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FEDERAL ELECTION COMMISSION
Washington, DC 20463

Jul 23 8 29 AM '99

July 23, 1999

AGENDA ITEM
For Meeting of: 7-29-99

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Michael G. Marinelli
Staff Attorney

SUBJECT: Draft AO 1999-17

SUBMITTED LATE

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for July 29, 1999.

Attachment

DRAFT

1 **ADVISORY OPINION 1999-17**

2
3 **Benjamin L. Ginsberg**
4 **Patton Boggs LLP**
5 **2550 M Street, NW**
6 **Washington, DC 20037-1350**
7

8 **Dear Mr. Ginsberg:**
9

10 **This refers to your letters dated July 8 and June 7, 1999, which request an**
11 **advisory opinion on behalf of Governor George W. Bush for President Exploratory**
12 **Committee, Inc. ("the Committee") concerning the application of the Federal Election**
13 **Campaign Act of 1971, as amended ("the Act"), and Commission regulations to various**
14 **issues, including fundraising and polling, relating to Internet use by the Committee.**

15 **FACTUAL BACKGROUND**

16 **The Committee requests clarification concerning a number of issues that, you state, have**
17 **arisen regarding the possible uses of the Internet by the Committee in the 2000 election cycle...**

18 **They relate to several areas.**

19 **Valuation of Web Site:**

20 **You note that the Commission's past opinions and enforcement actions regarding**
21 **Internet activity indicate that a web site and links from one Internet site to another are something**
22 **of value to a campaign.¹ You ask whether a campaign must assess value for having its name**
23 **mentioned by a web site that it does not control (and may not even know about). You ask how a**
24 **campaign should treat a web site supportive of Mr. Bush that is established by either Committee**
25 **volunteers or by individuals unconnected with the campaign, but about which the campaign may**
26 **know nothing. You inquire as to the basis for determining the fair market value of a web site.**

27 **You further ask how the situations should be handled where the web site changes**
28 **messages on a regular basis, without the knowledge of the campaign.**

¹ The request cites to Advisory Opinions 1995-9, 1995-35, 1997-16 and 1998-22, as well as Matters Under Review 4340 and 3980.

1 You also ask how the Committee should assess the value of a link between itself and
2 another web site. You describe several different types of web sites where such links to the
3 Committee web site could exist. These are sites operated by volunteers with the campaign,
4 media outlets, commercial enterprises both related and unrelated to the campaign, and corporate
5 sites discussing the Presidential race or candidates for a variety of reasons.

6 Vendor issues:

7 You note the increasing phenomenon of Internet commerce-- the selling of various
8 products over the World Wide Web. This development has implications for the Committee
9 regarding the marketing of items (pins, bumper stickers, tee shirts, hats, etc.) which advocate the
10 election of a candidate. You ask whether the campaign may provide a link on its web site to that
11 of a vendor selling items about Mr. Bush's candidacy and how it would value that link. You also
12 ask regarding the reporting obligations in this situation. You ask whether a vendor selling a
13 candidate's campaign materials may provide a link to the candidate's web site and what
14 obligations exist for the Committee in this situation. You further ask if the Committee may pay
15 a vendor for a link to the campaign's web site. In this situation, you ask how the Committee
16 should value the link and what, if any, disclaimers are required.

17 Internet polls:

18 You note the increasing frequency of polls concerning possible Presidential candidates
19 and the appearance of these polls on the Internet. You ask whether these polls fall under the
20 news media exception, regardless of the sponsor or source of the poll. Further, does the
21 dissemination of the results of a poll become a reportable event under the Act? Again, if so, you
22 ask what is the valuation and description for the related disbursement. You ask what are the
23 applications of the Act if the Committee, through the Internet, urges its supporters to participate
24 in the polling.

1 **E-Mail:**

2 **You ask how the campaign should determine the fair market value of the use of email**
3 **where a Committee volunteer uses it to solicit friends and associates to contribute to the**
4 **campaign. You ask whether the campaign is required to report such activity and how it should**
5 **be valued. You also ask whether it must be counted against the volunteer's contribution limit.**

6 **Solicitation of Contributions through the Internet:**

7 **Several issues have emerged regarding the Committee's fundraising efforts through the**
8 **Internet.² One issue is whether a campaign can use e-mail to fulfill the Committee's best efforts**
9 **obligation, whether or not the original contribution was solicited over the Internet.**

10 **A second issue arises as to participation of a vendor in its Internet fundraising efforts.**
11 **Assuming the Committee contracts with a vendor to assist in the collection and matching of**
12 **contributions received over the Internet, you ask whether that vendor must provide the**
13 **Committee (along with its other campaign clients) with a separate and unique "Merchant ID**
14 **number," or may the vendor simply capture all contributions in its regular corporate account and**
15 **then distribute the proceeds to each campaign.**

16 **You explain that if each campaign has an individual Merchant ID number, then the**
17 **donations flow through "Cybercash" and the bank processor into the campaign's bank account at**
18 **its designated bank. The credit card receipt will show a donation to the campaign and the vendor**
19 **bills the campaign for the vendor's fee. However, if the vendor uses its own Merchant ID**
20 **number for its clients, the donations will flow into the vendor's account designated for each**
21 **campaign. You explain that the vendor will deduct its 10 percent fee and then forward 90% to**
22 **the designated campaign. The donor's credit card bill will show a charge to the vendor rather**

² In your original submission, you indicated that the Committee was considering whether to accept Federal matching funds. On July 15, 1999, the Committee announced that it would not seek matching funds. Therefore, the draft will only address those fundraising issues which relate to the Act and not those which concern obligations the Presidential Primary Matching Payment Account Act ("the Matching Payment Act"), at 26 U.S.C. §§9031-9042.

1 than the campaign. You ask whether this is permitted under the Act or would this latter
2 procedure constitute a corporate donation.

3 **ACT AND COMMISSION REGULATIONS**

4 The Act prohibits contributions and expenditures by a corporation in connection with a
5 Federal election. 2 U.S.C. §441b(a); 11 CFR 114.2(b). The term "contribution" is defined to
6 include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or
7 any services, or anything of value ... to any candidate, campaign committee, or political party or
8 organization," in connection with any Federal election. 2 U.S.C. §441b(b)(2); 11 CFR
9 114.1(a)(1). See 2 U.S.C. §431(8)(A)(i) and (9)(A)(i); 11 CFR 100.7(a)(1) and 100.8(a)(1). The
10 phrase "anything of value" includes goods or services provided without charge, or at less than the
11 usual and normal charge. 11 CFR 100.7(a)(1)(iii)(A) and 100.8(a)(1)(iv)(A). However, the
12 term "contribution" under the Act does not include, among other categories, the value of services
13 provided without compensation by any individual who volunteers on behalf of a candidate or
14 political committee. 2 U.S.C. §431(8)(B)(i).

15 The definition of "expenditure" in 2 U.S.C. §431(9) includes "any purchase, payment,
16 distribution, loan, advance, deposit, or gift of money or anything of value, made by any person
17 for the purpose of influencing any election for" Federal office. See also 11 CFR 100.8(a)(1).

18 Whenever any person makes an expenditure to finance communications expressly advocating the
19 election or defeat of a clearly identified candidate or soliciting any contribution, and does so
20 through various types of mass media (e.g., a broadcasting station) or via "any other type of
21 general public political advertising," the communication is required to include a statement of
22 sponsorship or disclaimer. 2 U.S.C §441d, 11 CFR 110.11.

23 The Act, 2 U.S.C. §431(9)(B)(i), specifically exempts from the definition of
24 "expenditure":

25 any news story, commentary, or editorial distributed through

1 the facilities of any broadcasting station, newspaper, magazine,
2 or other periodical publication, unless such facilities are owned or
3 controlled by any political party, political committee, or candidate.

4
5 Commission regulations similarly exclude from the definitions of contribution and
6 expenditure "[a]ny cost incurred in covering or carrying" a news story, commentary,
7 or editorial by any broadcasting station, newspaper, magazine, or other periodical
8 publication. 11 CFR 100.7(b)(2) and 100.8(b)(2). According to the legislative
9 history of this "press exemption," Congress intended to preserve the traditional role of the press
10 with respect to campaigns:

11 [I]t is not the intent of the Congress in the present legislation to limit or
12 burden in any way the First Amendment freedoms of the press and of
13 association. Thus, [the exemption] assures the unfettered right of the
14 newspapers, TV networks, and other media to cover and comment on
15 political campaigns:

16
17 H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. at 4 (1974).

18

19 DISPOSITION OF QUESTIONS

20 *Valuation issues*

21 Web sites established by volunteers

22

23 Commission regulations offer relevant guidance in two areas: volunteer activity by an
24 individual conducted at home or at corporate facilities. Both these situations (depending on the
25 circumstances) could result in no reporting obligations by the Committee because it would not
26 have received a contribution.

27 In the first situation, Commission regulations provide under 11 CFR 100.7(b)(4) that no
28 contribution results where an individual, in the course of volunteering personal services on his or
29 her residential premises to any candidate, provides the use of his or her real or personal property
30 to such candidate for candidate-related activity. Therefore, if a volunteer for the campaign
31 chooses to prepare a web site supporting the campaign using his or her personal property at

1 home, i.e. a home computer, that action would not be a contribution. Further, the ongoing
2 related costs (such as maintaining Internet service with a provider) that are part of the upkeep of
3 a home-run web site would also fall into this exception. In short, there would also be no
4 reporting obligation that would attach to the activity.

5 The second situation, involving the use by committee volunteers of corporate facilities or
6 equipment, requires a slightly different analysis. Under 11 CFR 114.9(a), stockholders and
7 employees of a corporation may, subject to the rules and practices of the corporation, make
8 occasional, isolated, or incidental use of the facilities of a corporation for individual volunteer
9 activity in connection with a Federal election. Reimbursement of the corporation is only
10 required to the extent that the overhead or operating costs of the corporation are increased.³ If
11 the volunteer were to prepare Internet related material such as a web site using corporate owned
12 facilities and such use went beyond occasional, isolated, or incidental use, the campaign would
13 incur an obligation to reimburse the corporation within a commercially reasonable time for the
14 normal and usual rental charge, as defined in section 100.7(a)(1)(iii). Without such
15 reimbursement, a prohibited corporate contribution would result.⁴

16 Activity by non-volunteers

17 In addition to the activity by volunteers, your request would also seem to concern
18 Internet related activity by individuals not connected to the campaign. Advisory Opinion 1998-
19 22 is relevant where an individual who is not a volunteer for the campaign chooses to prepare a

³ Section 114.9(a) further defines "incidental use" to mean "(a) when used by employees during working hours, an amount of activity during any particular work period which does not prevent the employee from completing the normal amount of work which that employee usually carries out during such work period; or (b) when used by stockholders other than employees during the working period, such use does not interfere with the corporation in carrying out its normal activities." The regulation also notes that any such activity which does not exceed one hour per week or four hours per month, regardless of whether the activity is undertaken during or after normal working hours, shall be considered as occasional, isolated, or incidental use of the corporate facilities.

⁴ The Commission cautions the Committee that the presence of company banners on corporate e-mail used by volunteers may create the appearances of a corporate endorsement of Mr. Bush unless the user made clear the message contained in the e-mail did not reflect corporate views. Corporate communications of candidate endorsements are limited under the Act and Commission regulations. See 2 U.S.C. § 441b(2) and 11 CFR 114.3(c)(2) and 114.4(c)(6); see also Advisory Opinion 1997-16.

1 web site which expressly advocates the election of Mr. Bush or expressly advocates the defeat of
2 his opponents.⁵ As the Commission noted in that opinion, if the activity to create the web site
3 where not conducted completely independent (in this situation, of Mr. Bush's campaign) the
4 resulting expenditures would be reportable by the Committee as an in-kind contribution See 2
5 U.S.C. §§431(8)(A)(i), 434(b)(2)(A), 434(b)(3)(A); 11 CFR 104.3(a)(3)(i), 104.3(a)(4)(i),
6 104.13; and Advisory 1998-22.

7 If the Committee, as you state, has no knowledge and control of a particular web site that
8 is prepared by an individual, then the costs for establishing and maintaining the web site would
9 be an independent expenditure. The fact that the Committee may have no editorial input in the
10 content of a web site would be a factor in determining whether or not a web site is truly
11 independent of a campaign or its control (for example, if the contents change without notice to or
12 without the permission of the Committee). If the costs for such activity proved to be
13 independent expenditures, the Committee would incur no reporting obligations. The creator of
14 the web site, however, would need to file reports with the Commission if the total value of the
15 expenditure exceeded \$250 during the calendar year. See 2 U.S.C. §§431(17), 434(c),
16 441a(a)(7)(B); 11 CFR 109.1, 109.2.

17 The Commission notes that it is possible for a volunteer of the campaign to prepare a
18 web site supporting the candidate as an independent expenditure, but only where that individual
19 was not an agent of the campaign, as defined in 11 CFR 109.1(b)(5).⁶ A further limitation is that
20 the volunteer has not been "authorized to raise or expend funds, who is, or has been, an officer of

⁵ In Advisory Opinion 1998-22, an individual created a web site which urged the defeat of a incumbent Congressional candidate and the election of the candidate's opponent. The campaign supported by the web site asserted that the individual was acting independently of the campaign. Since this question was not asked by the requester, the advisory opinion did not determine whether the independence of the expenditures was compromised by the contacts between the campaign and the requester.

⁶ 11 CFR 109.1(b)(5) defines "agent" to mean "any person who has actual oral or written authority, either express or implied, to make or to authorize the making of expenditures on behalf of a candidate, or means any person who has been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities he or she may authorize expenditures."

1 an authorized committee, or who is, or has been, receiving any form of compensation or
2 reimbursement from the candidate, the candidate's committee or agent." See 11 CFR
3 109.1(b)(4)(i)(B).

4 As regards the valuation of a web site which is an in-kind contribution, again, Advisory
5 Opinion 1998-22 is relevant. In that opinion the requester asserted that creation and maintenance
6 of the web site entailed no cost to himself. The Commission disagreed and noted:

7 that there are minimal costs associated with creating the web site. Some
8 portion of the previous expenses described in your request could be
9 apportioned to each and every web site that you construct as part of your
10 business. These overhead costs would include, for example, the fee to
11 secure the registration of domain name, the amounts you invested in
12 your hardware, and the utility costs to create the site.

13
14 These are the factors which the campaign would need to consider regarding any web site that is
15 an in-kind contribution to the Committee.

16 Links between web sites

17 Providing a link to web sites operated by the Committee would be considered a service
18 and something of value to the campaign and could therefore meet the definition of "contribution"
19 under the Act and Commission regulations. See Conciliation Agreement in MUR 4340. The
20 Commission notes that any service provided without charge, or at less than the usual and normal
21 charge, would constitute a contribution. 11 CFR 100.7(a)(1)(iii)(A) and 100.8(a)(1)(iv)(A).⁷

22 However, providing a specific link to the Committee web site may not in and of itself
23 necessarily constitute a contribution to a campaign. The issue would turn on whether or not the
24 owner of the web page providing the link would normally charge for the providing of such a link.
25 You suggest that "accepted industry practice" should determine the valuation of such links. You
26 also assert that such practice is to provide such links without cost.

⁷ The Commission has also examined whether on the basis of its content a web site or a link could be construed as a contribution to a candidate. See Advisory Opinions 1999-7 and 1998-22. Recently, in Advisory Opinion 1999-7, the Commission noted that whatever the content of a web site or the providing of a web link, the exception in the Act at

1 The Commission questions whether, with numerous types of web sites and site owners in
2 existence, there is one uniform practice that governs the entire Internet "industry." For example,
3 while it may be common practice for one type of owner of a web site to charge little or nothing
4 for a link (i.e. those established by certain smaller non-profit organizations or sites established by
5 individuals), certain other categories of site owners (such as commercial vendors, Internet
6 service providers or larger non-profits) may, in fact, charge a large amount for including a link to
7 another entity's web site. You have not identified a specific web site from which the Committee
8 wishes to have a link provided. But in any case, the industry practice that should be applied is
9 the custom that pertains to the particular type of web site. If an owner of a web site would
10 normally charge for a link to another site and chooses not to charge the Committee, or charges
11 the Committee less than a similarly situated nonpolitical organization or entity, the provision of a
12 link would be treated as a contribution to the campaign.⁸

13 The amount of the contribution would be the difference between what the Committee is
14 normally charged and the amount it paid, if anything, for the link. Additionally, if the owner of
15 the web site is a corporation, then the contribution would be prohibited by section 441b.

16 A special situation exists regarding links provided free of charge by media owned web
17 sites. Providing these links may be activity within the "news story exemption" found at 2
18 U.S.C. §431(9)(B)(i). See 11 CFR 100.7(b)(2) and 100.8(b)(2); see also Advisory Opinions
19 1996-16 and 1996-2. If the other relevant factors are present, then any cost to provide these links
20 would be neither a contribution nor an expenditure under the Act.⁹

section 431(9)(b)(ii) for non partisan activity to encourage voting could apply to remove the activity from being considered an expenditure or contribution.

⁸ The Commission notes that there is an exception to following standard business practice. The Commission has determined that services offered free of charge by corporations in the ordinary course of business for promotional or good will purposes (if these services might otherwise have required consideration) are prohibited by 2 U.S.C. §441b. See Advisory Opinions 1996-2, 1988-25, 1988-12. With regard to Internet activity, in Advisory Opinion 1996-2 the Commission determined that CompuServe's proposal to extend to Federal candidates its program of promotional free Internet accounts would result in a prohibited corporate contribution under section 441b.

⁹ The regulations explain that several factors have to be present to conclude that the proposed activity falls within the press exemption of 2 U.S.C. §431(9)(B)(i). The entity must be a press entity as described in the section. See Advisory

1 *Committee and vendor Internet activity*

2 The discussion above applies to your questions regarding the Committee's obligations
3 where a vendor that sells campaign materials provides a link to the Committee's web site.
4 Providing the link is permissible. However, if it would be normal industry practice to charge for
5 the link, then the Committee would have to pay the usual and normal charge to avoid the making
6 of a contribution by the vendor. The Committee would also be obligated to report the
7 disbursement as an operating expenditure in its report filings. See 2 U.S.C. §434(b)(4) and 11
8 CFR 104.3(b)(2). If the Committee pays a web site owner for a link to the Committee's web
9 site, this would be considered an operating expenditure.

10 The Commission has concluded that disclaimers are required on web sites that expressly
11 advocate the election or defeat of a Federal candidate, as well as those that solicit contributions.
12 See Advisory Opinion 1998-22. This would apply to any web site that contained any express
13 advocacy similar to that found in Advisory Opinion 1998-22.

14 However, the situation may exist where the only portion of a web site that contains an
15 expression of support for a candidate is the banner or graphic which leads the viewer to the
16 Committee's web site. These banners, which may themselves simply reproduce the logo of a
17 campaign (and therefore expressly advocate the support of a candidate), can be of minute size.
18 In these circumstances, it would be impossible to place a readable disclaimer in the banner. The
19 Commission notes that 11 CFR 110.11(a)(6) exempts from the disclaimer requirements certain
20 means of displaying political advertisements which by their nature, would make the inclusion of

Opinions 1996-16, and 1987-8, compare with Advisory Opinion 1996-2. See also *Federal Election Commission v. Multimedia Cablevision, Inc.*, Civ. Action No. 94-1520- MLB, slip. op. at 6 (D. Kan. August 15, 1995), (referring to the need for "a qualified press entity" in applying the exemption). The regulation also states the exemption does not apply if the press entity is owned by a political party or candidate. See Advisory Opinion 1990-5. If the press entity is owned by a candidate or party, the exemption may still apply but the activity must represent a bona fide news story and it must be part of a general pattern of campaign related news accounts which give reasonably equal coverage to all opposing candidates in the circulation or listening area. In examining these requirements together the Commission has placed importance on whether the press entity is acting as a press entity in performing the media activity. Advisory Opinion 1982-44 (citing *Reader's Digest Association v. Federal Election Commission*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981)).

1 a disclaimer impracticable. See Advisory Opinion 1994-13 and 1980-42. This section would be
2 applicable to the above situation.

3 *Internet polling*

4 Your next questions concern the transmission of polling information. As was noted
5 above, only web sites operated by entities whose activity could meet the requirements of the
6 "press exemption" could receive the benefit of 2 U.S.C. §431(9)(B)(i).¹⁰ Therefore, activity of
7 the Internet polling does not in and of itself receive the media exemption. The dissemination of
8 the results of a poll result is not, however, prohibited by the Act or Commission regulations.
9 Nothing in the Act or Commission regulations would prohibit the Committee from using its web
10 site or its e-mail functions to support Mr. Bush via Internet polling. Any costs associated with
11 this activity would be operating expenditures. The related costs for this and any other Internet
12 activity (as discussed above and in Advisory Opinion 1998-22) would include expenses to
13 operate an e-mail account, maintain a web site, purchase hardware, etc. Many of these costs,
14 such as the purchase of computer software and hardware, payment of electric power and
15 overhead costs, the Committee would have been required to report in any event. No additional
16 reporting would be required for each new or other Internet use unless it entails a separate
17 purchase or fee.

18 *E-Mail*

19 You ask regarding the use of e-mail by volunteer supporters of the campaign to urge
20 support for Mr. Bush's candidacy. The Committee's questions regarding the use of e-mail by
21 Committee volunteers are covered in the Commission's previous discussion regarding the value
22 of a web site. Under section 11 CFR 100.7(b) the use of e-mail by a campaign volunteer using

¹⁰ The Commission noted, for example, in Advisory Opinion 1996-2, that CompuServe's proposal to establish "nonpartisan online election headquarters" by providing free e-mail accounts would not receive the benefit of section 431(9)(B)(i) since "neither CompuServe nor its described online services is a facility qualifying for the media exemption as described in the Act."

1 his home equipment would not result in a contribution to the campaign. The ongoing costs for
2 home e-mail activity are likely to be small and in any case would also be covered by section 11
3 CFR 100.7(b). The contribution limit of the volunteer would not be affected by this activity.
4 However, e-mail using corporate equipment is governed by 114.9(a). The Commission notes it
5 could be considered occasional, isolated or incidental use if it met the other requirements of
6 114.9(e). See footnote one.

7 *Solicitation of contributions through Internet*

8 Your last series of questions relate to Internet fundraising activities. Although your
9 request originally phrased these questions with reference to the Committee's possible application
10 for matching funds, the issues raised are applicable to all fundraising efforts, whether or not the
11 resulting contributions are matched.

12 You ask whether e-mail communications may be used to fulfill the Committee's "best
13 efforts" obligations, whether or not the original contribution was solicited over the Internet. The
14 Commission notes that a political committee is required to use "best efforts" to obtain, for each
15 contribution aggregating in excess of \$200 per calendar year, any required contribution
16 information which was not provided by the contributor. 11 CFR 104.7(b)(2).¹¹

17 Such follow-up efforts (after the initial solicitation is sent) require either a written request sent to
18 the contributor, or an oral request to the contributor documented in writing. Furthermore, the
19 Explanation and Justification for the Commission's regulations on the matching of credit card
20 contributions noted the special circumstances of contributions raised through the Internet. The

¹¹ The information that a political committee is required to use its best efforts to obtain concerns a contributor's full name, mailing address, occupation, and the name of employer where the contributions exceed \$200 in a calendar year. 11 CFR 104.7(b)(1).

1 Commission, citing Advisory Opinion 1995-9, noted that “in the unique case of a contribution
2 received over the Internet, the [follow-up] request could consist of an electronic message sent to
3 the contributor’s e-mail address.” See 64 *Fed.Reg.* 32397 (June 17, 1999) and Advisory Opinion
4 1995-9. It is logical to assume that a contributor would respond best to the medium which was
5 first used for the successful solicitation.¹² Therefore, the Commission concludes that the
6 Committee may substitute e-mail communications for written or oral communications as a
7 means of exerting best efforts to obtain missing contributor information where the original
8 contribution was received through the Internet or where the Committee has otherwise obtained
9 reliable information as to a donor’s e-mail address (through, for example, frequent e-mail
10 communications with the contributor).

11 The Committee’s last question concerns whether a vendor assisting Committee
12 fundraising efforts must provide the Committee (and each of the vendor’s other campaign
13 clients) with a separate and unique merchant ID number, or may the vendor simply “capture” all
14 contributions in its regular corporate account prior to its distribution to each campaign it
15 represents.

16 The Commission notes that this last question initially presented issues relating both to
17 the Act and the the Matching Payment Act. However, as noted in Footnote two, this draft will
18 not consider the application of the Matching Payment Act to the Committee’s proposal.

19 Either the use of a vendor’s merchant ID or individual customer ID’s for each of the
20 vendor’s political committee clients would be permissible under the Act. The manner in which a
21 credit card bill or invoice records the transaction is less important than the treatment of the
22 contributions raised through fundraising with vendor participation. The greater concern arises

¹² The Commission notes that while both e-mail and postal addresses are subject to change, e-mail addresses may change with greater rapidity since no change of residence is necessary for an old e-mail address to be rendered inoperative, only a change of job or e-mail provider. Moreover, forwarding service for e-mail, is less prevalent as opposed to postal addresses. However, this concern is lessened if the campaign solicited and received the contribution

1 from where the funds are deposited prior to their transmittal to the Committee. Of some
2 relevance are several prior advisory opinions concerning vendors who provided 900 line
3 telephone services to campaigns. See Advisory Opinions 1990-1 and 1991-20.

4 In Advisory Opinion 1990-1, the Commission concluded that permitting a corporate
5 vendor to place the funds raised through these services in its regular corporate account before
6 transmitting them to its campaign clients would lead to a commingling of corporate and
7 campaign funds prohibited by section 441b. The Commission determined that separate accounts
8 were needed for a vendor's political committee clients.¹³

9 The Commission's reasoning in Advisory Opinion 1990-1 is applicable to the
10 Committee's circumstances. Corporate vendors who provide the Committee with Internet billing
11 services for its Internet fundraising could use whatever system they wish regarding merchant ID
12 as long as the funds raised are not placed in the vendor's regular corporate accounts. It may,
13 however, not be necessary for a corporate vendor to provide a separate account for each of its
14 political committee clients. The Commission noted in Advisory Opinion 1991-20 that, in certain
15 circumstances, a vendor may establish one separate account to process all funds raised for
16 political committees. Whether a particular Internet vendor can use one account will depend on
17 whether the factual situation and circumstances of that vendor are "indistinguishable in all

by Internet communication (with an Internet address provided), since that would indicate the existence of a viable e-mail address used for transactions.

¹³ In Advisory Opinion 1990-1 the Commission observed:

It appears from your proposal that funds sent to DCC by the telephone company, which resulted from callers' payments of their telephone bills, will be deposited into a DCC account and, after deduction of DCC's costs and fees, the remainder, sent to the committee. Such funds may not be commingled with the funds of DCC, which is a corporation. See U.S.C. §441b(a); compare 2 U.S.C. §432(b)(3); 11 CFR 102.15. None of the proceeds, therefore may be deposited in any of the DCC's existing accounts. DCC will need to establish a separate bank account with respect to each committee at a bank or depository institution designated by the committee. 2 U.S.C. §432(h)(1); 11 CFR 103.2 and 103.3(a). The proceeds must be deposited in the appropriate designated account, i.e. the account of the committee benefiting, within 10 days of the DCC receipt. 11 CFR 103.3(a).

1 material aspects form the transaction or activity” presented in Advisory Opinion 1991-20. ¹⁴
2 11 CFR 112.5(a)(2).

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

6 Sincerely,

7
8 Scott E. Thomas
9 Chairman

10
11 Enclosures (AOs 1998-22, 1996-16, 1996-2, 1995-9, 1994-13, 1990-1, 1990-5, 1990-20,
12 1988-12, 1988-25, 1987-8, 1982-44 and 1980-42)

¹⁴ In Advisory Opinion 1991-20, the Commission noted that the requester providing 900 line services received “potentially large numbers of political customers” and that it maintained separate book accounts for each committee customer. The proceeds passing through the one account for Federal customers was forwarded to each political committee within ten days or thirty days of its receipt by 900 line provider, depending upon the type of committee. See U.S.C. §432(b)(1) and (2); 11 CFR 102.8(a) and (b).