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FEDERAL ELECTION COMMISSION
Washington, DC 20463

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August 22, 2012

MEMORANDUM

AGENDA ITEM

TO: The Commission

FROM: Anthony Herman *AH*
General Counsel

Kevin Deeley *KE*
Acting Associate General Counsel

Amy Rothstein *AR*
Assistant General Counsel

Joanna S. Waldstreicher *JSW*
Attorney

Subject: Draft AO 2012-30 (Revolution Messaging, LLC)

For Meeting of 8-23-12

SUBMITTED LATE

Attached is a proposed draft of the subject advisory opinion. We have been asked to have this draft placed on the Open Session agenda for August 23, 2012.

Attachment

1 ADVISORY OPINION 2012-30

2
3 Joseph E. Sandler, Esq.
4 Elizabeth L. Howard, Esq.
5 Sandler, Reiff, Young & Lamb, P.C.
6 1025 Vermont Avenue, NW
7 Washington, DC 20005
8

DRAFT

9 Dear Mr. Sandler and Ms. Howard:

10
11 We are responding to your advisory opinion request on behalf of Revolution Messaging,
12 LLC (“Revolution Messaging”), concerning the application of the Federal Election Campaign
13 Act (the “Act”) and Commission regulations to your proposal to process contributions by text
14 message. The requestor asks whether its proposal (1) to enable the processing of contributions
15 by text message to a political committee in excess of \$50 per billing cycle and \$200 per calendar
16 year or election cycle, and (2) to enable political committees to share a premium short code to
17 process contributions by text message, complies with the Act and Commission regulations. The
18 Commission concludes the proposal complies with the Act and Commission regulations.

19 ***Background***

20 The facts presented in this advisory opinion are based on your letter received on August
21 6, 2012 and your email received on August 7, 2012. Certain facts have also been incorporated
22 from Advisory Opinion 2010-23 (CTIA – The Wireless Association) (“CTIA I”) and Advisory
23 Opinion 2012-17 (Red Blue T LLC, ArmourMedia, Inc., and m-Qube, Inc.) (“m-Qube I”).

24 Revolution Messaging is a limited liability company organized under District of
25 Columbia law that has elected to be treated as a partnership for income tax purposes. It is a
26 full-service digital technology and strategy company that specializes in providing mobile
27 communications strategies, content, and text messaging services to progressive non-profit
28 organizations, labor organizations, and Democratic Federal and State political committees and

1 organizations. Revolution Messaging coordinates mobile messaging on behalf of its clients
2 through a proprietary web-based platform that allows them to obtain common short codes and
3 customized keyword associations;¹ send customized messages to wireless users; and maintain,
4 analyze, and manage data provided by wireless users and data relating to actions taken by
5 wireless users in the course of text messaging programs. Revolution Messaging also advises its
6 clients in creating websites, mobile applications, and outgoing text messages.

7 As an application provider of text messaging services, Revolution Messaging administers
8 the mobile communications programs of various political committees.² In this role, Revolution
9 Messaging is responsible for collecting and maintaining wireless user data, including the name,
10 address, employer and occupation of specific wireless users. Revolution Messaging gathers this
11 information through maintenance of the records that it processes regarding members of
12 membership organizations with connected Federal political committees and supporters of
13 nonconnected Federal political committees who have participated in the political committees'
14 mobile programs. It uses other various methods to collect and maintain wireless user data,
15 including a mobile-friendly webform completed by the wireless user when opting in to receive

¹ A common short code is the five- or six-digit number to which a wireless user can send text messages to access mobile content, and a keyword is a word associated with a specific contribution amount and/or a specific recipient. For example, in the aftermath of the earthquake in Haiti, individuals pledged \$10 donations to the Red Cross by texting the keyword "HAITI" to the short code "90999."

² Application providers such as Revolution Messaging convert text messages received through common short codes into data that can be interpreted and used by content providers. Other commercial entities typically involved in text message transactions include The Common Short Code Administration, a component of CTIA –The Wireless Association, which oversees the technical and operational aspects of common short codes and leases common short codes to content providers; content providers, which are entities, such as vendors, charitable organizations, and political committees, that use common short codes to disseminate content to, or collect information or funds from, wireless users; wireless service providers, which are the companies from which subscribers purchase their mobile phone service; and connection aggregators, which link content providers, service providers, application providers, and users together.

1 text messages. Ensuring the accuracy of this data is an integral component of Revolution
2 Messaging's services.

3 *Contributions Aggregating More Than \$50 Per Billing Cycle or \$200 Per Calendar Year*
4 *or Election Cycle*

5
6 Revolution Messaging proposes to process contributions by text message that aggregate
7 in excess of \$50 per month and \$200 per calendar year (or, in the case of contributions to
8 authorized committees of candidates, \$200 per election cycle) for its political committee clients.
9 Each political committee that receives contributions under the proposal will contract exclusively
10 with Revolution Messaging, and Revolution Messaging will contract with a connection
11 aggregator that has agreed to provide the factoring service approved by the Commission in
12 Advisory Opinion 2012-17 (m-Qube I).

13 When a contribution is initiated by a wireless user who texts a unique keyword to a short
14 code, Revolution Messaging will generate an affirmation statement, which Revolution
15 Messaging describes as "containing the same information contained in the affirmation statement
16 proposed by m-Qube in AO 2012-17, Supplemental Information (June 6, 2012) at 4."
17 Revolution Messaging provides the following example of an affirmation statement: "Reply YES
18 to give \$20 to Shoemakers Federal PAC & certify ur 18+ & donating with own funds, not
19 foreign national or Fed contractor, <http://rev.ms/terms> (Msg&Data Rates May Apply)." If the
20 wireless user responds in the affirmative, then the contribution will be processed by the wireless
21 carrier, connection aggregator, and application provider.

22 As the application provider, Revolution Messaging will send a confirmation text thanking
23 and asking the contributor to provide the information required pursuant to the recordkeeping and
24 reporting requirements of the Act and Commission regulations via a series of text messages or by

1 completing a form on the website of Revolution Messaging.³ The text message script and
2 webform will include attestation statements similar to those proposed in Advisory Opinion 2010-
3 23 (CTIA-I);⁴ collect the contributor's name, address, employer name, occupation, and cellular
4 telephone number; notify the contributor that the political committee recipient is required to use
5 best efforts to collect the first four of these items of information in accordance with 11 CFR
6 104.7(b); and contain any necessary disclaimers. Revolution Messaging states that, as a general
7 rule, it will already have the information required by the reporting and recordkeeping
8 requirements of 2 U.S.C. 432(c) for text message contributors because of its ongoing work for
9 and with political committee clients. Due to the \$10 and \$20 per transaction limitations imposed
10 by wireless service providers (*see* Advisory Opinion 2012-17 (m-Qube I)), a wireless user's
11 initial contribution will not be permitted to exceed the threshold above which identifying
12 information must be collected and, given this initial limitation, will be allowed to proceed even if
13 the user does not provide the requested identifying information.

14 Revolution Messaging will use the information provided on the webform or by text
15 message and the information that it already has to identify wireless users. Revolution Messaging
16 will allow users for whom it has, at a minimum, a name and address to make aggregate

³ Revolution Messaging proposes the following language for its confirmation texts:

- (1) "Thanks for contributing! To make best efforts to comply with fed law we need more info. Visit <http://rev.ms/info> or reply OK."
- (2) "Thnx for contributing! Fed law reqs best effort 2 get&report name, address, employer&occupation 4 political contributions. Visit <http://rev.ms/info> or reply OK."

⁴ The confirmation webform and text script will include the following:

By checking this box, I confirm that the following statements are true and accurate:

1. Contributions made by text message from this wireless phone will be paid for with my personal, unreimbursed funds, and not those of another.
2. Contributions made by text message from this wireless phone will not be made by a corporation, labor organization, or other person paying my wireless bill.
3. I am not a Federal government contractor.
4. I am not a foreign national who lacks permanent resident status in the United States.
5. I am at least 18 years of age.

1 contributions exceeding \$50 per monthly billing cycle and \$200 or more per election cycle or
2 calendar year (as applicable). Revolution Messaging will provide this information to its political
3 committee clients.

4 Revolution Messaging will work with the connection aggregator to block all
5 contributions that aggregate more than \$50 per billing cycle or \$200 per election cycle or
6 calendar year from any wireless user whose name and address Revolution Messaging does not
7 have. Revolution Messaging will inform the wireless user, via text, that additional contributions
8 are not permitted unless the user completes the webform or responds to the appropriate text
9 message. Once the user completes the webform or text message script, Revolution Messaging
10 will enable the user to make additional text message contributions.

11 Revolution Messaging also will work with its political committee clients to combine
12 contributor information obtained through text message contributions with information already in
13 the committees' possession to ensure that contributors whose contributions aggregate in excess
14 of \$200, whether made by text messaging or in other forms such as check or credit card, are
15 properly disclosed on the political committees' reports to the Commission. This will also enable
16 the political committees to track contributors' aggregate contributions (whether made by text
17 messaging or in other forms) with respect to the contribution limits. Revolution Messaging
18 represents that there will be "more than sufficient time" to merge text message contributor
19 information with other contributor information for its political committee clients to file accurate
20 and timely reports with the Commission and to ensure that a contributor does not make excessive
21 contributions.

22 Revolution Messaging will also block contributions aggregating in excess of \$2,500 per
23 election and \$5,000 or \$10,000 per calendar year, as applicable.

1 *Shared Premium Short Codes*

2 Revolution Messaging also proposes to offer a service that would allow multiple Federal
3 political committees to share one premium short code for receiving contributions by text
4 message. Wireless users pay a premium charge for premium short codes, usually on a monthly
5 basis, in order to receive certain content.⁵ Examples of premium messaging programs include
6 those for the purchase of ringtones, wallpaper or screensavers, and for subscriptions to weather
7 alerts, sports scores, daily horoscopes, and pornography. A premium short code must be used for
8 receipt of message when contributions are made by text message.

9 The additional capability of a premium short code results in increased costs to the entity
10 leasing the short code, as well as the wireless user. Revolution Messaging estimates that the total
11 cost of leasing, setting up, applying, connecting, programming, testing, and registering a
12 premium short code ranges from \$6,000 to \$10,000. Premium short codes can also be time-
13 consuming to obtain. Revolution Messaging estimates that it takes eight to 12 weeks to obtain a
14 premium short code, and states that campaigns will thus be unable to raise contributions by text
15 messaging for a large part of the campaign cycle. Revolution Messaging posits that the time and
16 cost associated with premium short codes reduce their effectiveness for all but major party
17 presidential campaigns and national party committees.

18 For a contribution via text message to be processed when a shared premium short code is
19 utilized, it must use both a keyword and a short code in combination and include a reply to an
20 exact keyword. Additional steps based on the keyword attached to a shared premium short code

⁵ Premium short codes are distinct from standard short codes. Standard short codes involve the imposition of a small charge to the wireless user to send or receive regular text messages, beyond a certain data limit included in the user's monthly plan. Typically, non-profit organizations and political committees use standard short codes to communicate with supporters or members who have opted into the text messaging program of the committee or organization.

1 include (1) the use of a unique keyword to identify the political committee to which a
2 contribution is to be attributed and the amount of the contribution; (2) a message to the
3 contributor seeking confirmation that the contributor is eligible to make the contribution and
4 verifying that funds will be charged to the contributor's phone bill; and (3) a reply text message
5 from the contributor confirming eligibility and acknowledging that the contribution will come
6 from the contributor's own funds. Under Revolution Messaging's proposal, this full keyword
7 and premium short code process and confirmation will be used for all contributions by text
8 message. The wireless user's message initially providing the keyword will be time- and date-
9 stamped for auditing purposes.

10 To ensure that contributions are associated with only one political committee when a
11 premium short code is shared, Revolution Messaging will assign each political committee one or
12 more unique keywords. Keywords may be associated with specific contribution amounts and
13 specific political committees sharing a common short code. For example, a wireless user may be
14 asked to "Text DONATE to 675309 to give \$20 to the Shoemakers Federal PAC," where 675309
15 is the shared premium short code and DONATE is the unique keyword. Upon receiving the text
16 from the wireless user, Revolution Messaging will immediately generate an affirmation
17 statement, such as the one described above, that includes the amount of the contribution and the
18 name of the recipient political committee based on the unique keyword. If the wireless user
19 confirms the information, a charge will be added to the contributor's wireless bill.

20 Revolution Messaging and the connection aggregator receive this information in real time
21 and will immediately assign each transaction to an individual political committee's account
22 based on the unique keyword. Revolution Messaging represents that it and connection
23 aggregators regularly employ this funds-sorting mechanism for all of their customers to ensure

1 that funds are properly accounted for and transmitted to their intended recipient.⁶ Trailing
2 payments made by the connection aggregator to a political committee, *see* Advisory Opinion
3 2012-17 (m-Qube I), will be determined based on the outcome of individual transactions
4 associated with a unique keyword on a shared premium short code and not the short code itself.
5 Revolution Messaging will also be able to use the unique keyword to block a phone number from
6 making excessive contributions to a political committee, even if the political committee shares a
7 premium short code.

8 ***Questions Presented***

9 1. *Does the proposal to enable the processing of contributions by text message to a political*
10 *committee in excess of \$50 per billing cycle and \$200 per calendar year or election cycle,*
11 *as applicable, comply with the recordkeeping and reporting provisions of the Act and*
12 *Commission regulations?*

13 2. *Does the proposal to use a shared premium short code by multiple Federal political*
14 *committees to process contributions by text message comply with the Act and*
15 *Commission regulations?*

16 ***Legal Analysis and Conclusion***

17 1. *Does the proposal to enable the processing of contributions by text message to a political*
18 *committee in excess of \$50 per billing cycle and \$200 per calendar year or election cycle,*
19 *as applicable, comply with the recordkeeping and reporting provisions of the Act and*
20 *Commission regulations?*

⁶ Revolution Messaging will sign exclusive contracts with each political committee client in order to be the only provider of text messaging fundraising services to that political committee. During any period in which a political committee engages in fundraising via Revolution Messaging's services, it will not be permitted to contract with any other provider, including any aggregator or wireless service provider, for such services, and will not, as a practical matter, have access to any premium short code other than the one used by Revolution Messaging.

1 Yes, the proposal to enable the processing of contributions by text message to a political
2 committee in excess of \$50 per billing cycle and \$200 per calendar year or election cycle, as
3 applicable, complies with the recordkeeping and reporting provisions of the Act and Commission
4 regulations.

5 The Act and Commission regulations impose certain requirements on treasurers of political
6 committees. A treasurer of a political committee must “keep an account of (1) all contributions
7 received by or on behalf of such political committee; (2) the name and address of any person who
8 makes any contribution in excess of \$50, together with the date and amount of such contribution by
9 any person; [and] (3) the identification of any person who makes a contribution or contributions
10 aggregating more than \$200 during a calendar year, together with the date and amount of any such
11 contribution.” 2 U.S.C. 432(c)(1)-(3); *see also* 11 CFR 110.4(c). A political committee must also
12 file regular reports with the Commission that include, among other information, the identification of
13 each person who makes a contribution to the committee during the reporting period, “whose
14 contribution or contributions have an aggregate amount or value in excess of \$200 within the
15 calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal
16 office) . . . together with the date and amount of any such contribution.” 2 U.S.C. 434(b)(3)(A); *see*
17 *also* 11 CFR 104.8(b). Treasurers of political committees must “examin[e] all contributions
18 received for evidence of illegality and for ascertaining whether contributions received, when
19 aggregated with other contributions from the same contributor, exceed the [Act’s] contribution
20 limitations.” 11 CFR 103.3(b).

21 In Advisory Opinion 2012-17 (m-Qube I), the Commission concluded that the requestors’
22 proposal for processing contributions to political committees via text messages complied with the
23 Act and Commission regulations. The m-Qube proposal limited aggregate contributions to \$50 per
24 month from each wireless user to each political committee. Although m-Qube, the connection

1 aggregator, would not transmit contributor names and addresses to the political committee recipients,
2 it would provide the 10-digit phone number associated with each contribution as well as (1) the
3 amount and date of the contribution, (2) the fact that the contributor clicked “YES” or “Y” in
4 response to a question regarding whether the contributor agreed to have the contribution charged to
5 the contributor’s wireless bill, and (3) the fact that the contributor clicked “YES” or “Y” in response
6 to an affirmation question indicating eligibility to contribute. m-Qube also represented that it could
7 keep a running, real-time tally of the dollar amount of contributions made via text message from a
8 particular telephone number. Recipient political committees would then have real-time secure access
9 to the aggregator’s gateway where the contribution tally would be maintained, allowing political
10 committees to identify phone numbers associated with contributions aggregating \$200 or more. In
11 approving the proposal, the Commission noted that other proposals could provide equally permissible
12 methods of raising contributions through text messaging.

13 Here, Revolution Messaging’s proposal would enable a wireless user to make aggregate
14 contributions exceeding \$50 per month and \$200 per calendar year or election cycle to a single
15 political committee, so long as the user provides to Revolution Messaging his or her name and
16 address. Revolution Messaging will also request the user’s occupation and name of employer, which
17 the recipient political committee may need to comply with the recordkeeping and reporting
18 requirements of the Act and Commission regulations, as well as the user’s cellular telephone number.
19 Revolution Messaging will then transmit this identifying information to the political committee.
20 Although a wireless user may make initial contributions aggregating up to \$50 per month to a
21 political committee, any user failing to provide at least his or her name and address will be
22 blocked by Revolution Messaging, working with the connection aggregator, from making any
23 further contributions to the same political committee.

1 Revolution Messaging will also work with its political committee clients to combine the
2 information that Revolution Messaging collects regarding contributions with the information that
3 the political committee itself collects in connection with contributions made by means other than
4 text message. Combining these two sources of information will enable political committees to
5 disclose contributor information for all contributors whose contributions aggregate in excess of
6 \$200 per election cycle or per calendar year, as applicable, and to refuse or refund excessive
7 contributions, regardless of the means of contribution.

8 The Commission concludes, therefore, that the proposal described above will comply
9 with the recordkeeping and reporting requirements of the Act and Commission regulations.

10 2. *Does the proposal to use a shared premium short code by multiple Federal political*
11 *committees to process contributions by text message comply with the Act and*
12 *Commission regulations?*

13 Yes, the proposal to use shared premium short codes by multiple Federal political
14 committees to process contributions by text message complies with the Act and Commission
15 regulations.

16 Corporate vendors must generally maintain separate accounts to segregate contributions
17 that are to be transmitted to candidates from the vendors' corporate treasury funds. *See, e.g.,*
18 *Advisory Opinion 2010-23 (CTIA I).* This requirement is rooted in the Act's prohibition on
19 contributions by corporations and labor organizations. *See 2 U.S.C. 441b; 11 CFR 114.2(b);*
20 *Advisory Opinion 2010-23 (CTIA I).* The use of separate accounts for contributions and for
21 corporate treasury funds by a corporation that forwards contributions to political committees
22 prevents a "commingling of corporate funds and campaign funds prohibited by [2 U.S.C.] 441b."
23 *Advisory Opinion 1999-22 (Aristotle Publishing).*

1 The use by a connection aggregator of common short codes to track contributions made
2 via text messages to political committees achieves the goal of maintaining contributions and
3 corporate funds in separate accounts. *See* Advisory Opinion 2012-17 (m-Qube I). In Advisory
4 Opinion 2012-17 (m-Qube I), the trailing payments that the connection aggregator proposed to
5 receive from service providers and forward to political committees were linked to common short
6 codes that were unique to each political committee. The Commission concluded that this
7 mechanism ensured that contributions would be properly accounted for and that the connection
8 aggregator’s treasury funds would not be inadvertently transmitted to political committees. The
9 proposal therefore satisfied the requirements of the Act and Commission regulations.

10 Like the requestor in Advisory Opinion 2012-17 (m-Qube I), Revolution Messaging
11 proposes a mechanism to ensure that contributions will be properly accounted for and that
12 corporate funds will not be inadvertently transmitted to political committees. Revolution
13 Messaging will assign each of its political committee clients one or more unique keywords to
14 ensure that each contribution will be associated with only one political committee. In order for a
15 contribution to be completed, the wireless user must send an initiating text message to the correct
16 shared common short code and include the political committee’s assigned keyword in the
17 message. Revolution Messaging states that “no funds will ever be drawn without this full
18 keyword to short code process.” Revolution Messaging and the aggregator receive the
19 information about a contribution in real time, and immediately assign the transaction to a
20 political committee’s account based on the unique keyword used. All contributions are thus
21 attributed to their intended recipient political committees from the time they are made. Trailing
22 payments made by the aggregator to the political committees will then be determined based on
23 the unique keyword assigned to each political committee.

1 The unique keywords assigned to individual political committees under Revolution
2 Messaging's proposal will perform the same function that unique short codes performed in the
3 proposal considered in Advisory Opinion 2012-17 (m-Qube I). Revolution Messaging's
4 proposal effectively segregates contributions to one political committee from those belonging to
5 other political committees and from Revolution Messaging's and the connection aggregator's
6 treasury funds. Accordingly, the Commission concludes that the proposal will comply with the
7 Act and Commission regulations.

8 This response constitutes an advisory opinion concerning the application of the Act and
9 Commission regulations to the specific transaction or activity set forth in your request. *See*
10 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or
11 assumptions presented, and such facts or assumptions are material to a conclusion presented in
12 this advisory opinion, then the requestor may not rely on that conclusion as support for its
13 proposed activity. Any person involved in any specific transaction or activity which is
14 indistinguishable in all its material aspects from the transaction or activity with respect to which
15 this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B).
16 Please note that the analysis or conclusions in this advisory opinion may be affected by
17 subsequent developments in the law, including, but not limited to, statutes, regulations, advisory
18 opinions, and case law. The cited advisory opinions are available on the Commission's website,

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1 www.fec.gov, or directly from the Commission's Advisory Opinion searchable database at

2 <http://www.fec.gov/searchao>.

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On behalf of the Commission,

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Caroline C. Hunter

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Chair