

May 14, 2019

Ms. Ellen Weintraub
Chair
Federal Election Commission
1050 First Street NE,
Washington, DC 20463

Craig Engle

Partner
202.775.5791 DIRECT
202.857.6395 FAX
craig.engle@arentfox.com

RE: Advisory Opinion 2019-05 Draft A

Dear Chair Weintraub:

Thank you for the opportunity to testify before the Commission regarding Advisory Opinion Request 2019-05 last Thursday May 9, 2019. In light of the discussion at that meeting System73® is changing the Question Presented in its request to more closely conform with the Commission's standard views:

May System73 provide political committees with the broadband services its typically provides its commercial clients without paying the committees any license fee as it usually does in its ordinary course of business?

The facts of System73's request remain identical to those described in Advisory Opinion 2019-05 Draft A from page 1 line 21 – page 4 line 23 except that any references to paying political committee clients a license fee should be omitted. Instead, System73 will negotiate a license with a prospective political customer that provides for broadbanding, advertising, and a multitude of interactive services all without the committee receiving any license fees or payments.

System73 has made this business decision in light of (1) Commission precedent which allows corporations to treat its political and non-political clients differently and (2) Draft A's critical analysis of the media, licensing and fundraising mechanisms.

First, even though Draft A correctly states that System73 is not an affinity program, the draft treats System73 like one in order to prohibit its idea. Draft 2019-05 A page 18 line 14 – page 19 line 5; page 19 line 13 – page 20 line 3 (while System73 does not propose an affinity relationship, advisory opinions on affinity programs instruct that System73's payment of a license fee would be a prohibited contribution).

Although that analysis is wrong, the draft then says something helpful that has prompted System73 to change its Advisory Opinion request and business plan:

Corporations could provide services to political committees at reduced or no charge when the free service or reduced charge was due to commercial considerations. See, e. g., ... Advisory Opinion 2012-31 (AT&T) at 3. (Separate rate structures for processing contributions to political committees).

Draft Advisory Opinion 2019-05 A page 19 lines 6-10

So following this lead, System73 now intends to have one rate structure for its commercial clients and no rate structure for candidate committees.

Second, changing its business plan avoids an unnecessary confrontation over whether it is a legitimate media function for broadcasters to pay providers a license fee for exclusive access to their original content. The draft claims at page 11 lines 20-21 that this is not a legitimate media practice despite decades of overwhelming industry evidence and common knowledge to the contrary¹.

Changing the business plan also avoids any disagreement over whether paying a license fee is a mechanism for raising funds from donors for candidates. See Draft 2019-05 A page 11 line 23 – page 12 line 3 quoting Advisory Opinion 2008-14 (Melothe) at 7. Paying a political committee client a fee negotiated under an arms-length media contract is, of course, not acting as a fundraiser. It is more like the \$22.8 million the Trump and Clinton campaigns received from corporations last cycle as offsets to operating expenditures or other receipts.

System73's revised business plan and simplified Question Presented should be much easier for the Commission to approve since we are only asking for the routine application of decades-old precedent. Therefore I ask the Commission to issue its opinion no later than May 23, 2019.

Thank you for your prompt attention to this Advisory Opinion request. Although the Commission missed an opportunity to recognize and adopt contemporary media practices and technology in a crowded presidential campaign, at least some candidates may now reach a broader audience with System73's patented broadband technology.

¹ <https://tvbythenumbers.zap2it.com/business/tv-economics-101-cable-vs-broadcast-dramas/>
<https://www.forbes.com/sites/greatspeculations/2019/03/08/loss-of-licensed-content-is-an-underrated-crisis-for-netflix/#3fe4119c2111>
<https://www.taxi.com/music-business-faq/ftv/tv-licensing.html>

Please contact me at craig.engle@arentfox.com or (202) 775-5791 with any questions you may have.

Best regards,

A handwritten signature in blue ink, appearing to read "Craig Engle". The signature is fluid and cursive, with a long horizontal stroke at the end.

Craig Engle