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205 Pennsylvania Ave., S.E.  
Washington, D.C. 20003

September 20, 2010

*Comment on AOR 2010-23*

Christopher Hughey, Esq.  
Acting General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

**Re: Comment on Advisory Opinion Request 2010-23 (CTIA – The Wireless Association)**

Dear Mr. Hughey:

Pursuant to 2 U.S.C. § 437f(d) Aristotle International submits this comment urging the Commission to grant CTIA – The Wireless Association's (CTIA's) request to confirm that small contributions to Federal candidates and other Federal political committees may be initiated by text messages to Common Short Codes (CSCs) over wireless networks and processed and forwarded as described in the request.

#### **ARISTOTLE'S INTEREST**

Aristotle is a leading supplier of technology and services to political campaigns and committees. Aristotle developed the first commercial campaign management software. Advisory Opinion 1991-34 (West Virginia Republicans). Aristotle has continually expanded its services and developed business practices to enable campaigns to take advantage of advances in technology. *See, e.g.*, Advisory Opinion 1999-22 (Aristotle Publishing) (approving processing of credit card contributions eligible for Presidential primary matching funds). Aristotle is currently incorporating full compatibility with mobile communications services into its campaign technologies and intends to offer campaigns and other political committees a full suite of fundraising technology and services in wireless applications.

## DISCUSSION

The Commission has consistently adapted its regulations, practices, and interpretations of the Federal Election Campaign Act (FECA or the Act) to enable political committees to take advantage of technological developments and evolving commercial practices in fundraising and financial processing. The Commission has adapted FECA recordkeeping, forwarding, and screening requirements consistent with the unique features of differing fundraising methods, especially where those methods comported with standard commercial practices for non-political customers. The Commission should approve CTIA's proposal to enable political committees to take advantage of SMS fundraising technology with the screening, forwarding, and recordkeeping procedures described in that request and consistent standard commercial practices in the wireless industry.

**A. The Commission should interpret the FECA to allow political committees to take full advantage of new technologies.**

From its earliest days the Commission has interpreted the FECA to permit campaigns to employ technologies not contemplated when the Act was drafted. The diverse technologies the commission has addressed include telephone credit card processing,<sup>1</sup> 900-number services,<sup>2</sup> automatic fund transfers,<sup>3</sup> the Internet,<sup>4</sup> and mobile communications services.<sup>5</sup> The commission should continue its consistent path of enabling political committees to take full advantage of new technologies and commercial and financial innovations by approving this request.

**B. As it has done repeatedly, the Commission should adapt FECA administrative requirements to the technological characteristics and commercial standards of services and service providers.**

The Commission has long realized that "different fundraising methods may have different requirements applied to them.... Those requirements were applied to comport with the unique needs raised by the different methods."<sup>6</sup> Similarly, the commission has adapted administrative,<sup>7</sup> forwarding,<sup>8</sup> and recordkeeping requirements<sup>9</sup> to address the exigencies and commercial practices of various fundraising methods. "Most importantly," observed the commission in granting one such variance, is that fact that "these practices are within the ordinary course of business...for nonpolitical

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<sup>1</sup> Advisory Opinion 1978-68.

<sup>2</sup> Advisory Opinions 1988-28, 1990-01, 1990-14, 1991-02, 1991-20, 1991-26, and 1994-34.

<sup>3</sup> Advisory Opinion 1989-26.

<sup>4</sup> Advisory Opinion 1995-09, summarized by the Commission as "operating a political committee in cyberspace."

<sup>5</sup> Advisory Opinion 2002-09.

<sup>6</sup> Advisory Opinion 1994-33.

<sup>7</sup> Matching Credit Card and Debit Card Contributions in Presidential Campaigns, 64 FR 32394 (June 17, 1999); Advisory Opinions 1993-04 (non-paper records), 2007-17 (electronic signatures).

<sup>8</sup> Advisory Opinions 2003-23 and 2006-30.

<sup>9</sup> Advisory Opinions 1980-99 and 1981-48.

customers.”<sup>10</sup> Here, CTIA is proposing to treat political committee customers identically to nonpolitical customers, with the exception of adding screening procedures to protect against impermissible contributions. The Commission should grant this request for identical treatment.

**C. The Commission should avoid extra-statutory prophylactic requirements to protect against merely imagined harms.**

FECA explicitly permits political committees to accept and retain contributions of less than \$50.00 without records of the identity of the contributor or the date or amount of the contributions.<sup>11</sup> In the context of in-person contributions the FEC approved receipt of contributions in amounts of less than \$50.00 with no explicit screening requirements, mandating only a “reasonable accounting procedure.”<sup>12</sup> Neither did the Commission impose screening requirements to protect against corporate, foreign, or otherwise prohibited contributions in the case of credit card contributions processed via telephone.<sup>13</sup> In the case of contributions over the Internet, the Commission has approved donor self-certifications for compliance with contribution prohibitions.<sup>14</sup> CTIA has suggested a text message screening method with six questions similar to those used for Internet contribution screening. That reasonable proposal should be approved without alternative or additional screening requirements.

In the case of 900-number fundraising the Commission imposed extraordinary screening requirements such as telephone number matching, call recording and transcription, and data matching.<sup>15</sup> In the course of at least seven advisory opinions addressing 900-number fundraising<sup>16</sup> the Commission imposed a plethora of extra-statutory screening requirements. Without adequate explanation the Commission reversed position on whether the anonymous contribution procedures approved in Advisory Opinion 1980-99 applied to 900-number fundraising.<sup>17</sup> Further the Commission failed to explain why recordings and external data matching was required for 900-number fundraising yet not required for telephone charge authorizations. The Commission should reject the contradictory and statutorily-unsupported 900-number opinions as a model for text message fundraising.

There is no evidence that low-dollar text message fundraising presents an unusual threat of circumvention or corruption. Given the per message and monthly limits on text message charges described in the request a donor would have to send 240 text messages at the rate of ten per month over the course of two entire years in order to reach the individual contribution limit to a single campaign. Moreover, campaigns are motivated

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<sup>10</sup> Advisory Opinion 1991-20.

<sup>11</sup> 2 USC 432(c).

<sup>12</sup> Advisory Opinion 1980-99.

<sup>13</sup> Advisory Opinion 1978-68.

<sup>14</sup> See, e.g. Advisory Opinion 1995-09.

<sup>15</sup> See, e.g. Advisory Opinion 1995-34.

<sup>16</sup> Advisory Opinions 1988-28, 1990-01, 1990-14, 1991-02, 1991-20, 1991-26, and 1995-34.

<sup>17</sup> Compare Advisory Opinion 1990-01 at 5 and Advisory Opinion 1990-14 at 3 with Advisory Opinion 1991-20 at 8.

to gather donor names and contact information from small contributions for future fundraising and organizing purposes. Text message fundraising should be approved subject to no more than the donor self-certification questions required for Internet fundraising.

We urge favorable treatment of this request.

Respectfully,

*David M. Mason*

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