act. Politechs will, as the charge to the authorized committee or political committee for the value of services rendered by Politechs (and by the third-party vendors with whom Politechs will contract), retain the full amount of the caller's payment for the call. If, in addition to the call itself, the caller also makes a credit card contribution, the authorized committee or political committee will receive the full amount of that credit card contribution less the usual and normal service charges of the credit card issuers.

Arent Fox

Lawrence M. Noble, Esq.

August 28, 1995

Page 3

As illustrated in previous advisory opinions on 900 number service, the provision of 900 number technology involves the combination of a number of services provided by several different vendors including long distance carriers, telephone service bureaus, information providers, and other vendors which provide specific technical and ancillary services.

Politechs has reserved certain 900 numbers under a licensing agreement with DialTone, Inc., a California corporation. Pursuant to a contract with an authorized committee or 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 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 normal and usual rate for similar services, such rate to include expenses plus a reasonable profit.

In order to avoid any prohibited corporate contributions, Politechs will ensure that authorized committees and 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 authorized committees and political committees at the usual and normal rate. In addition, Politechs will require deposits from its authorized committee and political committee customers sufficient to cover the costs of the 900 number service and adequate to cover any losses. Politechs will terminate its 900 number service for a particular authorized committee or political committee if the service fails to generate sufficient caller volume in order to ensure that losses do not exceed the deposit.

A. Calls to Politechs' 900 Numbers

Callers to the 900 number will be greeted with a preamble on the audioscript informing them of the charges for the call, the purpose of the call, and the identity of the authorized committee or political committee that has authorized availability of the 900 number services. The audioscript will explain that the entire charge is considered a political contribution subject to the limitations and prohibitions of the Act, and will also inform callers about relevant contribution limits and prohibitions on contributions from corporations, labor unions, government contractors and foreign nationals, as well as

Arent Fox

Lawrence M. Noble, Esq.

August 28, 1995

Page 4

contributions in the name of another, and a prohibition against a credit card cardholder receiving reimbursement for the charge to his or her card. See, e.g., 2 U.S.C. §§ 441(a)-(f). At the conclusion of the preamble, callers will be provided an opportunity to disconnect without incurring any charges, should they not wish to proceed further.

Those callers who remain on the line following the preamble will be prompted by an audioscript to enter, using an interactive touchtone response system, responses to various questions. Information that will be generated from such responses 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 he or she wishes to receive information about a candidate's position), and credit card number and expiration date in the event he or she wishes to make a contribution. Callers will also have the opportunity to indicate that they wish to be contacted by the authorized committee or political committee directly in order to make a contribution by means other than a credit card. Database controls will be initiated relative to the length of individual calls and the number of times an individual may call the 900 number, in order to limit the number of calls and, accordingly, contributions from any one telephone number. The aggregate cost of calls from any one telephone number will be limited to \$50.

B. 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.³ Using an automatic number identification ("ANI") system, as well as the responses to touchtone 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 database 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.⁴

³ In addition to the screening activities undertaken by Politechs and the various vendors operating under contract with Politechs, we understand that the practice in many businesses and corporations is to block access to all 900 services from telephone lines located on corporate premises or leased by the corporation for business purposes.

⁴ The combination of caller identity and screening procedures described herein will permit Politechs to identify in excess of 96 percent of individual callers to the Politechs 900 number. Only identified callers, of course, 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.

Arent Fox

Lawrence M. Noble, Esq.

August 28, 1995

Page 5

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, individuals calling from telephone numbers outside the United States are unable to access 900 numbers, thereby preventing the receipt of prohibited contributions from foreign nationals. 2 U.S.C. § 441e; 11 C.F.R. § 110.4(a).

C. Billing Process

Billing of individual callers for their calls to the 900 number will not be undertaken directly by the LDC. After the caller identity and screening activities described above are completed, a billing company operating under contract with Politechs will be responsible for billing individuals for calls to Politechs' 900 number.

Politechs believes that basic telephone service is a fundamental right of all Americans. As a result, Politechs will require all calls to its 900 numbers to be billed in a non-deniable call record format. If a caller claims that a call was unauthorized or made by mistake, the billing company reserves the right to remove the disputed charge 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 of calls who successfully refused a charge).

D. Delivery of Information to Political Committees

Politechs will provide the authorized committees and political committees with which it contracts a list (caller name, telephone number, address, and fax number

Arent Fox

Lawrence M. Noble, Esq.
August 28, 1995
Page 6

(if available)) generated from various screening systems for which the committees will pay Politechs the usual and normal rate appropriate for such lists. Politechs will also provide a summary of the touchtone responses of callers (e.g., affirmative, negative or numerical answers to questions posed by the audioscript) to the authorized committees and political committees at regular intervals, a service for which it will also receive the usual and normal fee appropriate for such services.

E. Credit Card Contributions

In the event a caller wishes to make a contribution to the authorized committee or 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 authorizations from callers. EAS will not authorize any non-U.S. issued credit card for settlement 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 authorized or political committee within ten days of the date the credit card authorization is obtained. While the amount actually remitted to the authorized committee or political committee by Politechs 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 authorized committees and political committees), the entire amount of the caller's credit card transaction will be treated as a political contribution to the authorized committee or political committee.

F. 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

Arent Fox

Lawrence M. Noble, Esq.

August 28, 1995

Page 7

material they wish to receive and enter their fax number. This information is recorded by the VRU and is forwarded to the R.j. Gordon Company 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.

G. Advertising of Politechs 900 Number Service

The campaign or 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 the Act, and providing such other information as required by Commission regulations. See, e.g., 2 U.S.C. § 441(d); 11 C.F.R. § 110.11(a)(1)(i-iv).

In several Advisory Opinions issued during the last decade, the Commission has examined the use of similar, though not identical, 900 number services by authorized committees and political committees. Politechs believes that its proposed 900 number service for authorized committees and political committees, as described herein, will comply with the Act and the Commission's regulations, and requests the Commission's opinion thereon.

If you should require any additional information, please do not hesitate to contact the undersigned at any time.

Respectfully submitted,



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