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FEDERAL ELECTION COMMISSION
Washington, DC 20463

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August 1, 2012

AGENDA ITEM

MEMORANDUM

TO: The Commission

For Meeting of 8-2-12

FROM: Anthony Herman *AH*
General Counsel

SUBMITTED LATE

Kevin Deeley
Acting Associate General Counsel *AD/AR*

Amy Rothstein *AR*
Assistant General Counsel

Theodore Lutz *TuL*
Attorney

Subject: Draft AO 2012-26 (Cooper for Congress Committee,
ArmourMedia, Inc., and m-Qube, Inc.)

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 2, 2012, for discussion purposes only. No vote will occur pending the conclusion of the comment period on the advisory opinion request. The Commission will accept comment on the request and the draft until the close of business on Tuesday, August 7, 2012.

Attachment

1 ADVISORY OPINION 2012-26

2
3 Craig Engle, Esq.
4 Brett G. Kappel, Esq.
5 Arent Fox LLP
6 1050 Connecticut Avenue, NW
7 Washington, DC 20036-5339

DRAFT

8
9 Robert A. Davidson, Treasurer
10 Cooper for Congress
11 223 Rosa L. Parks Blvd. #206
12 Nashville, TN 37203
13

14 Dear Messrs. Engle, Kappel & Davidson:

15
16 We are responding to your advisory opinion request on behalf of Cooper for Congress
17 (“the Committee”), m-Qube, Inc. (“m-Qube”), and ArmourMedia, Inc., concerning the
18 application of the Federal Election Campaign Act (the “Act”) and Commission regulations to the
19 proposed receipt and processing of contributions by text message. The Commission concludes
20 that the proposal is consistent with the Act and Commission regulations.

21 ***Background***

22 The facts presented in this advisory opinion are based on your letter received on July 18,
23 2012 and supplemental information that you provided on July 24, 2012. Certain facts have also
24 been incorporated from Advisory Opinion 2012-17 (Red Blue T LLC, ArmourMedia, Inc., and
25 m-Qube, Inc.) (“m-Qube”) and Advisory Opinion 2010-23 (CTIA – The Wireless Association).

26 The Committee is the principal campaign committee of Representative Jim Cooper.
27 Representative Cooper is a candidate in his party’s August 2, 2012, primary election to represent
28 Tennessee’s Fifth Congressional District. The Committee intends to receive contributions by
29 text message for the primary and general elections. m-Qube is an aggregator of business-to-

1 consumer messaging and merchant billing for public wireless service providers. ArmourMedia
2 is a political and media consulting firm that advises and represents political committees.

3 *1. Industry Overview*

4 Text message transactions typically involve a number of commercial entities. The
5 Common Short Code Administration (the “Code Administration”), a component of CTIA – The
6 Wireless Association, oversees the technical and operational aspects of short codes.¹ The Code
7 Administration leases short codes, administers their registration, and maintains a public database
8 of short codes, available at www.usshortcodes.com. As part of its leasing process, the Code
9 Administration requires that applicants provide identity information. CTIA commonly reviews
10 applicants to verify that an applicant’s corporate address and leadership match those in
11 incorporation documents and searches for any adverse regulatory or litigation history.² In
12 addition to leasing short codes through the Code Administration, CTIA is also responsible for
13 compiling and publishing industry best practices designed to protect consumers from deceptive
14 marketing and to preserve its members’ business interests. CTIA also assists in monitoring
15 compliance with these standards.

16 Wireless service providers are the companies from which subscribers purchase their
17 mobile phone service. Content providers, such as the Committee, are typically vendors that use
18 short codes to disseminate content to, or collect information or funds from, wireless users.
19 Connection aggregators, such as m-Qube, link content providers, service providers, and users

¹ A common short code is a five- or six-digit number to which wireless users can send text messages to access mobile content.

² The requestors expect that, in the case of political committees, CTIA will review Commission records to verify committee treasurers and addresses and search for adverse regulatory history. The requestors also expect that, in the course of reviewing the Committee’s application for a short code, CTIA may contact the Committee’s treasurer, rather than directly contact Representative Cooper.

1 together. m-Qube operates direct interconnection gateways with all of the nation's major public
2 wireless service providers.

3 Typically, a wireless user initiates a text message transaction by texting a predetermined
4 word or phrase to a short code. For example, in the aftermath of the 2010 earthquake in Haiti,
5 individuals texted the word "HAITI" to Code "90999" to make ten dollar donations to the Red
6 Cross. The connection aggregator then sends a reply text message that asks the user to confirm
7 his or her desire to engage in the specific transaction. Once confirmation has been received, the
8 user has completed the "opt-in" process and a charge will appear on the next wireless bill
9 associated with that wireless user's phone number. A wireless service provider will generally
10 forward payment to the connection aggregator about seven to ten days after receiving it. A
11 connection aggregator generally accumulates all funds designated for a specific content provider
12 from all wireless service providers over a 30-day period before forwarding the accumulated
13 funds to the content provider – in this example Red Cross. Both the wireless service provider
14 and the connection aggregator deduct fees from the payment; thus, the amount received by the
15 content provider is less than the amount paid by the wireless subscriber.

16 Wireless service providers maintain records of their wireless subscribers' names and
17 addresses and the phone numbers of the wireless users associated with each subscriber's account.

18 2. *Service Order Between m-Qube and the Committee*

19 The Committee intends to enter into a service order with m-Qube to enable the
20 Committee to receive contributions by text message. The terms of the service order will be
21 consistent with those approved by the Commission in Advisory Opinion 2012-17 (m-Qube):
22 The Committee must be registered "and in good standing" with the Commission and relevant
23 State authorities; the Committee may register only one short code; no mobile phone number may

1 make contributions exceeding \$50 per month to the Committee; and contributors must certify
2 their eligibility to make a contribution under the Act and Commission regulations. Because
3 common short codes are “country-specific,” only users who obtain service through U.S.-based
4 wireless service providers will be able to use a short code to complete an opt-in.

5 Also consistent with the Commission’s determination in Advisory Opinion 2012-17 (m-
6 Qube), m-Qube will require the Committee to use m-Qube’s factoring service. Factoring is a
7 financial transaction in which an entity (here, the Committee) sells its accounts receivable to a
8 third party (here, m-Qube) at a discount in exchange for receiving a percentage (or “factor”) of
9 its outpayment on an expedited basis.³ m-Qube currently offers factoring as an optional service
10 in exchange for a fee to customers who wish to receive a portion of their outpayments more
11 quickly than the normal industry practice would allow and has stated that it will make factoring
12 mandatory for political committees. Additional information on m-Qube’s factoring practices
13 appears in Advisory Opinion 2012-17 (m-Qube).

14 m-Qube does not propose to identify any of the wireless users whose opt-ins it analyzes
15 as part of the factoring process or to transmit their names and addresses to the Committee,
16 consistent with its current practice for customers that are not political committees. m-Qube will,
17 however, provide the Committee with the ten-digit phone number associated with each
18 contribution, as well as (1) the amount and date of the contribution, (2) confirmation that the
19 contributor affirmatively consented to charge the contribution to his or her wireless bill, and (3)
20 confirmation that the contributor certified his or her eligibility to make a contribution under the
21 Act and Commission regulations.

³ An “outpayment” is the total amount that a recipient content provider is entitled to receive after all fees have been deducted by the wireless service providers and connection aggregators. A “factor” is a reduced percentage of the outpayment.

1 m-Qube will also give the Committee access to a running, real-time tally of the dollar
2 amount of contributions made via text message from each phone number and will configure its
3 gateway to inform the Committee if contributions from any one phone number equal or exceed
4 \$200 in a calendar year. Once alerted, the Committee will collect the contributor's identifying
5 information via text message by texting the contributor a web form to complete, or by other
6 legally permitted methods. The Committee will receive further contributions via text message
7 from that phone number only after it has obtained the contributor's identifying information. If
8 that information is not provided by the contributor, then the Committee will take steps to refund
9 any contribution over \$200 and prevent that number from making additional contributions via
10 text messaging. Further, if the Committee receives information about a contributor indicating
11 that the contributor is a prohibited source, the Committee will take steps to refund the
12 contribution and block the number from texting any further contributions. The Committee will
13 take these steps based only on the information that m-Qube makes available to the Committee in
14 m-Qube's ordinary course of business and without receiving any information from, or entering
15 into any contractual relationships with, wireless service providers.

16 3. *Agreements Between Wireless Service Providers, m-Qube, and the Committee*

17 After the Committee receives its short code and completes a service order with m-Qube,
18 m-Qube will work with the wireless service providers to gain access to their networks to
19 communicate with mobile phone users. Even after CTIA has leased a short code to the
20 Committee, the wireless service providers may permit or prohibit any type of text message
21 program, and the wireless service providers may establish the conditions or rules that govern the
22 manner in which a text message program may be operated.

1 The Committee will have no direct contractual relationship with the wireless service
2 providers. Rather, m-Qube maintains its own contractual relationships with the wireless service
3 providers, and any agreement between m-Qube and a wireless service provider would be an
4 amendment to the standing master agreement between m-Qube and the wireless service provider.
5 Due to trade secret concerns and antitrust regulations, the rates in these agreements are
6 confidential and are not disclosed, including to the Committee. The requestors also represent
7 that, aside from charitable programs where service is provided for free, wireless service
8 providers do not offer different rates for specific types of text message programs.

9 ***Questions Presented***

- 10 1. *As between m-Qube, the carriers and the Committee, does the Committee bear the*
11 *responsibility to determine its contributors' eligibility, which it would do by adopting the*
12 *necessary safeguards?*
13
14 2. *If the Committee performs several of its own tasks and employs several of its own*
15 *safeguards regarding the \$50 monthly limit on contributions; the recordkeeping*
16 *obligations for contributions that tally in excess of \$200; and the limitation of one short*
17 *code per campaign: will the Committee have fulfilled all the responsibilities for*
18 *compliance under the Act without any additional action by any carrier or aggregator*
19 *other than those set forth in this request?*
20
21 3.
22
23 a.
24 i. *If any given carrier offering this service is not offering a discount on these*
25 *services as provided in the ordinary course of business to all customers, is*
26 *it correct that if m-Qube received a special discount from a carrier for*
27 *political committees, and passed that savings on to the Committee, that the*
28 *Committee could be seen as receiving an in-kind contribution, since the*
29 *discount was not "usual and normal?"*
30
31 ii. *If any given carrier concludes that it could offer m-Qube a discount*
32 *consistent with its ordinary course business practices, and m-Qube passed*
33 *that savings on to the affected political committees, would the Committee*
34 *be safe in receiving those savings without being viewed as having*
35 *accepted an in-kind corporate contribution?*
36

1 *b. Please confirm the Treasurer will not be receiving an impermissible “in-kind”*
2 *contribution from the carriers when the carriers follow their normal business*
3 *practices with respect to administering premium SMS programs, and that if any*
4 *changes are made it is because normal practices are not relevant to, or are*
5 *impracticable for, political committees.*

6
7 4. *Can the Committee avoid receiving an “in-kind” contribution if it or any other political*
8 *committee is subjected to eligibility requirements established by the aggregators and the*
9 *wireless carriers for determining whether a committee may participate in a text*
10 *messaging contribution campaign?*

11
12 5. *Please confirm that nothing in Advisory Opinion 2012-17 (m-Qube) prevents treasurers*
13 *from being subject to the methods wireless service providers normally process payments*
14 *to connection aggregators.*

15
16 **Legal Analysis and Conclusions**

17 1. *As between m-Qube, the carriers and the Committee, does the Committee bear the*
18 *responsibility to determine its contributors’ eligibility, which it would do by adopting the*
19 *necessary safeguards?*

20
21 2. *If the Committee performs several of its own tasks and employs several of its own*
22 *safeguards regarding the \$50 monthly limit on contributions; the recordkeeping*
23 *obligations for contributions that tally in excess of \$200; and the limitation of one short*
24 *code per campaign: will the Committee have fulfilled all the responsibilities for*
25 *compliance under the Act without any additional action by any carrier or aggregator*
26 *other than those set forth in this request?*

27
28 Yes, the Committee is responsible for determining the eligibility of its contributors. The
29 Committee will satisfy its responsibilities under the Act by employing the safeguards described
30 below.

31 The Act and Commission regulations impose certain requirements on treasurers of
32 political committees. A treasurer of a political committee “must keep an account of (1) all
33 contributions received by or on behalf of such political committee; (2) the name and address of
34 any person who makes any contribution in excess of \$50, together with the date and amount of
35 such contribution by any person; [and] (3) the identification of any person who makes a
36 contribution or contributions aggregating more than \$200 during a calendar year, together with

1 the date and amount of any such contribution.” 2 U.S.C. 432(c)(1)-(3); *see* also 11 CFR
2 110.4(c). Commission regulations also state that “[t]he treasurer shall be responsible for
3 examining all contributions received for evidence of illegality and for ascertaining whether
4 contributions received, when aggregated with other contributions from the same contributor,
5 exceed the [Act’s] contribution limitations.” 11 CFR 103.3(b).

6 In Advisory Opinion 2012-17 (m-Qube), the Commission approved a proposal very
7 similar to the one proposed here.⁴ As in that advisory opinion, the requestors propose to enter
8 into a service order that will require: (1) the Committee to register only one short code; (2) a
9 monthly limit of \$50 for contributions to the Committee from any single mobile phone number;⁵
10 (3) contributors to certify their eligibility to make a contribution under the Act and Commission
11 regulations; (4) the Committee to have real time access to m-Qube’s running tally of
12 contributions made from mobile phone numbers; and (5) the Committee to use m-Qube’s
13 factoring services. In addition, only wireless users who obtain service through U.S.-based
14 wireless service providers will be able to complete an opt-in. The Committee will take
15 additional steps to comply with the Act’s reporting and recordkeeping provisions if the
16 Committee receives information that a contributor has made contributions aggregating in excess
17 of \$200 in a calendar year.⁶ Under this proposal: the m-Qube gateway will alert the Committee

⁴ Because no political committee was a party to that request, the Commission did not comment as to political committees’ recordkeeping and reporting requirements.

⁵ As explained further in the text, the \$50 monthly limit on contributions ensures that the requirement in 2 U.S.C. 432(b) and 11 CFR 102.8(a) to forward to the Committee the contributor’s name and address and the date of receipt of the contribution will not be triggered.

⁶ m-Qube’s agreement with the Committee will include all of the terms discussed in Advisory Opinion 2012-17 (m-Qube). The Committee will thus also be required to refund to m-Qube any factored contributions that it receives in excess of the amounts later received by m-Qube from wireless service providers, to post deposits to guard against such overpayments, or to have any overpayments offset against future factored payments. *See* Advisory Opinion 2012-17 (m-Qube).

1 when the value of contributions made from any one mobile phone number meets or exceeds
2 \$200, which will prompt the political committee to collect the information necessary to identify
3 the contributor before accepting additional contributions. The Commission determines that all of
4 these safeguards, taken together, will enable the Committee to satisfy its requirements under the
5 Act and Commission regulations.⁷

6 As compared to political committees, the Act and Commission regulations impose
7 comparatively fewer obligations on persons who receive and forward political contributions.
8 *Compare* 2 U.S.C. 432(b) (requiring persons who receive contributions for political committees
9 to forward the contributions to the political committees' treasurers within either ten or 30 days)
10 *with* 2 U.S.C. 432(c) (recordkeeping requirements) *and* 2 U.S.C. 433 (filing requirements) *and*
11 2 U.S.C. 434(a)-(b) (reporting requirements). *See also* Advisory Opinion 2009-32 (Jorgensen)
12 ("Contributions from foreign nationals, corporations, labor organizations, and [F]ederal
13 contractors are prohibited. The political committee, *not the vendor*, is responsible for
14 determining the legality of contributions.") (emphasis added).⁸

15 Although persons who receive and forward contributions in excess of \$50 to political
16 committees must also forward the contributors' names, addresses, and other identifying
17 information, 2 U.S.C. 432(b); 11 CFR 102.8(a), (b), none of the contributions under the proposal
18 here will exceed \$50. The Commission determined in Advisory Opinion 2012-17 (m-Qube) that
19 on these facts, contributions will be made when the user completes an opt-in. Because of the \$50

⁷ This conclusion does not relieve the Committee of the obligation to return or refund any contributions that it receives if it subsequently learns that they came from a prohibited source. *See generally* 11 CFR 103.3(b), 110.20(a)(4), (g).

⁸ Similarly, in Advisory Opinion 1978-68 (Seith for Senate), the Commission premised its conclusion that contributions by credit card were permissible on the "assum[ption] that the credit card issuers (BankAmericard and Master Charge) will follow their usual and normal collection procedures with respect to obtaining payment from persons who used their credit cards to make political contributions to the Committee." *Id.*

1 monthly cap, no single opt-in will exceed \$50. Therefore, the obligation under 2 U.S.C.
2 432(b)(1)-(2) to forward the contributors' names, addresses, and other identifying information to
3 the Committee will not be triggered. The Committee, however, will be able to satisfy its
4 obligations under 2 U.S.C. 432(c)(3) regarding persons who will make a contribution
5 aggregating more than \$200 during a calendar year.

6 Accordingly, for the reasons stated above, the Committee will have fulfilled the
7 responsibilities for compliance under the Act and Commission regulations.

8 3.

- 9
- 10 a.
- 11 i. *If any given carrier offering this service is not offering a discount on these*
12 *services as provided in the ordinary course of business to all customers, is*
13 *it correct that if m-Qube received a special discount from a carrier for*
14 *political committees, and passed that savings on to the Committee, that the*
15 *Committee could be seen as receiving an in-kind contribution, since the*
16 *discount was not "usual and normal?"*
- 17
- 18 ii. *If any given carrier concludes that it could offer m-Qube a discount*
19 *consistent with its ordinary course business practices, and m-Qube passed*
20 *that savings on to the affected political committees, would the Committee*
21 *be safe in receiving those savings without being viewed as having*
22 *accepted an in-kind corporate contribution?*
- 23

24 The Act and Commission regulations prohibit corporations from making a contribution in
25 connection with a Federal election. *See* 2 U.S.C. 441b(a); 11 CFR 114.2(b)(1). A contribution
26 includes "any gift, subscription, loan, advance, or deposit of money or anything of value made
27 by any person for the purpose of influencing any election for Federal office." 2 U.S.C.
28 431(8)(A)(i); 11 CFR 100.52(a); *see also* 2 U.S.C. 441b(b)(2); 11 CFR 114.2(b)(1). "Anything
29 of value includes all in-kind contributions," including the provision of goods or services without
30 charge or at a charge that is less than the usual and normal charge. *See* 11 CFR 100.52(d)(1).
31 "Usual and normal charge" is defined as the price of goods in the market from which they

1 ordinarily would have been purchased at the time of the contribution, or the commercially
2 reasonable rate prevailing at the time the services were rendered. *See* 11 CFR 100.52(d)(2).

3 The requestors represent that wireless service providers base their text message program
4 rates on commercial considerations, such as volume of messages, refund rates, customer
5 satisfaction, and technical level of effort. As a general matter, the requestors state that, aside
6 from charitable programs where services are provided for free, wireless service providers do not
7 differentiate their rates among text message programs. The requestors, however, also represent
8 that m-Qube may attempt to negotiate special rates for its political committee program when it
9 amends its master agreements with wireless service providers, and to pass any savings on to the
10 Committee.

11 The Commission has previously determined that a political committee's "purchase of
12 goods or services at a discount does not result in a contribution if the discounted or
13 complimentary goods were available to others on equal terms or as part of a pre-existing
14 business relationship." Advisory Opinion 1994-10 (Franklin National Bank); *see also* Advisory
15 Opinion 2006-01 (PAC for a Change) (approving a bulk purchase of books at a discount because
16 "the items [were] made available in the ordinary course of business and on the same terms and
17 conditions offered to the vendor's other customers that are not political committees"). The
18 Commission has also found, however, that a corporation may not provide a discount to a political
19 committee "where a political committee [is] accorded preferential treatment different from other
20 customers, or the treatment [is] *outside of a business relationship*." Advisory Opinion 1994-10
21 (Franklin National Bank) (emphasis added); *see also* Advisory Opinion 1991-23 (Retail
22 Druggists) (corporation may not provide a car for a political committee to use as a raffle price
23 because doing so would violate 2 U.S.C. 441b).

1 M-Qube, therefore, may pass on discounts that it negotiates with wireless service
2 providers to the Committee as part of m-Qube’s plan for all committees on an “equal, non-
3 partisan basis” without the amount of discounts constituting corporate in-kind contributions to
4 the Committee if: (1) m-Qube receives discounts from wireless service providers for their
5 services in processing contributions by text message that are consistent with the discounts that
6 m-Qube receives from wireless service providers in connection with similar services rendered to
7 customers that are not political committees; or (2) the discounts otherwise reflect commercial
8 considerations, such as volume of messages, refund rates, customer satisfaction, and technical
9 level of effort, and do not reflect considerations “outside of a business relationship.”⁹

10 *b. Please confirm the Treasurer will not be receiving an impermissible “in-kind”*
11 *contribution from the carriers when the carriers follow their normal business*
12 *practices with respect to administering premium SMS programs, and that if any*
13 *changes are made it is because normal practices are not relevant to, or are*
14 *impracticable for, political committees.*
15

16 As discussed above, the definition of contribution includes “any gift . . . of . . . anything
17 of value made by any person for the purpose of influencing any election for Federal office.”
18 2 U.S.C. 431(8)(A)(i); 11 CFR 100.52(a); *see also* 2 U.S.C. 441b(b)(2); 11 CFR 114.2(b)(1).
19 “Anything of value includes all in-kind contributions.” 11 CFR 100.52(d)(1).

20 The requestors represent that CTIA and the wireless service providers adhere to routine
21 business practices when administering text message programs. Before leasing a short code,
22 CTIA vets content providers. It does this by reviewing publicly available incorporation
23 documents, contacting the content provider’s corporate leadership by phone and email, and
24 searching for any adverse regulatory actions or litigation history. Wireless service providers also

⁹ In reaching this conclusion, the Commission assumes that *m-Qube*’s normal commercial practice is to pass negotiated discounts to its customers that are not political committees or that passing on such a discount reflects commercial considerations and not considerations “outside of a business relationship.”

1 engage in a diligence review of content providers before entering into agreements with
2 aggregators that represent the content providers. Furthermore, CTIA maintains industry best
3 practice standards to protect consumers from deceptive marketing, and, upon the implementation
4 of a text message program, CTIA monitors compliance with these standards.

5 While the requestors expect CTIA and wireless service providers to conform to these
6 normal business practices in connection with the Committee's text message program, the
7 requestors also note that the Committee is different from content providers with which CTIA and
8 the wireless service providers have previously done business. Specifically, the Committee is
9 regulated under the Act and Commission regulations, and public documents pertaining to the
10 Committee may facilitate the vetting process. The requestors expect, therefore, that CTIA and
11 the wireless service providers may tailor their business practices accordingly. CTIA and the
12 wireless service providers may, for example, search the Commission's website for available
13 information on the Committee and contact the Committee's treasurer, rather than directly
14 contacting Representative Cooper.

15 The Commission concludes that the Committee would not receive a "gift . . . of . . .
16 anything of value" from CTIA and wireless service providers that engage in these business
17 practices when reviewing and administering the Committee's text message program. Nor would
18 the Committee receive a "gift . . . of . . . anything of value" from CTIA and wireless service
19 providers that use publicly available information about the Committee to vet the Committee
20 before issuing a short code or approving the Committee's proposal.

21 Accordingly, the Committee will not receive an impermissible in-kind contribution when
22 CTIA or the wireless service providers apply their normal business practices in their
23 administration of the Committee's text message program.

1 4. *Can the Committee avoid receiving an “in-kind” contribution if it or any other political*
2 *committee is subjected to eligibility requirements established by the aggregators and the*
3 *wireless carriers for determining whether a committee may participate in a text*
4 *messaging contribution campaign?*

5
6 Yes, the Committee can avoid receiving an in-kind contribution if it and other political
7 committees are subjected to eligibility requirements established by aggregators and wireless
8 service providers for determining whether a political committee may participate in a text
9 messaging contribution campaign. This answer is not altered if the application of those
10 requirements results in the Committee being able to receive contributions via text message and
11 other political committees not being able to do so, so long as the requirements are based on
12 commercial, rather than political, considerations.

13 The Commission has recognized that a vendor may establish and apply eligibility criteria
14 to political committees in order to protect the commercial viability of the vendor’s program.
15 In Advisory Opinion 2006-34 (Working Assets), for example, the Commission approved an
16 affinity program that a corporate vendor proposed to make available to any political party
17 committee and nonconnected committee that asked to participate, “without regard to party
18 affiliation or ideological orientation, ‘but subject to each particular program’s commercial
19 viability, determined by common commercial principles,’ including, for example, size of
20 membership and hence number of potential customers, potential for long-term customer
21 commitment, strength of trademark, and credit rating of membership.” Further, in finding the
22 program to be commercially reasonable, the Commission “assume[d] that *the commercial*
23 *viability of the vendor’s relationship with each political committee would stand or fall on its*
24 *own,*” and thus that the vendor “would not depend on profitability from its relationship with

1 other [non-political committee] clients to sustain the arrangement with a particular [political]
2 committee sponsor.” *Id.* (emphasis added).

3 Accordingly, the Committee may receive contributions by text message without also
4 receiving an in-kind contribution, even if some other political committees are ineligible to raise
5 funds via text messages under eligibility criteria established by aggregators and wireless service
6 providers, so long as the criteria are based on commercial, rather than political, considerations.

7 5. *Please confirm that nothing in Advisory Opinion 2012-17(m-Qube) prevents treasurers*
8 *from being subject to the methods wireless service providers normally process payments*
9 *to connection aggregators.*

10
11 In Advisory Opinion 2012-17 (m-Qube) the Commission approved m-Qube’s proposal to
12 process contributions by text message for political committees. To the extent the proposal here
13 is “indistinguishable in all its material aspects,” 2 U.S.C. 437f(c), from that proposal, the
14 Committee’s treasurer may rely upon it when accepting contributions by text message. *See also*
15 *Advisory Opinion 1978-68 (Seith for Senate), supra n.7.* To the extent the proposal here differs,
16 none of those changes affects the permissibility of m-Qube’s planned payment arrangements
17 with the wireless service providers.

18 This response constitutes an advisory opinion concerning the application of the Act and
19 Commission regulations to the specific transaction or activity set forth in your request. *See*
20 *2 U.S.C. 437f.* The Commission emphasizes that, if there is a change in any of the facts or
21 assumptions presented, and such facts or assumptions are material to a conclusion presented in
22 this advisory opinion, then the requestor may not rely on that conclusion as support for its
23 proposed activity. Any person involved in any specific transaction or activity which is
24 indistinguishable in all its material aspects from the transaction or activity with respect to which
25 this advisory opinion is rendered may rely on this advisory opinion. *See 2 U.S.C. 437f(c)(1)(B).*

1 Please note that the analysis or conclusions in this advisory opinion may be affected by
2 subsequent developments in the law, including, but not limited to, statutes, regulations, advisory
3 opinions, and case law. The cited advisory opinions are available on the Commission's website,
4 www.fec.gov, or directly from the Commission's Advisory Opinion searchable database at
5 <http://www.fec.gov/searchao>.

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On behalf of the Commission,

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Caroline C. Hunter

Chair