

CALL INTERACTIVE

A joint venture of American Express Information Services Corporation and AT&T

HEADQUARTERS OFFICE
2301 North 117th Avenue
Omaha NE 68164
Tel (402) 498-7000 Fax (402) 498 7900

American Express Tower
World Financial Center
200 Vesey Street
New York NY 10285 4900
Tel (212) 640-5784 Fax (212) 267 9061

July 1, 1991

The Honorable John Warren McGarry
Chairman
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Advisory Opinion Request
of Call Interactive

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RECEIVED
FEDERAL ELECTION COMMISSION

AOR
1991-20

Dear Chairman McGarry:

This advisory opinion request is submitted pursuant to 2 U.S.C. 437f and 11 C.F.R. Part 112, on behalf of Call Interactive, an equal partnership of two companies respectively owned by subsidiaries of American Telephone & Telegraph Company (AT&T) and American Express Information Services Corporation. Call Interactive previously submitted another advisory opinion request, AOR 1990-28 (submitted December 5, 1990), regarding substantially the same subject matter as this advisory opinion request. By letter dated February 1, 1991, the Commission declined to issue an advisory opinion in response to AOR 1990-28. This advisory opinion incorporates by reference the prior advisory opinion request; however, this request seeks to obtain the Commission's guidance in a manner that does not require the decision of issues upon which the Commission was previously unable to come to a consensus.¹

¹ In particular, Call Interactive understands that among the reasons for the Commission's determination not to issue an advisory opinion in response to AOR 1990-28 was its difficulty in determining whether Call Interactive would be an "agent" of the political committee for purposes of FECA. Call Interactive does not believe it is an agent for these purposes, since it is not generally or specifically authorized to alter the legal relations between its customers and third parties



Call Interactive is a service bureau in the business of providing caller paid (900) and sponsor paid (800) voice response services to information providers. A detailed description of Call Interactive's business is provided in AOR 1990-28, which factual discussion Call Interactive respectfully requests be incorporated herein by reference.² That description includes a discussion of Call Interactive's contractual relationships with AT&T, who supplies Call Interactive with both tariffed telecommunications services and untariffed "premium billing" services. It also describes Call Interactive's relationships with the information providers who are its customers, as well as Call Interactive's intentions to make its services available to political customers for fundraising and related purposes.

In addition to the facts in the prior opinion request, we wish to note additional facts with respect to the manner in which Call Interactive intends to offer services to political customers. First, for purposes of this request and the prior request, the term "political committees" or "political customers" would include any prospective customer which or who is qualified under the federal election laws to solicit contributions in connection with federal elections. In any case in which a third party is acting on behalf of a person or organization seeking funds for political purposes, Call Interactive would require a certification in writing of such third party's and its political customer's compliance with all applicable laws and documented evidence of a written agreement between such third person and the political committee.

Further, Call Interactive would require a preamble on all calls exceeding a total cost of \$10.00 (or as otherwise legally required) which disclose to the caller the purpose of the call (which is descriptive of the purposes for which the funds will be used), the cost of the call and the name of the political committee, along with the opportunity for the caller to disconnect without charge. Call Interactive would also require that all advertising promoting the 900 number disclose conspicuously and clearly the name of the political customer, the fact that the entire charge will constitute a political contribution (versus any portion thereof) and is not tax deductible, and that contributions from sources such as corporations, labor unions and foreign nationals are prohibited. Call Interactive will reserve all rights to review

or between its customers and itself. See Restatement of Agency 2d at Sections 7,12 (1958). However, Call Interactive does not ask the Commission to decide this issue at this time but rather requests that the Commission confirm that, by engaging in the practices described herein, Call Interactive will be in compliance with FECA.

² Any facts presented in this request which we believe may conflict with the prior opinion request are expressly addressed.

all advertising materials in advance of dissemination, display or broadcast to substantiate compliance with Call Interactive disclosure requirements.³

Finally, Call Interactive's review of political program content will be limited to satisfying itself that the political customer has reasonably demonstrated its intent to comply with all applicable laws. Unless a prospective political customer does not evidence compliance or intended compliance and qualification under the applicable laws and the Call Interactive guidelines, Call Interactive will accept any political program for service⁴ on the same material terms and conditions offered to its other customers in the ordinary course of business for applications requiring the same or similar kinds of services. Call Interactive does not intend to edit message content except in connection with the technical implementation of the program or where such editing would cause the program to be in compliance with the Call Interactive disclosure and compliance guidelines described above (i.e. we intend to be content neutral).

We understand that the Commission did not issue an advisory opinion in response to our prior opinion request due in large part to the unresolved issue of whether or not Call Interactive was deemed an "agent" of a political committee by virtue of its contractual privity with such customer and the nature of the services, which include the billing and collection of proceeds.⁵

³ Call Interactive would also comply with the guidelines to be imposed by AT&T on service bureaus as a condition of AT&T providing billing services, as set forth in AO 1990-14.

⁴ At this time, Call Interactive does not believe that is technically possible for it to provide services which could enable a political customer to allocate proceeds which are earmarked for more than one political purpose or organization. However, Call Interactive were to develop the requisite technology, ear-marking may be a part of the program.

⁵ Call Interactive wishes to note that there is no provision in its standard contract in which the customer authorizes Call Interactive to act in its stead with respect to third parties, generally or with respect to any particulars. To the contrary, the contract explicitly states that the client is solely responsible for the content of the telephone program, advertising and solicitation, in addition to complying with all applicable laws. To hold Call Interactive accountable as though it were the political customer contradicts the manner in which Call Interactive conducts itself in the ordinary course of business. Because Call Interactive's business interests are that of a turnkey service bureau offering its technical services to a broad array of customers desiring to communicate via the telephone with masses of

In order to enable Call Interactive to receive guidance on the issues which deal directly with its ability to offer audiotext services to political customers, we request the Commission to review the business practices in which Call Interactive would engage, and confirm that such practices would be consistent with the requirements of FECA, without considering whether Call Interactive is an agent.⁶

QUESTIONS

Based on the foregoing, Call Interactive respectfully requests that the Commission issue an advisory opinion providing guidance on the following issues:

- (1) 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 customers, for purposes of determining whether the provision of services would result in a corporate contribution from Call Interactive.

people, and not a promoter which is largely responsible for advertising, soliciting and otherwise managing a fundraising campaign, we believe that Call Interactive only need offer its services to political customers and conduct its business in the normal course. Call Interactive's receipt and remittance of proceeds of calls are the same for all customers.

⁶ Call Interactive views itself, within the context of FECA, only as "a person who receives a contribution for an authorized political committee" under 2 U.S.C. Section 432 (b). Under that provision, Call Interactive is required to remit contributions to authorized political committees within 10 days of receipt and (for contributions of \$50 or less) to non-authorized committees within 30 days of receipt. The provisions of that section do not impose any other obligations on a vendor (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). We respectfully believe that imposing broader "agency" responsibilities on those who perform this role was not intended by 2 U.S.C. Section 432(b). Finally, if Call Interactive were concluded to be an agent by virtue of the fact that it receives proceeds, then it would follow that each common carrier would also be deemed an agent. We do not believe that this is a conclusion the Commission intends to reach. See AO 1990-14 and AO 1991-2. Despite our position on this issue, we kindly request that resolution of the agency issue not be a prerequisite to providing guidance to Call Interactive on its ability to provide audiotext services to political customers.

This question was raised as question (5) in AOR 1990-28. As set forth therein, Call Interactive does not require a deposit from its customers in the ordinary course of business and has found that its ability to prebill the customer for certain of its charges, to deduct the remainder from revenues received and to proceed to collect any shortfall from the customer (in the very unlikely event such shortfall would occur) has proved much more than adequate security to assure the payment of its fees and charges. Call Interactive requests the Commission to confirm that, in these circumstances, Call Interactive may provide its services to political committees without requiring a deposit. See 11 C.F.R. 116.3; AO 1976-36.

- (2) **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 Section 432(b) of FECA for remittance of funds.**

In question (6) of AOR 1990-28, Call Interactive describes its procedures for receiving funds from AT&T and separating out and remitting funds to its individual customers. As described therein, Call Interactive receives revenues from AT&T in a single lump sum which is not separated by 900 number, by campaign, by customer or even by political vs. nonpolitical customer. Call Interactive must use the Call Detail Report provided by AT&T, together with Call Interactive's own records, to separate the funds received by Customer. Once this accounting separation is accomplished, Call Interactive deducts its charges and promptly forwards the balance to its customer. Identification and transmittal of the funds to the political customer would be effected within 10 days after receipt of the proceeds from AT&T. Call Interactive asked the Commission to confirm that under these circumstances, it will not be required to engage in the burdensome exercise of setting up a separate account for each political committee to avoid violation of 11 C.F.R. 102.15, 103.2 and 103.3(a). Call Interactive renews that request here.⁷

⁷ Please note that Call Interactive does not in any manner pay a customer's debts or otherwise dispose of a customer's funds on its behalf. For this reason, we submit that Call Interactive would not "make expenditures" on the committee's behalf for purposes of 11 C.F.R. 102.9. The funds withheld by AT&T represent Call Interactive's own debt, not the customer's, since it is Call Interactive, not its customer, who is in privity with AT&T under both AT&T's tariff and its premium billing contracts; Call Interactive does deduct its own fees from proceeds it receives, but this is the standard means through which service bureaus who

- (3) Please confirm that Call Interactive can comply with the information-gathering requirements of FECA by either (a) providing its call transcription, touchstone response and database services to the committee at standard charges for such services; or (b) obtaining certification from the committee that it is obtaining comparable service elsewhere.

As discussed in AOR 1990-28, Call Interactive can provide an interactive touchtone response service for which a recorded audioscript is used to process calls from persons who identify themselves (by touchtone responses) as calling on behalf of corporations, labor unions or as foreign nationals differently from calls from persons who identify themselves as calling as individuals. Call Interactive also offers, on an optional basis, a call transcription service whereby callers are prompted to speak their name, address or other information; the sound of the spoken words is digitally recorded and later transcribed into writing by Call Interactive employees listening to the recording. Call Interactive can provide on an optional basis, a reverse directory database service under which it can use the touch tone data obtained from the caller to identify the name and address of caller. Identification through the reverse directory is successful for about 40-50 percent of calls. Reverse directory combined with the standard transcription can yield an average identification rate of about 90 percent of all calls, where all audio information is clearly spoken by the caller.

Unlike AOR 1990-28, Call Interactive is not proposing in this request the use of "Call Detail" records in combination with reverse directory services as an additional means of identifying callers. Call Interactive believes that it can achieve a substantially higher identification rate by tracking and accounting for each call through the direct correlation of self identification (through touchtone response) of the caller as an individual, corporation, labor union or foreign national and the originating telephone number (inputted by the caller).⁸

contract with common carriers, or billing agents, are paid for services rendered and does not mean that Call Interactive is in any sense acting on its customers' behalf. Indeed, a credit card company also deducts its service fees prior to remitting the balance of receipts to the merchants and other parties with whom it contracts, yet the Commission has held that credit card companies need not establish separate accounts for political committees on whose behalf they agree to receive contributions. See AO 1978-68.

⁸ If caller data is received by Call Interactive which indicates that such a contribution is prohibited, Call Interactive will provide such data to the political committee. Call Interactive's contract with the political committee will provide

All of these services are currently available from Call Interactive, which would offer to sell them at standard charges to political committees as it would, to any other customer. In this regard, the draft AO circulated to, but not adopted by, the Commission in response to AOR 1990-28 stated (at page 10) that:

"... Call Interactive, as an agent whose purpose is to provide access to complex technology leading to the receipt of large numbers of contributions on a continuing basis, must assume much of the responsibility for obtaining the identity of callers and the return of prohibited or excessive contributions."

Page 15 of the draft goes on to say that "Call Interactive must provide to the committee reverse directory data base service and audioscript and transcription services, or the committee must obtain them elsewhere". (Emphasis added)

We ask confirmation that, in the event the committee chooses to obtain comparable services from a source other than Call Interactive, Call Interactive is not required to audit the committee's compliance with this requirement, but may discharge its responsibilities by obtaining certification from the committee that it is in fact obtaining comparable services from an alternative source.

In summary, we request the Commission to define what services must be provided to a political customer as a condition of doing business and whether the political customer's certification to Call Interactive with respect to the use of other vendors' services will fulfill Call Interactive's compliance obligations, wherever applicable, under FECA.

- (4) **With regard to the return of prohibited or excessive contributions, and to the proper disposition of unidentifiable contributions, please confirm that Call Interactive will have discharged its responsibility (if any) by turning over to the committee all remittances for such calls (net of Call Interactive's fees for services rendered with respect to such calls) together with all information obtained by Call Interactive pertaining to such calls.**

In Call Interactive's view, the committee bears the full responsibility under FECA for obtaining such information and using it to identify and return or otherwise lawfully dispose of

that the political committee shall not use such prohibited contributions in connection with a federal election, but that it will applied to other lawful purposes consistent with the requirements of FECA, e.g. donations to a charitable organization.

problematic contributions. While Call Interactive would, if requested by the committee, provide information that can be used to the end, Call Interactive would not be delegated any authority to act on the committee's behalf in disposing of such contributions, and Call Interactive would not accept such delegation.⁹

As noted above, the draft AO would have placed some level of responsibility on service bureaus for "the barring or timely return of prohibited and excessive contributions". Draft AO 1990-28 at page 10. At the same time, as to unidentifiable contributions, Call Interactive would have been required to forward all contributions (net of its fees) to the committee, and it would have been the committee's responsibility to dispose of the funds in a lawful manner. Id. at page 16.

The determination whether particular contributions are prohibited or excessive, or whether they come from unidentifiable sources, depends on information which may be obtained by the committee from either Call Interactive or an alternative source. If the committee purchases the requisite services from Call Interactive, Call Interactive will forward the information in a timely manner (as noted above, complete information will not be available for some 10 percent of the calls). Whether the committee purchases the information from Call Interactive or from a comparable source, the information must undergo analysis and interpretation before any particular contribution can be designated as prohibited, excessive or unidentifiable. Call Interactive will be unable to provide such analysis and interpretation; it can provide to the political committee only data which the political committee can then combine with its own records for the purposes of analysis. (Some aspects of such analysis, indeed, such as special requirements on aggregated contributions, would depend on information, typically held by the committee treasurer, which Call Interactive would not possibly have.)

Consistent with the confirmation requested in Question (3), above, Call Interactive requests confirmation that its obligations with regard to prohibited, excessive or unidentifiable contributions do not extend to holding money or transferring it to any party other than the committee, but will be discharged by (a) either providing the information obtained from its transcription, database and touchstone services to the committee, or by obtaining the committee's certification that it is obtaining such services elsewhere; and (b) obtaining the committee's certification that it will use the information, regardless of the source, to dispose of funds in a manner which complies with FECA.

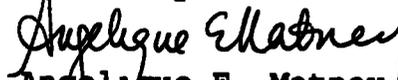
⁹ In short, whether or not Call Interactive might be deemed an agent for other purposes, it would not be deemed an agent for these purposes. Restatement of Agency 2d at Section 1(1), 15.

- (5) 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 Call Interactive is not required to provide a breakdown of fees charged to Call Interactive by its services providers.

As discussed in question (7) of AOR 1990-28, 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 of business, 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. We request confirmation that Call Interactive may report costs to the political committee on that basis, and need not break out Call Interactive's own costs of doing business.

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

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ORIGINAL

GARDNER, CARTON & DOUGLAS

SUITE 750

1001 PENNSYLVANIA AVENUE NW

WASHINGTON DC 20004

(202) 347-8200

TELEX 9106001318

TELECOPIER (202) 628-0470

CHICAGO ILLINOIS

DENVER COLORADO

SOUTHFIELD MICHIGAN

WRITER'S DIRECT DIAL NUMBER

(202) 879-9458

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**

50 DEC 19 11 10 14

RECEIVED

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

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.

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

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.

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.

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.

(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.

(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.

(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