

## **PUBLIC COMMENTS ON DRAFT ADVISORY OPINIONS**

Members of the public may submit written comments on draft advisory opinions.

DRAFT ADVISORY OPINION 2010-23 is now available for comment. It was requested by Jan Witold Baran, Esq. and Caleb P. Burns, Esq., on behalf of CTIA – The Wireless Association, and is scheduled to be considered by the Commission at its public meeting on Thursday, November 4, 2010.

If you wish to comment on DRAFT ADVISORY OPINION 2010-23 (CTIA), please note the following requirements:

- 1) Comments must be in writing, and they must be both legible and complete.
- 2) Comments must be submitted to the Office of the Commission Secretary by hand delivery or fax ((202) 208-3333), with a duplicate copy submitted to the Office of General Counsel by hand delivery or fax ((202) 219-3923).
- 3) Comments must be received by noon (Eastern Time) on November 3, 2010.
- 4) The Commission will generally not accept comments received after the deadline. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case-by-case basis in special circumstances.
- 5) All timely received comments will be made available to the public at the Commission's Public Records Office and will be posted on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

## **REQUESTOR APPEARANCES BEFORE THE COMMISSION**

The Commission has implemented a pilot program to allow advisory opinion requestors, or their counsel, to appear before the Commission to answer questions at the open meeting at which the Commission considers the draft advisory opinion. This program took effect on July 7, 2009.

**Under the program:**

- 1) A requestor has an automatic right to appear before the Commission if any public draft of the advisory opinion is made available to the requestor or requestor's counsel less than one week before the public meeting at which the advisory opinion request will be considered. Under these circumstances, no advance written notice of intent to appear is required. This one-week period is shortened to three days for advisory opinions under the expedited twenty-day procedure in 2 U.S.C. 437f(a)(2).**
- 2) A requestor must provide written notice of intent to appear before the Commission if all public drafts of the advisory opinion are made available to requestor or requestor's counsel at least one week before the public meeting at which the Commission will consider the advisory opinion request. This one-week period is shortened to three days for advisory opinions under the expedited twenty-day procedure in 2 U.S.C. 437f(a)(2). The notice of intent to appear must be received by the Office of the Commission Secretary by hand delivery, email ([Secretary@fec.gov](mailto:Secretary@fec.gov)), or fax ((202) 208-3333), no later than 48 hours before the scheduled public meeting. Requestors are responsible for ensuring that the Office of the Commission Secretary receives timely notice.**
- 3) Requestors or their counsel unable to appear physically at a public meeting may participate by telephone, subject to the Commission's technical capabilities.**
- 4) Requestors or their counsel who appear before the Commission may do so only for the limited purpose of addressing questions raised by the Commission at the public meeting. Their appearance does not guarantee that any questions will be asked.**

**FOR FURTHER INFORMATION**

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Other inquiries:

To obtain copies of documents related to Advisory Opinion 2010-23, contact the Public Records Office at (202) 694-1120 or (800) 424-9530, or visit the Commission's website at <http://saos.nictusa.com/saos/searchao>.

**ADDRESSES**

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**AGENDA DOCUMENT NO. 10-67**



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Washington, DC 20463

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2010 OCT 28 P 4:14

**AGENDA ITEM**

October 28, 2010

For Meeting of 11-4-10

**MEMORANDUM**

TO: The Commission

FROM: Christopher Hughey *pch*  
Acting General Counsel

Rosemary C. Smith *RS*  
Associate General Counsel

Amy L. Rothstein *AR*  
Assistant General Counsel

Theodore M. Lutz *TML*  
Law Clerk

Subject: Draft AO 2010-23 (CTIA)

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for November 4, 2010.

Attachment

1    **ADVISORY OPINION 2010-23**

2

3    **Jan Witold Baran, Esq.**

4    **Caleb P. Burns, Esq.**

5    **Wiley Rein, LLP**

6    **1776 K Street NW**

7    **Washington, DC 20006**

8

9    **Dear Messrs. Baran and Burns:**

**DRAFT**

10           **We are responding to your advisory opinion request on behalf of CTIA – The**  
11 **Wireless Association (“CTIA”), concerning the application of the Federal Election**  
12 **Campaign Act of 1971, as amended (“the Act”), and Commission regulations to the**  
13 **pledging of contributions to Federal candidates, political parties, and other political**  
14 **committees (collectively “political committees”) by sending text messages to Common**  
15 **Short Codes (“Codes”) over wireless networks. The Commission concludes that CTIA’s**  
16 **proposal for wireless service providers and connection aggregators to proceed under their**  
17 **current business practices to process contributions to political committees would not be**  
18 **permissible under the Act and Commission regulations.**

19    ***Background***

20           **The facts presented in this advisory opinion are based on your letter received on**  
21 **September 10, 2010.**

22           **CTIA is an incorporated nonprofit trade association that represents the wireless**  
23 **communications industry. Members of CTIA include wireless service providers and their**  
24 **suppliers, as well as providers and manufacturers of wireless data services and products.**  
25 **CTIA, through its Common Short Code Administration (“Code Administration”),**  
26 **manages the Codes. The Codes are five- or six-digit numbers to which wireless users can**  
27 **send text messages to access mobile content. The Code Administration oversees the**

1 technical and operational aspects of Code functions and maintains a single database of  
2 Codes. The Code Administration leases Codes to entities, who use them for a variety of  
3 purposes, including sweepstakes, opinion polling, mobile coupons, and charitable  
4 donations. A prominent example of the use of Codes was the Red Cross's utilization of a  
5 Code to allow wireless users<sup>1</sup> to pledge ten dollar donations to the organization's  
6 earthquake relief efforts in Haiti in 2010.

7 Content providers, application providers, connection aggregators, and wireless  
8 service providers work together to enable wireless subscribers' use of Codes. Content  
9 providers (such as the Red Cross) are the organizations that use Codes to disseminate  
10 content to or collect information or pledges from, wireless users. Application providers  
11 convert the text messages received through Codes into data that can be interpreted and  
12 used by content providers. Connection aggregators link application providers to wireless  
13 service providers' networks. Wireless service providers are the companies from which  
14 wireless subscribers purchase their mobile phone service.

15 A wireless user who wishes to pledge a donation to an organization initiates the  
16 transaction by texting a predetermined word or phrase to a Code.<sup>2</sup> As a security  
17 precaution, the connection aggregator sends a reply text message to the wireless user,  
18 requesting confirmation of the pledge. If the wireless user confirms the pledge by

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<sup>1</sup> The Commission distinguishes between the terms "wireless user" and "wireless subscriber." A "wireless subscriber" refers to an individual who a wireless service provider would bill. By contrast, a "wireless user" refers to a broader category of individuals, who, for example, may be on a family or group plan and therefore not directly responsible for payment to the wireless service provider.

<sup>2</sup> For example, in the aftermath of the earthquake in Haiti, individuals pledged ten-dollar donations to the Red Cross by texting "HAITI" to the Code "90999."

1 sending a reply text, then the pledge is complete and the charge will appear on the next  
2 wireless bill associated with that wireless user's phone number.

3 CTIA indicates that it is standard business practice in the wireless industry for the  
4 wireless service provider to forward the payment to the connection aggregator about  
5 seven to ten days after the wireless service provider receives payment from the wireless  
6 subscriber. The connection aggregator accumulates all funds designated for a specific  
7 recipient from all wireless service providers over a 30-day period, and then forwards all  
8 those collected funds to the appropriate content provider(s). Both the wireless service  
9 provider and the connection aggregator deduct fees from the payment; thus, the amount  
10 ultimately received by the content provider will be smaller than the amount paid by the  
11 wireless subscriber.

12 It is also the wireless industry's standard business practice to impose limits on  
13 pledges made through Codes. Wireless service providers set a ten dollar ceiling per  
14 transaction, and most<sup>3</sup> wireless service providers impose an aggregate monthly cap of  
15 \$100 on all Code-initiated transactions per phone number. These limits reflect the  
16 concern of wireless service providers that wireless subscribers who pay one bill for  
17 multiple phone numbers (such as a family plan) or who pay for a phone number that they  
18 do not themselves use (such as a parent paying a child's wireless bill) would not pay their  
19 bills if the wireless user incurred large Code charges. Wireless service providers have the  
20 capability to impose these limits on a per-phone-number basis only, rather than upon the  
21 entire account, which may include several phone numbers.

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<sup>3</sup> CTIA does not specify which wireless service providers impose the caps.

1           The wireless service providers maintain records of their wireless subscribers'  
2 names, addresses, and the phone numbers of the wireless users associated with that  
3 account. However, wireless service providers may not know if their subscribers or users  
4 are foreign nationals. A wireless subscriber's address, as provided by the wireless  
5 subscriber, is the only information that wireless service providers may have regarding  
6 nationality.

7           CTIA proposes to issue Codes so that wireless users may pledge contributions to  
8 political committees through the above-described process. Only those wireless industry  
9 participants who agree to CTIA's proposal would be eligible to lease Codes from the  
10 Code Administration. The transaction fees charged to the political committees by  
11 wireless service providers and connection aggregators under CTIA's proposal would be  
12 based on the amounts charged for processing non-political funds.<sup>4</sup> When forwarding  
13 contributions to political committees, the wireless service providers and connection  
14 aggregators would follow the same business practices that they use in collecting and  
15 forwarding other funds generated through Codes. Thus, the wireless service providers  
16 would send political contributions generated by the Codes to the connection aggregators  
17 seven to ten days after receiving payment. The connection aggregators would collect  
18 political contributions from all wireless service providers over a 30-day period and then  
19 forward the contributions on to political committees. The wireless service providers and  
20 connection aggregators would not transmit the political contributions through separate

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<sup>4</sup> CTIA notes that the fees charged to political committees would not be based entirely on the charitable donation model because that model can at times include waivers of fees.

1 merchant accounts. Also, wireless service providers and connection aggregators would  
2 not forward contributors' names and addresses to recipient political committees.

3 The connection aggregators could send text messages to wireless users to certify  
4 their compliance with the Act before accepting a wireless user's pledge. The messages  
5 would read:

- 6 1. Thank you for interest in contributing. Reply Y (YES) to proceed with the  
7 required legal certifications. Reply N (NO) if you do not wish to proceed.
- 8 2. I certify that I will make this contribution by paying my wireless bill with my  
9 personal, unreimbursed funds. Reply Y or N to proceed.
- 10 3. I certify that this contribution will not be made by a corporation, labor  
11 organization, or other person paying my wireless bill. Reply Y or N to proceed.
- 12 4. I certify that I am not a foreign national or government contractor. Reply Y or N  
13 to proceed.
- 14 5. I certify that my total contributions by text message to this recipient will not  
15 exceed \$50 this calendar year. Reply Y or N to proceed.
- 16 6. Contributions to political committees are not tax deductible. Please reply Y to  
17 initiate your contribution which will appear on your next wireless bill.

18 A wireless user would be required to respond affirmatively to each statement to make the  
19 pledge...

20 CTIA asserts that technological limitations and cost considerations could  
21 constrain CTIA's ability to require the wireless service providers and connection  
22 aggregators to adopt the following measures when implementing the proposed program:

1           1. Require through the confirming text message process that the wireless user  
2           supply his or her name and address to the connection aggregator to submit to the  
3           recipient Federal candidate, party, or political committee to monitor compliance  
4           with the Act's contribution limitations and prohibitions.

5           2. Include certification language along the following lines with each wireless  
6           subscriber's bill:

7                         Contributions to political committees are not tax deductible. By  
8                         proceeding with this contribution, I certify that all contributions by text  
9                         message are: (1) made from personal, unreimbursed funds of a U.S.  
10                        citizen, and (2) do not exceed \$50 in total to any recipient this calendar  
11                        year.

12  
13           3. Require wireless service providers and connection aggregators to refuse  
14           contributions from wireless subscribers with "Inc." or "Corp." or some other  
15           clearly identifiable reference in the subscriber's name indicating that the wireless  
16           subscriber is a corporation.

17           4. Require wireless service providers and connection aggregators to refuse  
18           contributions from wireless subscribers with foreign addresses.

19           5. Impose an aggregate monthly cap on contributions from each wireless subscriber  
20           to ensure that contributions do not exceed the Federal contribution limits.

21   ***Questions Presented***

22   1. *May CTIA establish the program described above to enable the wireless service*  
23    *providers and connection aggregators to process contributions to political*  
24    *committees by Code?*

25   2. *Will the proposed services be provided in the ordinary course of business for the*  
26    *normal and usual charge?*

1 3. *Must CTIA require that the wireless service providers and connection aggregators*  
2 *forward contributions by Codes to political committee treasurers within ten or 30*  
3 *days through separate merchant accounts or may they follow their ordinary business*  
4 *practices?*

5 4. *Does the \$10 approximate per transaction limit satisfy the \$50 anonymous*  
6 *contribution limit? If not, must CTIA ensure that wireless service providers and*  
7 *connection aggregators develop a means to ensure that the contributions are not from*  
8 *impermissible sources and do not aggregate in excess of the \$50 limit? If so, do the*  
9 *proposed confirming text message certifications satisfy this obligation?*

10 ***Legal Analysis and Conclusions***

11 1. *May CTIA establish the program described above to enable the wireless service*  
12 *providers and connection aggregators to process contributions to political*  
13 *committees by Code?*

14 No, CTIA may not establish the program as it is described above to enable  
15 wireless service providers and connection aggregators to process contributions to political  
16 committees by Code. As explained below, the program would violate 2 U.S.C. 432,  
17 would commingle corporate funds and political contributions, and would not use the  
18 certification mechanisms previously approved or any other method to ensure that  
19 impermissible contributions are not sent to the recipient political committees.

20 2. *Will the proposed services be provided in the ordinary course of business for the*  
21 *normal and usual charge?*

22 Yes, the proposed services will be provided in the ordinary course of business for  
23 the normal and usual charge.

1           The Act and Commission regulations prohibit corporations from making  
2 contributions in connection with Federal elections. 2 U.S.C. 441b(a); 11 CFR 114.2(b).  
3 A “contribution” includes “any gift, subscription, loan, advance, or deposit of money or  
4 anything of value made by any person for the purpose of influencing any election for  
5 Federal office.” 2 U.S.C. 431(8)(A)(i); 11 CFR 100.52(a); *see also* 2 U.S.C. 441b(b)(2);  
6 11 CFR 114.2(b)(1). “Anything of value” includes all in-kind contributions, including  
7 the provision of any goods or services without charge or at a charge that is less than the  
8 usual and normal charge. *See* 11 CFR 100.52(d)(1). “Usual and normal charge” is  
9 defined as the price of goods in the market from which they ordinarily would have been  
10 purchased at the time of the contribution, or the commercially reasonable rate prevailing  
11 at the time the services are rendered. *See* 11 CFR 100.52(d)(2).

12           Corporations are prohibited from facilitating the making of contributions to  
13 candidates or political committees. 11 CFR 114.2(f)(1). Facilitation means using  
14 corporate resources to engage in fundraising activities in connection with any Federal  
15 election. *Id.*

16           A corporation does not make contributions, and does not facilitate the making of  
17 contributions, if it provides goods or services in the ordinary course of business as a  
18 commercial vendor at the usual and normal charge. 11 CFR 114.2(f)(1). A “commercial  
19 vendor” is any person “providing goods or services to a candidate or political committee  
20 whose usual and normal business involves the sale, rental, lease, or provision of those  
21 goods or services.” 11 CFR 116.1(c).

22           The Commission concludes that the proposed services would be rendered to the  
23 political committee in the ordinary course of business for the usual and normal charge.

1 CTIA currently administers the Code Administration to enable wireless service providers  
2 and connection aggregators to process charitable donations via Code. CTIA's proposal  
3 would establish a new program in which political committees would pay the usual and  
4 normal charge to become content providers. Further, the wireless service providers and  
5 connection aggregators will deduct fees from the contributions transmitted to political  
6 committees based on amounts charged for processing non-political funds. Therefore, the  
7 Commission concludes that CTIA's proposed services would be rendered in the ordinary  
8 course of business for the usual and normal charge. See Advisory Opinions 2010-21  
9 (ReCellular), 2010-06 (Famos), 2004-19 (DollarVote), and 2002-07 (Careau).

10 3. *Must CTIA require that the wireless service providers and connection aggregators*  
11 *forward contributions by Codes to political committee treasurers within ten or 30*  
12 *days through separate merchant accounts or may they follow their ordinary business*  
13 *practices?*

14 Yes, CTIA must require that the wireless service providers and connection  
15 aggregators forward contributions by Code to political committee treasurers within ten or  
16 30 days through separate merchant accounts.

17 a. *Forwarding Requirements of 2 U.S.C. 432(b)*

18 The Act and Commission regulations state that all persons who receive a  
19 contribution for an authorized political committee must forward the contribution to the  
20 political committee's treasurer within ten days of receipt. 2 U.S.C. 432(b)(1);  
21 11 CFR 102.8(a). The Act and Commission regulations also require that all persons who  
22 receive a contribution for a political committee that is not an authorized committee must  
23 forward the contribution to the political committee within 30 days of receipt, if the

1 contribution is \$50 or less, and within ten days of receipt, if the contribution is in excess  
2 of \$50. 2 U.S.C. 432(b)(2)(A); 11 CFR 102.8(b); *see, e.g.*, Advisory Opinion 2009-32  
3 (Jorgensen).<sup>5</sup>

4 Under CTIA's proposal, a contribution would be made at the time that a wireless  
5 subscriber pays a bill that includes a charge resulting from a Code-initiated pledge to  
6 contribute – not at the time a pledge is made. The wireless service provider would  
7 forward that contribution to a connection aggregator approximately seven to ten days  
8 after receiving the payment. Next, over a 30-day period, the connection aggregator  
9 would collect all contributions for a particular political committee from all wireless  
10 service providers. The connection aggregator would then forward the contributions to the  
11 recipient political committee. Thus, 40 days could lapse before a political committee  
12 received a contribution made by a wireless subscriber. Therefore, because CTIA's  
13 proposal would not require wireless service providers and connection aggregators to  
14 forward contributions to recipient political committees within the applicable statutory and  
15 regulatory timeframes, this aspect of CTIA's proposal would not comply with the Act  
16 and Commission regulations.<sup>6</sup>

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<sup>5</sup> The Commission has recognized exceptions in only narrow circumstances not presented here. In Advisory Opinion 2006-30 (ActBlue), the Commission approved a proposal for a nonconnected political committee to collect earmarked contributions for prospective candidates before those individuals had registered their authorized committees with the Commission, on the condition that the political committee forward the contributions to the candidates' committees within ten days after the candidates' committees filing their statements of organization. Similarly, in Advisory Opinion 2003-23 (WE LEAD), the Commission approved a proposal for a nonconnected political committee that sought to raise money for the "presumptive nominee of the Democratic Party," on the condition that the political committee forward the contributions within ten days after the "presumptive nominee is identified." Here, by contrast, CTIA's proposal envisions forwarding contributions only for existing political committees. *See also* Advisory Opinions 2006-08 (Brooks), 1998-25 (Mason Tenders), and 1982-23 (Westchester Citizens for Good Government).

<sup>6</sup> Although the Commission did not specifically address the timely forwarding requirements of 2 U.S.C. 432(b) in Advisory Opinions 2007-04 (Atlant) and 2002-07 (Careau), those advisory opinions involved

1           b. *The Use of Separate Merchant Accounts*

2           CTIA's proposal does not envision the segregation of political contributions from  
3           the corporate funds of either the wireless service provider or the connection aggregators.  
4           The segregation of these funds is grounded in the Act's prohibition on corporate  
5           contributions. *See* 2 U.S.C. 441b; 11 CFR 114.2(b); Advisory Opinions 2007-04 (Atlatl),  
6           2004-19 (DollarVote), and 2002-07 (Careau). The use of separate accounts by a  
7           corporation that forwards contributions to political committees prevents "a commingling  
8           of corporate funds and campaign funds prohibited by [2 U.S.C.] 441b." Advisory  
9           Opinion 1999-22 (Aristotle Publishing). In Advisory Opinion 2006-08 (Brooks), the  
10          Commission stated that "to prevent a contribution by [the corporation] to any political  
11          committee or candidate, [the corporation] must use a separate merchant account for funds  
12          that will be dispersed as contributions." Similarly, in Advisory Opinion 2006-34  
13          (Working Assets), the Commission required that a corporation forwarding contributions  
14          to political committees place the funds "in an account separate from its other accounts . . .  
15          before transmitting [the funds] to the political committee sponsors, rather than  
16          transmitting funds from [the corporation's] usual treasury accounts." *See also* Advisory  
17          Opinions 2007-04 (Atlatl), 2004-19 (DollarVote), 2002-07 (Careau), 1999-22 (Aristotle  
18          Publishing), and 1991-20 (Call Interactive).

19          The Commission has consistently interpreted the Act's prohibition on corporate  
20          contributions as necessitating a separation between corporate funds and political

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contributions made by credit card. In contrast to CTIA's proposal, nothing in the requests for Advisory Opinions 2007-04 (Atlatl) and 2002-07 (Careau) suggests the kind of lengthy delay presented by CTIA's proposal that would give rise to concerns under 2 U.S.C. 432(b).

1 contributions.<sup>7</sup> Therefore, because CTIA's proposal does not provide adequate  
2 safeguards against commingling of corporate funds and political contributions, which  
3 could result in a prohibited corporate contribution, this part of CTIA's proposal does not  
4 comply with the Act and Commission regulations.

5 4. *Does the \$10 approximate per transaction limit satisfy the \$50 anonymous*  
6 *contribution limit? If not, must CTIA ensure that wireless service providers and*  
7 *connection aggregators develop a means to ensure that the contributions are not from*  
8 *impermissible sources and do not aggregate in excess of the \$50 limit? If so, do the*  
9 *proposed confirming text message certifications satisfy this obligation?*

10 No, the ten dollar approximate per transaction limit does not satisfy the \$50  
11 anonymous contribution limit. Yes, CTIA must ensure that wireless service providers  
12 and connection aggregators use a means to ensure that contributions are not from  
13 impermissible sources and, if in excess of \$50, are forwarded together with the requisite  
14 information in a timely manner. CTIA's proposed certifications, however, do not satisfy  
15 this obligation.

16 The Act and Commission regulations require that any person who receives a  
17 contribution in excess of \$50 for a political committee must forward to the recipient  
18 political committee the name and address of the contributor and the date of the  
19 contribution. 2 U.S.C. 432(b)(1) and (b)(2); 11 CFR 102.8(a) and(b). Further, treasurers  
20 of political committees must "keep an account of (1) all contributions received by or on

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<sup>7</sup> While the Commission has mandated a division in corporate funds and political contributions, the Commission no longer requires the creation of a separate account for contributions to each individual recipient political committee. See Advisory Opinions 1999-22 (Aristotle Publishing) and 1991-20 (Call Interactive).

1 behalf of such political committee; (2) the name and address of any person who makes  
2 any contribution in excess of \$50, together with the date and amount of such contribution  
3 by any person; [and] the identification of any person who makes a contribution or  
4 contributions aggregating more than \$200 during a calendar year, together with the date  
5 and amount of any such contribution[.]” 2 U.S.C. 432(c)(1)-(3); *see also* 11 CFR  
6 110.4(c).

7 In its advisory opinions, the Commission has consistently approved proposals in  
8 which the contributors have provided, at a minimum, their names and addresses, which  
9 were then forwarded to the recipient political committees. *See* Advisory Opinions 2010-  
10 06 (Famos), 2009-32 (Jorgensen), 2007-04 (Atlatl), 2006-34 (Working Assets), 2004-19  
11 (DollarVote), 2002-07 (Careau), 1995-09 (NewtWatch). For example, in Advisory  
12 Opinion 1991-20 (Call Interactive), the Commission stated that “900 line fundraising  
13 programs [for political committees] do not involve truly anonymous contributions”  
14 because existing “technology and procedures” tend to result in the creation of a record  
15 indicating the name and address to which a bill is sent. Because Call Interactive could  
16 identify approximately 90 percent of contributors, the Commission concluded that the  
17 company must do so. The Commission reasoned that its “interest in requiring the  
18 recording of names and addresses of ‘small’ contributors is heightened . . . because of the  
19 ability of callers to make repetitive calls and calls from prohibited sources.” *Compare*  
20 Advisory Opinions 1991-20 (Call Interactive), *with* Advisory Opinions 1983-15  
21 (Republican Party of Virginia), *and* 1980-99 (Republican Round-up Committee).

22 Similarly, here, bill payments by wireless subscribers to wireless service  
23 providers are not anonymous. Wireless service providers maintain billing information

1 about their wireless subscribers, including subscribers' names and addresses. In addition,  
2 the factor that gave rise to the Commission's "heightened" interest in recording the  
3 names and addresses of contributions in Advisory Opinion 1991-20 (Call Interactive) –  
4 that is, the ability of callers to make repeated or prohibited contributions – is also present  
5 here.

6 This aspect of CTIA's proposal does not comply with the requirements of the Act  
7 and Commission regulations. Within the context of family and group plans, several users  
8 could each pledge to make a contribution. Moreover, a wireless user may make repeated  
9 pledges to the same political committee within a single billing cycle. Either scenario  
10 could result in the wireless subscriber making a contribution more than \$50 when paying  
11 the monthly bill, thereby triggering the requirements of 2 U.S.C. 432(b) and (c). CTIA's  
12 proposal does not satisfactorily address this concern.

13 Further, the failure to forward contributors' names and addresses to the recipient  
14 political committees, despite the fact that the wireless service providers will know that  
15 particular wireless subscribers have foreign addresses or are corporations, could result in  
16 violations of the prohibitions on contributions from foreign nationals and corporations.<sup>8</sup>  
17 Because CTIA's proposal does not provide adequate safeguards against contributions in  
18 excess of the amount limitations or from prohibited sources, it could result in violations  
19 of the Act.

20 CTIA proposes, in the alternative, to require wireless service providers and  
21 connection aggregators to use screening procedures that consist of a series of inquiries by

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<sup>8</sup> Under 11 CFR 110.20(a)(4) and (5), the provision of a foreign address is a pertinent fact that will lead a reasonable person to inquire as to whether the source of the funds is a foreign national.

1 text messages, to which a wireless user pledging a contribution must affirmatively  
2 respond. Commission regulations require that treasurers of political committees  
3 “examin[e] all contributions received for evidence of illegality and for ascertaining  
4 whether contributions received, when aggregated with other contributions from the same  
5 contributor, exceed the [Act’s] contribution limitations . . . .” 11 CFR 103.3(b) (emphasis  
6 added).

7 In its prior advisory opinions, the Commission has approved a number of  
8 arrangements designed to ensure that corporations do not forward illegal contributions to  
9 political committees and thereby enable treasurers to comply with the Commission’s  
10 regulations. See 11 CFR 103.3(b); Advisory Opinions 2009-32 (Jorgensen), 2007-04  
11 (Atlatl), 2004-19 (DollarVote), and 2002-07 (Careau). For example, in Advisory  
12 Opinion 1991-20 (Call Interactive), the Commission required a provider of 900 line  
13 services to use reverse directories and audioscripts to identify callers and calls from  
14 foreign nationals, corporations, and labor organizations, as well as to guard against  
15 “contributions in the name of another by reimbursement.” See Advisory Opinion  
16 1991-20 (Call Interactive). The Commission also required the service provider to  
17 forward information gathered from these tools to the recipient political committees. *Id.*;  
18 see also Advisory Opinion 1991-26 (Versatel). In Advisory Opinion 2004-19  
19 (DollarVote), the Commission approved screening procedures that relied on contributor  
20 certifications as to the legality of the contributions, identified individual contributors, and  
21 compared residential and billing addresses to guard against corporate contributions. In  
22 Advisory Opinion 2007-04 (Atlatl), the Commission approved procedures that entailed

1 certifications as to the legality of contributions and that forwarded contributor  
2 identification information to recipient political committees.

3 CTIA's alternative safeguard is not similar to those approved by the Commission  
4 in prior advisory opinions. *See* Advisory Opinions 2010-21 (ReCellular), 2010-06  
5 (Famos), 2007-04 (Atlatl), 2006-34 (Working Assets), 2004-19 (DollarVote), 2002-07  
6 (Careau), 1995-09 (NewtWatch). Although the certification language proposed by CTIA  
7 is similar to that of prior advisory opinions, CTIA proposes to obtain these certifications  
8 from the wireless user making a pledge, rather than from the wireless subscriber paying  
9 the bill and thus making the contribution.<sup>9</sup> Given the common use of family and group  
10 plans, in many cases the individual who makes the pledge, and therefore makes the  
11 certifications, will not be the individual who pays the bill and thereby makes the  
12 contribution.<sup>10</sup> Therefore, because the proposed certifications do not sufficiently ensure  
13 compliance with the Act and Commission regulations, the Commission cannot approve  
14 CTIA's alternative proposal.

15 This response constitutes an advisory opinion concerning the application of the  
16 Act and Commission regulations to the specific transaction or activity set forth in your  
17 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any  
18 of the facts or assumptions presented, and such facts or assumptions are material to a

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<sup>9</sup> In contrast, in Advisory Opinions 2007-04 (Atlatl) and 2004-19 (DollarVote), those who made online contributions to political committees were required to attest to the legality of their contribution at the time of authorizing charges to their credit cards. In Advisory Opinions 2006-34 (Working Assets), 2002-07 (Careau), and 2003-16 (Providian), contributors were required to make the certifications in advance and they also received additional notices in the mail. Though a gap in time existed between the certifications and actual payment, the various screening processes ensured that the individual who made the certifications was also the individual who made the contribution.

<sup>10</sup> Further, it is unclear from CTIA's proposal whether a wireless subscriber paying a bill that includes a Code charge would even be aware that the money constituted a contribution to a political committee.

1 conclusion presented in this advisory opinion, then the requestor may not rely on that  
2 conclusion as support for its proposed activity. Any person involved in any specific  
3 transaction or activity which is indistinguishable in all its material aspects from the  
4 transaction or activity with respect to which this advisory opinion is rendered may rely on  
5 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or  
6 conclusions in this advisory opinion may be affected by subsequent developments in the  
7 law, including, but not limited to, statutes, regulations, advisory opinions, and case law.  
8 The cited advisory opinions are available on the Commission's website at  
9 <http://saos.nictusa.com/saos/searchao>.

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On behalf of the Commission,

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Matthew S. Petersen  
Chairman