



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: The Commission

FROM: Commission Secretary's Office 

DATE: August 13, 2012

SUBJECT: Comments on Draft AO 2012-28
(CTIA – The Wireless Association)
(replacement copy – corrected salutation)

Attached is a late submitted comment from Nell P. Reiff, Burns, counsel, on behalf of Revolution Messaging.

Attachment



SANDLER, REIFF, YOUNG & LAMB, P.C.

2012 AUG 13 P 5:30

August 13, 2012

The Honorable Caroline C. Hunter
Chair
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: Comments on AOR 2012-28

Dear Chair Hunter:

I am writing to provide comments regarding the Draft Advisory Opinion Request 2012-28 on behalf of our client Revolution Messaging. Specifically, Revolution Messaging wishes to address certain points made by the CTIA – The Wireless Association (“CTIA”) in its comments today in connection with the Commission’s Draft Advisory Opinion in the above referenced Advisory Opinion Request.

Revolution Messaging would like the committee to recognize that it is concerned that, through its Advisory Opinion Request, CTIA is attempting to use the Advisory Opinion process to limit access of using the mobile gateway by overstating the potential negative effects of providing its services to persons or groups that it deems harmful to its brands.

Text messaging fundraising is not a new phenomenon. The CTIA and carriers have already provided short codes and premium messaging to very controversial groups such as gangster rap ringtones, sex tip text messaging, pornography, and horoscopes without hurting their brand images. It is clear that allowing political campaigns to use a carrier’s services should not have any type of substantial negative effect on carrier’s profits or brands. To be sure, it would be impossible for the carriers to ever promote these codes - these codes just exist and are active on the carrier’s services - the only promotion is from the campaigns themselves not undertaken by the carriers. So the carrier would never be seen as the branded sponsor or promoter of these fundraising programs.

Revolution Messaging understands that the Commission is prepared to decide that CTIA and carriers are free to determine who they intend to do business with and that such determinations, if based upon appropriate business policies, do not violate the Federal Election Campaign Act (the "Act"). In that regard, the Commission's current draft provides more than enough protections to the CTIA. Clearly the Commission should not completely abrogate its future responsibilities to determine whether arbitrary denial of access by CTIA or carrier's may not somehow violate the Act in some future context. There may be circumstances in which such arbitrary actions, such as the complete denial of services of one party or candidate, in preference of another, could implicate the Act.

Thus, Revolution Messaging urges the Commission to reject the CTIA's request to add even additional protective language that would allow CTIA and carriers to randomly and arbitrarily reject requests for access to premium short codes and the use of carrier's products and services.

If you would like to discuss the matters addressed in this letter, or any other issues regarding these opinion, feel free to contact my office at (202) 479-1111.

Sincerely yours,



Neil P. Reiff
Counsel to Revolution Messaging