

December 5, 1990

The Honorable Lee Ann Elliott
Federal Election Commission
999 E Street N.W.
Washington, D.C. 20463

Re: Advisory Opinion Request

Dear Chairperson Elliott:

This advisory opinion request is submitted on behalf of Call Interactive, an equal partnership of two companies respectively owned by American Telephone & Telegraph Company and American Express Information Services Corporation, pursuant to 2 U.S.C. 437f and 11 C.F.R. Part 112. This opinion request is also being submitted at the request of American Telephone and Telegraph Company and AT&T Communications Inc. ("AT&T") whose opinion requests were submitted to you on July 6, 1990 and October 16, 1990 (the "AT&T Opinion Request"). As a service bureau in the business of providing caller paid (900) and sponsor paid (800) voice response services to information providers, we have an interest in the questions raised by AT&T in its opinion request and their resolution. However, due to the marked ways in which the business activities of a service bureau differ from those of a common carrier and billing services provider, there are yet more questions and issues we are now requesting that you address.

We note that the Commission has previously issued two advisory opinions to service bureaus concerning the use of caller paid information services to facilitate fundraising in connection with federal election campaigns within the scope of the Federal Election Campaign Act ("FECA"), 2 U.S.C. Ch.14. We believe, however, that the factual information and analysis contained in A.O.s 1990-1 and 1988-28 do not reflect the experience or capabilities of most audiotext service bureaus and common carriers, and certainly do not reflect those of Call Interactive. Because the FEC predicated its opinions on those facts (and, indeed, because A.O.s are expressly



limited to the facts presented), we find that the Commission's analysis in A.O.s 1990-1 and 1988-28 provides no meaningful guidance to Call Interactive. In light of the issues raised by AT&T and different facts provided by Call Interactive, we believe that unless the Commission addresses these issues as they affect service bureaus, there will still be difficulty in interpreting the legal compliance requirements for service bureaus and political committees. We are hopeful that the Commission will resolve these questions in response to this request and based on the facts set forth herein, to provide useful guidance to Call Interactive and other service bureaus who engage in similar practices.

STATEMENT OF FACTS

Call Interactive is a full service, turnkey service bureau offering caller paid (900) and sponsor paid (800) information processing and transport services, in addition to several support services, such as transcription, data base services, data analysis and reporting services, live operator service, contest and order fulfillment and credit card authorizations. Customers who order Call Interactive's basic information processing and transport services may - but are not required to - order one or more of these support services.

Based in Omaha, Nebraska, with sales offices in New York City and Los Angeles, Call Interactive is the largest turnkey service bureau in the audiotext industry. It has an audio response equipment capacity capable of receiving 10,000 simultaneous calls (the highest volume of simultaneous calls using AT&T high capacity network services). Call Interactive provides services to a broad array of customers, including national network and cable television companies, consumer goods and product merchandising companies, entertainment companies, information service bureaus which package 800 and 900 programs and provide other value added services, marketing and news organizations, in addition to government and not-for-profit organizations. Call Interactive services can be provided to customers and are accessible by callers, irrespective of their U.S. geographic location.

Programs serviced by Call Interactive include product and service promotions through product giveaways and sweepstakes, trivia and other games for entertainment, games, opinion polls, telephone games based on nationally televised game shows, product order and fulfillment programs, record promotions, tip and other information lines, in addition to updates on soap operas and other television programs. This same technology would permit political committees to solicit support from thousands of interested individuals, particularly those persons who are small contributors, potentially more cheaply than through direct mail and fundraising events.

Call Interactive contracts with its customer to provide the turnkey service. In these contracts, the customer is responsible for ensuring that the program and its implementation comply with all applicable federal, state and local law and that the content of the program does not fall outside certain prescribed guidelines, i.e. the premium billing guidelines in the AT&T Standard Premium Billing Agreement.

AT&T acts as a supplier to Call Interactive by providing tariffed interstate network services and non-tariffed premium billing services. These services are provided on an arms' length basis and fees for both services are paid to AT&T by Call Interactive as AT&T's customer. With respect to 900-type (caller-paid) services, AT&T has a premium billing contract with Call Interactive. Pursuant to this contract, AT&T bills and collects, through its separate contractual arrangements with the local exchange carriers (LECs), all charges for the information services. Generally, the local exchange carrier buys the caller paid receivables from AT&T and then collects them from the callers. The monies the LECs remit to AT&T in payment for the receivables are remitted in turn to Call Interactive, after AT&T deducts the network transport charges and the premium billing fees. Call Interactive, in turn, deducts its fees for its value-added services, and then allocates and remits the net proceeds to its customer. This process, from the end of the month during which calls are made to a customer's program, until the customer receives its net proceeds typically takes from 60 to 90 days.

As AT&T states in its opinion request, approximately 30 days prior to its transmittal of funds to Call Interactive, it will send to Call Interactive a Call Detail Report which lists the total number of calls, and the date, time and caller charge for each call. For some, but not all calls, AT&T is able to provide "automatic number identification" (ANI); in these cases, the Call Detail Report will also contain the telephone number from which each call was made. AT&T also provides a Call Refund Report, which is a list of customers who called AT&T and successfully refused the charges. (These "chargebacks" are discussed further below). As AT&T notes, this listing does not reflect those callers who do not pay their bills (uncollectibles) or who were refused an adjustment. To our knowledge, local exchange carriers do not terminate telephone service of subscribers for non-payment of 900 services.

Call Interactive does not, in the ordinary course of business, require deposits of its customers desiring to use Call Interactive services in order to offer a caller-paid program. There are relatively few up-front costs incurred by Call Interactive prior to the point in time at which calls are made to the telephone program of a political committee. Set-up charges, charges for programming the script, voice digitization and caller prompts are generally fixed charges which amount to a few thousand dollars; these costs are unrelated to the volume of calls. These charges are billed

directly to Call Interactive's customer, not the callers. Costs associated with sales and customer service, legal review, accounting and billing review are all accounted for in overhead. Overhead costs are absorbed by the fees deducted by Call Interactive from actual call revenues received. Call revenues for Call Interactive are measured by its per minute rates.

With respect to those calls for which callers have requested billing adjustments and refunds, AT&T will bill Call Interactive the entire amount of the charge to the caller (a "chargeback"). Call Interactive, in turn, bills its customers the entire amount (which includes Call Interactive, AT&T and LEC charges) for the unpaid for call. Under contracts with its customers, Call Interactive has the right to deduct these charges from any revenues collected by it should the customer fail to pay the chargeback amount in a timely manner. To the extent that Call Interactive doubts the collectibility of such chargeback amounts from its customer, Call Interactive contracts for the right to retain a reasonable percentage of the proceeds on a monthly basis as security until at least 180 days after the last billed call to the program. Based on Call Interactive serviced programs to date, chargebacks account, on average, for only about 1/2-2% of the calls received. Nevertheless, even if every caller subsequently requested a credit in the full amount, Call Interactive's customer would be liable to Call Interactive for the full amount of the call if proceeds had already been collected and remitted to the customer, or for the amount of Call Interactive's fees (which also include Call Interactive's cost recovery of the AT&T fees) if the proceeds had not yet been billed to caller or collected by AT&T. Accordingly, Call Interactive's rights to its fees are not dependent on call proceeds being received; it has an independent recourse to the customer for payment.

Call Interactive's generally available basic services include means for a political customer to collect information from callers. As AT&T discussed in its opinion request, the Call Detail Report will probably contain telephone numbers of the actual caller in only 85-90% of cases, leaving 10-15% of the revenues that cannot be tied to a calling number. In order to collect names and addresses associated with the known telephone numbers, a political customer can purchase Call Interactive's reverse directory database services or the database service of another service bureau. Call Interactive's database service includes access to a database containing approximately 90 million names, addresses and telephone numbers. By using the database, it is estimated that approximately 50% of known phone numbers can be successfully matched with names and addresses. If a customer wishes to link additional telephone numbers with names and addresses in connection with its promotion or product or service ordering, Call Interactive provides a simple messaging service in which the audioscript (a recorded voice) instructs the caller to speak their name and address. This verbal information is recorded and transcribed by operators into the

customer's data file. It has been Call Interactive's experience that this methodology will yield full and correct information for, on average, about 90% of all calls. The remaining 10% typically consists of aborted calls, incoherent or incomplete speech, or no speech at all.

If the political customer wishes to obtain additional information from callers in order to facilitate its compliance with its legal obligations or to obtain demographic profiles of callers, it can request Call Interactive to provide these transcription services, and assist in designing an audiotext script which would prompt callers to provide such information. For example, a caller could be asked to respond, using touchtone for affirmative, negative or numerical answers, to questions regarding the caller's eligibility to contribute. This would permit political customers to obtain this information for verification purposes instead of manually calling numbers back to confirm eligibility. Call Interactive could even provide separate scripts based on the touch-toned answer to questions--requesting name and address in only questionable cases. Call Interactive's reporting services can deliver caller supplied information to the political customer within two days after it is received.

In order to limit calls (and accordingly, contributions) from any one phone number, Call Interactive offers an optional "call limiting" service feature which advises a caller that he or she has reached the limit of calls permissible from his or her number. This is a feature which, in general, was designed to have the effect of discouraging overuse of caller paid services by children and to restrict, for business or legal purposes, the number of times a call may be made from one number. In the case of a political promotion, a call limiting message would advise the caller that any further calls will put him in excess of \$50 and that the political committee will contact him to obtain further information. The effect of Call Limiting is not to prevent the caller from calling and incurring an additional charge, but to provide notice to the caller either that further calls will not be acknowledged or what the consequences will be if further calls are made.

As a final note, Call Interactive offers standard per minute rates for 900 services which are generally applicable to its customers. To the extent certain of its customers are value added resellers or enter into long term contracts with Call Interactive with either minimum commitment or exclusivity type arrangements, price structures are tailored accordingly. Political customers would be treated no differently than any other retail Call Interactive customer.

QUESTIONS FOR THE COMMISSION'S CONSIDERATION

(1) If Call Interactive complies with AT&T's guidelines for its caller paid services, will it be in compliance with FECA? Specifically, please confirm that Call Interactive's FECA compliance requirements (and accordingly, AT&T guidelines for FECA compliance) are met by (i) remitting to its political customer the funds collected in the aggregate from callers (after deducting our service charges) within prescribed timeframes, (ii) forwarding to the treasurer of such customer a copy of the Call Detail Report listing all recordable telephone numbers promptly after receipt, and (iii) reporting to the political customers the amounts retained by Call Interactive for its fees.

AT&T has indicated in its opinion request that it does not intend to contract directly with political committees, but instead will contract with service bureaus who in turn have contractual relationships with political committees. AT&T's guidelines require that the service bureau represent that it and its political customer will comply with all applicable federal, state and local laws during the term of the program, and more specifically, that it will comply with 2 U.S.C. Section 432(b) and 11 C.F.R. Part 102.8. The Commission has concluded in Advisory Opinions 1990-1 and 1978-68 that a telephone service bureau that received contributions under a campaign to solicit contributions by telephone was a "person who receives a contribution for an authorized political committee." under 2 U.S.C. Section 432(b). In both cases, the Commission concluded that the service bureau was obligated to comply with that section of the statute. The provisions of that section require that the service bureau remit contributions to authorized committees within 10 days of receipt and (for contributions of \$50 or less) to non-authorized committees within 30 days of receipt.¹ The provisions of the section do not impose any other obligations on the service bureau (except for the prohibition on commingling a committee's funds with those of an individual, which is discussed in a subsequent section of this letter).

¹Separate timetables and reporting requirements for contributions over \$50 are not applicable here, since Call Interactive does not presently intend to handle political promotions where the charge to the caller will exceed \$50.

(2) Similarly as for AT&T, please confirm that Call Interactive has no further obligations or liabilities under FECA if, pursuant to its usual and normal business practice, it remits all funds associated with all calls to the treasurer of a political committee (after deduction of its own fees), so long as Call Interactive requires its political customers to contract to comply with all applicable election laws, including FECA. Specifically, please confirm that it is the duty of the political committee, not Call Interactive, to identify those proceeds which the political committee may be prohibited from accepting for political purposes, and to dispose of those proceeds in the manner prescribed by law. Please confirm that the political customer, and not the service bureau, is directly obligated under FECA to comply with recordkeeping and reporting provisions, including those which require the identification of the names and other information of the individuals whose payments are included in the proceeds.

We seek confirmation that if (i) Call Interactive offers services to a political committee in the manner set forth above and (ii) it provides standard Call Detail Reports to the political committee which the committee can use as it sees fit in further identifying contributors, then Call Interactive does not have a further legal obligation for FECA compliance purposes, to provide the political committee the names and addresses of all those persons who made contributions. Call Interactive further would not have to separately identify the caller who actually paid the portion of the phone bill generating the contribution; to identify those proceeds which might constitute prohibited contributions; or to provide information which determines whether a caller exceeded certain contribution amounts or employer and occupation information. We submit that - to the extent such obligations may apply to all contributions (i.e. whether over or under \$50) - it is the obligation of the political committee to obtain the necessary information for purposes of determining the amounts of contributions and identifying the contributors. It is the committee which has the ability and the discretion to determine and employ the means necessary to comply with these requirements. In choosing its means of compliance, the committee may well resort to the menu of services offered by a service bureau, e.g. transcription and reverse directory and data base services and live operator services. But alternative means may exist for satisfying all or more of these functions. Call Interactive cannot realistically dictate to its political customer which means to use, nor can it audit whether its customer has actually used the information it obtains to comply with FECA.

The AT&T opinion request and the facts provided above outline the general extent to which the political committee can receive complete information regarding contributions and their sources.

Beyond their contractual commitments to political committees, it does not appear, despite the facts presented to the Commission in A.O. 1990-1 by one service bureau, that service bureaus have (or should have) the same compliance responsibilities as political committees. We request confirmation that, if Call Interactive follows its usual and normal audiotext processing and collection procedures at its usual and normal charges which do not discriminate between political and non-political customers, in addition to the requirements of 2 U.S.C. Section 432(b) outlined above, then it will have complied with all of the provisions of FECA directly applicable to Call Interactive. All other obligations for compliance with FECA, are accordingly, the responsibility of the political committee.²

(3) (a) With respect to individual contributions under \$50, please confirm that so long as the treasurer of a political committee receives the Call Detail Report and establishes reasonable accounting procedures pursuant to A.O. 1980-99, it is not, as a matter of law, obligated to expend additional substantial effort and funds to ascertain the identity of the contributor by name and address.

(b) Alternatively, if the Commission determines that the "large gathering" procedures described in A.O. 1980-99 do not apply to individual contributions under \$50 collected through the use of caller paid services, please confirm that a political customer will be in compliance with its FECA obligations if it adheres to the political guidelines contained in Exhibit 6 of the AT&T Opinion Request. In other words, please confirm that a political committee will comply with FECA with respect to individual contributions if it receives the Call Detail Report; uses a data base service to match names and addresses to the Call Detail Report to the extent reasonably possible; collects transcribed names, addresses and telephone numbers; matches any information received, including phone numbers against the information in its records for purposes of identifying contributors of aggregate amounts exceeding \$50; establishes reasonable accounting procedures for unidentifiable contributors of contributions less than \$50 consistent with A.O. 1980-99; and

²Call Interactive does take issue with AT&T's Opinion Request to the extent it suggests that a service bureau might be independently obligated to "take the caller telephone numbers provided by AT&T and determine the name and address of each caller." See page 10 of the AT&T Opinion Request.

returns funds where they are verified to be associated with prohibited contributions.³

The new interactive telephone technology permits a sponsor to reach thousands of people in their homes. For a political fundraising committee, it means that more direct and less costly means can be employed to contact and solicit contributors and interested supported other than through large fundraising events and extensive direct mail campaigns. We believe that this technology will especially enable political committees to reach the "small" contributor. Accordingly, based on previous opinions that the Commission has issued which are analogous to these new facts, we would contend that with respect to individual contributions under \$50, as long as the political committee uses reasonable accounting procedures to reflect the proceeds contributed, it does not have to use extraordinary measures to obtain the names and addresses of contributors and to independently verify whether the contributions are prohibited.

In A.O. 1980-99, a political committee proposed to host several events to raise money for certain Republican candidates. The cost of each event was to range from \$5 to \$25 per person. Hundreds of people were expected to attend each event. The opinion request asked the Commission whether cumulative donor records must be kept by the committee of contributions under \$50 for aggregation and reporting purposes.

The Commission first acknowledged that the provisions of 2 U.S.C. Section 432(c)(1) were incorporated into the Commission's regulations at 11 CFR 102.9. The Commission stated that "[w]hile neither the statute nor the Commission's regulations set forth a specific recordkeeping procedure for contributions under \$50, the regulations at section 102.9 do state that 'an account [of all contributions received] shall be kept by any reasonable accounting procedure.' The question then becomes what constitutes a reasonable accounting procedure for small contributions." The Commission then offered at least two methods of accounting for sub - \$50 contributions which would meet the requirements of the regulations. It stated that an acceptable method would be "to record the name of the event, the date(s) contributions were received for that event, and the total amount of contributions received on each day for that event. This method would facilitate accounting for gate receipts

³AT&T's Opinion Request does not address in detail the distinction between a political committee's compliance requirements where individual contributions are under \$50 and the compliance requirements for contributions over \$50. As discussed further herein, it is Call Interactive's belief that the use of transcription and database services is not required for contributions under \$50, so long as reasonable procedures are used to account for those contributions.

and small cash contributions." (With respect to tracking obligations for contributions over \$50, the Commission stated that the political committee would nonetheless be responsible for compliance with 2 U.S.C. Section 432(c) and 11 CFR 102.9.)

The facts of A.O. 1980-99 are not dissimilar to the facts presented here. If calls are charged at a rate of under \$50 and a political committee is provided the Call Detail Report, then the Call Detail Report by itself would be sufficient to enable the political committee to identify the contributions--with respect to name of event, date received and total amount received. In 1980-99, the Commission accepted just such an accounting procedure as "reasonable" and did not require the political committee to ask every small contributor for identifying and eligibility information. To require the political committee to expend additional resources to "hunt down" the name and address of every contributor through the use of expensive database services does not seem warranted where contributions under \$50 are being received and thousands of people are expected to use the telephone to make their contributions.⁴ Using interactive telephone services is like being able to attend the fundraiser from one's home.⁵ While political committees may nonetheless choose to expend additional resources in order to build a mailing list of interested supporters and to be consistent with their recordkeeping procedures, we suggest, that as a matter of FECA law, it is not required for compliance purposes.

To the extent that political committees cannot readily identify the source of a contribution under \$50, it appears acceptable for them to retain and use these contributions, consistent with both A.O. 1980-99 and 11 C.F.R. Part 110.4(c)(3). See also A.O. 1981-48 (applying the "large gathering approach to bingo games").

⁴For many contributors--those whose calling numbers are not served by ANI or are not included in the "matching" databases--even these burdensome procedures would not result in full identification. It is true that the local exchange carrier will, in some sense, generate a record of these calls for purposes of billing the caller, but the necessary technological arrangements do not exist for passing this information in an appropriately sorted manner to AT&T, Call Interactive or the political committee. Thus, for all practical purposes, is impossible to obtain this information for these calls. Call Interactive asks that the Commission confirm that the procedures described above will constitute compliance with FCA with regard to unidentifiable contributions.

⁵While it may be argued that corporate contributions are not likely to be made at fundraisers, we believe that most corporations block 900 services from their lines and are not likely to try to make small contributions by using 900 services in any event.

The AT&T Opinion Request (including the AT&T guidelines in Exhibit 6 thereof) and this request have outlined the manner in which political committees can obtain information about callers for purposes of enabling them to comply with FECA. Finally, we request guidance from the Commission as to whether the AT&T guidelines for political committees (with respect to their contractual obligations to the service bureau) will be sufficient for FECA compliance purposes, with respect to individual contributions under \$50, and if the Commission disagrees with the application of the "large gathering" rule of A.O. 1980-99 to these facts, then whether the AT&T guidelines are in general, sufficient for all contributions.

(4) Please confirm that the contribution has been made by the caller at the time of the call and not when the telephone bill is paid.

The term "contribution" is defined in FECA to include "a gift, subscription, loan . . . , advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office". In A.O. 1978-68, which involved the ability of callers to make contributions to political committees using a credit card, the Commission concluded that "contributions authorized to be made by telephone, and using a written form to record pertinent information, would be regarded by the Commission as contributions under the Act." The telephone bill is also a billing mechanism pursuant to which the caller promises to pay charges based on his use of the telephone and access to certain telephone numbers. Even though callers do not suffer disconnection by the billing telephone company for nonpayment, the service bureau or its customer does have the right to enforce payment through other avenues as a legal matter. In addition, some billing common carriers have the right and ability to block a caller's access to caller-paid services due to failure to pay for such services. As in the credit card situation, the caller is not deemed to have made the contribution at the time it pays his credit card bill. The contribution is reportable by the political customer at the time it receives the funds. In that situation, there is no obligation on the part of the political customer to verify that the credit card users actually paid the charge. Moreover, AT&T's procedures for permitting a caller to contest charges are analogous to procedures (under federal law) for permitting credit card holders to challenge charges.

Accordingly, the rule for determining the timing of a caller's contribution ought to be the same in this context as it is in the context of contributions made by credit card - at the time the caller takes the action which gives rise to the responsibility for the charge. In this context, this triggering event is the making of the telephone call.

(5) Please confirm that since Call Interactive does not require deposits from its customers purchasing 900 services in the ordinary course of business, then it is not required to obtain a deposit from its political committee customers, for purposes of determining whether the provision of services would result in a corporate contribution by Call Interactive.

Under FECA, a corporation may extend credit to political customers in the ordinary course of business if credit is extended on a similar basis to non-political customers. 11 C.F.R. Section 116.3. Call Interactive requests the Commission to conclude, as AT&T has also requested with respect to its facts, that as long as Call Interactive continues to extend credit on a similar basis to all customers, Call Interactive should not have to require deposits of its customers who may be political committees.⁶

In A.O. 1990-1, the Commission instructed a service bureau to obtain deposits from customers before providing these services. This instruction was based in part on the factual representation of the particular service bureau who requested the opinion that it required a deposit from all its customers in the ordinary course of business in order to cover all the costs associated with the 900 service and any losses.

As detailed in the factual section above, Call Interactive does not require deposits from customers or prospective customers desiring to purchase caller paid services. We also observe that it is not the standard practice of most other service bureaus to require 900 customers to submit deposits. (See Exhibit 1--AT&T Opinion Request.) Also described above are the low upfront costs incurred by Call Interactive and the fact that many of these costs are billed separately to the customer, which reduce Call Interactive's risk further. It is instructive to compare Call Interactive's practices with the practices of a direct mail company upheld by the Commission in A.O. 1979-36. There the direct mail company was providing services to a political committee and its ability to recover upfront costs was capped by three quarters (3/4) of the total amount of contributions received. In that case, if the direct mail company determined that the fundraising effort would not be successful, it had a right to retain all funds until its costs were paid. Nevertheless, the company was at financial risk if the proceeds received did not cover its fees and costs. In that opinion the Commission concluded that because the company's revenue collection policy was standard and in the ordinary mode of

⁶Since Call Interactive is a joint venture of two corporations, it may presumably comply with FECA by following the same procedures that would constitute compliance if engaged in by the corporations themselves. Cf. 11 C.F.R. 110.1(e)(2); A.O. 1980-132.

its operation, this extension of credit would not result in a corporate contribution being made.

Like the direct mail organization in A.O. 1979-36 (and like most, if not all, of Call Interactive's competitors), Call Interactive does not ordinarily require a customer deposit. Call Interactive's policy is, if anything, even more reasonable than that of the direct mail company. First, the amount of Call Interactive's upfront costs would appear to be more limited than those of the direct mail company. Unlike that organization, for example, Call Interactive is not required to advance the equivalent of postage, since AT&T collects its tariffed communications charges and nontariffed billing and collection fees by deducting them from the amounts remitted to Call Interactive. As to most other types of upfront costs (see above) Call Interactive bills them to its customers at the time they are incurred, rather than rely on proceeds to cover them.

Second, Call Interactive is more likely than the direct mail company to recover its costs and fees from proceeds, for three reasons: (a) Call Interactive's share of revenues is ordinarily much less than the direct mail organization's 75%; thus, Call Interactive's "safety margin" for recovering its fees out of proceeds of a less successful campaign, is much wider than that of the direct mail organization; (b) the withholding of a higher-than-usual share of revenues to meet costs and fees is automatic and continuing in Call Interactive's case; it does not depend, as it evidently did in the direct mail case, on the failure of the promotion to survive an "initial testing period"; and (c) Call Interactive is enabled through the "chargeback" procedures outlined above, to withhold funds to cover even anticipated, but not yet incurred, costs. In addition, because Call Interactive, and not the customer, is the prior recipient of the funds, there is no affirmative action that Call Interactive need take in order to induce a customer to pay its fees; the call charges and other outstanding payables will simply be deducted from the call proceeds prior to any remittance by Call Interactive to the political committee.

For these reasons, Call Interactive asks the Commission to verify that it need not require a deposit from its political committee customers to the same extent that it does not require deposits from its other customers.⁷

⁷The situations presented in A.O. 1989-21 and A.O. 1976-50 are not apposite, since in both cases the companies requesting the A.O. proposed to incur large up-front costs with no recourse to the committee if revenues failed to cover those costs, and with no history for assessing the risks of the arrangement. Moreover, in neither case was there a showing that the arrangement was standard practice for either the individual company or the industry.

(6) Please confirm that Call Interactive is not required to maintain a separate bank account for each political customer, so long as it appropriately identifies funds for each political customer from other aggregated funds it receives in its ordinary and normal process of accounting for and remitting these funds, and so long as it complies with the Section 432(b) of FECA for remittance of funds.

Call Interactive will, in the ordinary course of business, receive funds from AT&T in an aggregated form. AT&T's periodic remittance of amounts owed to Call Interactive is paid in a lump sum, not in separate remittances by individual 900 promotion or by promotion category. In particular, Call Interactive would receive funds for political promotions lumped together with funds for non-political promotions. This is not surprising, since at no upstream stage in the payment process are funds likely to be separated in such a manner. Thus, the LECs will not remit funds to AT&T separately according to whether the 900 services are political in nature; nor are most callers likely to write separate checks for that part of their telephone bill which consists of charges for political calls.

As a result of this undifferentiated remittance process, Call Interactive will not receive funds in a manner which will permit them to be placed in separate accounts for the various political committees who may be Call Interactive customers. Consistent with its practice for all other customers, however, Call Interactive will use the Call Detail Report and other information provided by AT&T to calculate the amounts of call revenues attributable to each political promotion, as well as the charges to be deducted by Call Interactive--yielding a net amount due to the political customer. Once this process is complete, remittance will be made immediately to the customer. In short, funds attributable to a political customer (like any other customer), once identified as such, will not be held by Call Interactive for any significant length of time. We ask that the Commission confirm that such a practice will obviate any need to create separate bank accounts to hold funds for, at most, *de minimus* amounts of time.

Call Interactive respectfully submits that its practices in this regard would comply with both the letter and the spirit of FECA and the Commission's rules and policies. First of all, Section 432(b)(3) of FECA is not directly applicable here, since it only prohibits only the commingling of the funds of a political committee with those of an individual, and since neither Call Interactive nor either of its constituent partners is an individual, the same reasoning applies to 11 C.F.R. Part 102.15. Nor is the spirit of this compromised by Call Interactive's practices. These provisions are intended to avoid the impermissible use of campaign funds for personal purposes, and nothing in Call Interactive's practices would facilitate or permit such use.

Section 441b of FECA has been construed to prohibit the receipt by a political committee of contributions from a commingled fund operated by a local committee and consisting of both corporate and noncorporate political contributions, on the theory that such a practice could result in a prohibited indirect contribution from the corporate contributors because the source of funds could not be identified. See A.O. 1976-110. The purpose there, however, was to prevent political committees from unlawfully accepting corporate contributions. So long as the political committee carries out its obligations to avoid receiving unlawful contributions (as described hereinabove), nothing in Call Interactive's practices would increase the likelihood that an impermissible corporate contribution is being received, nor would the establishment of a separate Call Interactive bank account for each political committee further prevent such a contribution.

The separate provisions of 103.2 and 103.3(a), would, as we understand them, be satisfied by either remittance to the political committee's treasurer, or deposit in an account established by the committee, of the funds earmarked for the committee within the time limits established under 2 U.S.C. Section 432(b) and 11 C.F.R. Part 102.8. Call Interactive intends to comply fully with these time limits.

In addressing this issue, Call Interactive is best analogized to the credit card company whose practices were approved by the Commission in A.O. 1978-68. Like the credit card company, Call Interactive will receive a payment from callers. Like the credit card company, Call Interactive will receive a payment stream which is not differentiated between political and nonpolitical amounts, or between individual payees. And, like the credit card company, Call Interactive has a well established procedure for accounting for and remitting funds owed to each of its customers, political and nonpolitical alike, onto which the engrafting of a separate bank account requirement would be impractical and pointless. Because the credit card company was permitted to proceed without establishing separate accounts for the political committees with which it did business, and did not thereby run afoul of FECA or the Commission rules and policies, Call Interactive should be permitted to proceed on the same basis.

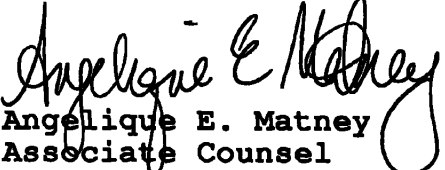
Permitting Call Interactive to follow its well established and uniform procedures would not result in a contribution from Call Interactive, nor would it result in a violation of the specific provisions of FECA and the Rules cited above. Call Interactive respectfully requests the Commission to confirm that such a requirement does not apply to the facts of Call Interactive's business practices.

(7) Based on the fact that Call Interactive is a turnkey service bureau offering "one-stop" services, please clarify that, in reporting to the political committee the service fees associated with the 900 campaign, it will be sufficient to provide the gross fees charged by Call Interactive to the political committee. Further, please confirm that it is not required that Call Interactive provide a breakdown of fees charged to Call Interactive by its service providers.

Call Interactive's fees to its customers are charged on an aggregated basis. While they are calculated to recover all Call Interactive's telecommunications costs, in addition to premium billing charges, and charges for other services under agreements between Call Interactive and third parties, Call Interactive does not in the ordinary course break out these costs to its customers, because their relationship is with - and their debts are owed to Call Interactive, not Call Interactive's suppliers. AT&T, the local exchange carriers and all other third party subcontractors of Call Interactive have no contractual privity to or direct relationship with the political committee in these matters and consequently charge no fee directly to Call Interactive's customers. We would like clarification on this point insofar as the A.O. 1990-1 and AT&T's Opinion Request do not clearly address this issue specifically.

If you have any questions concerning this request or require further information or clarification, please do not hesitate to contact the undersigned.

Sincerely,


Angelique E. Matney
Associate Counsel

cc: M. Nemeroff

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December 18, 1990

AOR 1990-28

The Honorable Lee Ann Elliott
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

**Re: Corrected Copy of Advisory Opinion Request
1990-28**

Dear Chairperson Elliott:

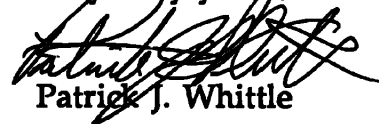
Attached, please find a corrected copy of Advisory Opinion Request 1990-28, which was submitted by Call Interactive on December 5, 1990. The corrected copy corrects various typographical and transcription errors present in the letter as initially filed.

The specific corrections are as follows:

- (a) Changing the word "non-subscriber" to the word "subscriber" in the last line of the second full paragraph on page 3.
- (b) Changing the word "Committee" to "Commission" in several places on pages 9-13.
- (c) Correcting mistranscribed statutory wording at the beginning of the first full paragraph on page 11 (regarding the definition of "contribution").

Call Interactive requests that the corrected letter be substituted for the letter as originally filed. If there are any questions, please contact the undersigned at (202) 879-9458.

Very truly yours,


Patrick J. Whittle

Attachment