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Comment on AOR 2012-17

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May 4, 2012

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Federal Election Commission  
Office of the General Counsel  
Advisory Opinions  
999 E Street  
Washington DC 20463

OFFICE OF GENERAL  
COUNSEL

Re: Comment on Advisory Opinion Request 2012-17

Dear General Counsel:

We write in support of the above-referenced AOR (<http://saos.nictusa.com/aodocs/1206315.pdf>) dated April 5, 2012, on behalf of Red Blue T LLC and ArmourMedia, Inc. We urge you to issue an opinion that concurs with the campaign contribution method detailed in that request. This will help bring control of political campaigns back to ordinary Americans at a time when wealthy special interests are accumulating more power through Super PACs, independent expenditures and other "soft" money techniques of circumventing the intent of our campaign finance laws.

I am the founder and managing partner of Edelson McGuire, LLC ("EM"). EM maintains one of the nation's leading consumer protection class action practices, focusing in particular on protecting consumers in the fields of electronic commerce, privacy and Internet use. We have, over the years, brought a number of successful cases to protect consumers against so-called "cramming" – the piercing of unauthorized charges on mobile phone bills. We also are the leading firm in the country prosecuting "text spam" cases under the Telephone Consumer Protection Act – the federal laws protecting consumers against unsolicited phone calls and texting. We have also been recognized as "pioneers in the electronic privacy class action field, having litigated some of the largest consumer class actions in the country on this issue." In re Facebook Privacy Litig., No. C 10-02389 (N.D.Cal) (order appointing Edelson McGuire interim co-lead of privacy class action).

From this vantage point, we can make the following observations to the Commission in the matter of this AOR:

In our prosecution of cramming and TCPA cases, we believe the facts set forth in the petition regarding how the PSMS and mobile carrier billing industry works are true.

- 1) m-Qube, Inc. is one of the nation's predominant premium SMS and mobile carrier billing and messaging aggregators.
- 2) "Factoring" or "advancing" is a common practice amongst the nation's premium SMS aggregators.
- 3) It does not appear that the terms of the Service Order and the methods recommended in the request letter would require the mobile operators to handle mobile donations to political committees in any manner different from how they handle mobile content merchant purchases today.
- 4) Mobile payments for content and software, not including services offered by the operators themselves, such as international roaming and branded video content, comprise approximately \$2 billion of transactions per year.

**Edelson McGuire, LLC**

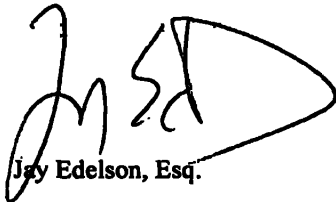
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- 5) We believe that so long as consumers are protected ensuring that they have fully and knowingly permitted and authenticated all donations, using this channel could have a wonderful democratizing effect on campaign finance.
- 6) To ensure that the private donor has in fact authorized each contribution, we agree that it is important to centralize control of the "opt-in" (payment authentication) in a single place. So we are comfortable with the proposal that the aggregator itself take control of authenticating donations using the type of process recommended in the request letter.
- 7) We agree that in the mobile payments industry, a short code is the equivalent of a segregated merchant account in the credit card world. So as long as each political committee is required to operate one and only one short code exclusively, their donation funds are segregated from mobile content purchases via other short codes throughout the transaction and payment process.
- 6) In our years of investigation and prosecuting TCPA cases and text message "cramming" cases, the courts and litigants have supported the general proposition that individual mobile users have one and only one personal mobile phone number. It is reasonable to presume that capping donations at \$50 per phone number will equate to capping at \$50 per person.
- 7) Additionally, we wish to observe that we do not see any unique privacy issues affected by the proposed mobile donation method. In fact, when compared with donating via websites using credit cards, the request letter's proposed method actually offers privacy improvements. One of the prevalent complaints that consumers bring to us is the misuse or negligent handling of their personal information and especially credit card information in website transactions. By contrast, donating via text message means donors do not need to provide their names, credit card numbers, or any other private information. Even if a cell phone is stolen, there are strict limits on the types of purchases and the amounts that can be purchased via premium SMS.

Thank you for considering our views and observations.

Respectfully Yours,



Managing Partner

Edelson McGuire, LLC