



1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
MCLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wileyrein.com

October 11, 2011

Caleb P. Burns
202.719.7451
cburns@wileyrein.com

VIA FAX: 916.322.6440

Fair Political Practices Commission
428 J Street
Sacramento, CA 95814

Re: Comments to Notice to Adopt 2 Cal. Code Regs. Section 18421.31
regarding Text Message Contributions

Dear Commissioners:

On behalf of CTIA-The Wireless Association, I respectfully submit these comments to the notice to adopt 2 Cal. Code Regs. Section 18421.31 regarding Text Message Contributions (the "Notice"). CTIA is participating in this proceeding to assist the Commission in its understanding of the practical and legal issues presented by the proposed regulation, and takes no position on the underlying proposal.

Background

CTIA is an incorporated nonprofit trade association that has represented the wireless communications industry since 1984. Members in the association include wireless service providers and their suppliers, as well as providers and manufacturers of wireless data services and products. One of CTIA's activities is to serve as the administrator of the Common Short Codes ("CSC"s) used to address text messages sent over wireless networks.

Four types of organizations work together to bring CSCs to wireless users. They include (1) content providers, (2) application providers, (3) connection aggregators, and (4) wireless service providers.

1. Content Providers

Content providers are typically media organizations, advertisers, and consumer product companies interested in disseminating content to wireless users. Content providers develop and/or sponsor programming or promotions that are conducted via CSCs. Under the proposed regulation, political committees would be content providers.



Fair Political Practices Commission
October 11, 2011
Page 2

2. Application Providers

Each text message addressed to an active CSC is routed to an application. The application processes the action dictated by the CSC. Under the proposed regulation, if a wireless user sends a text message to a CSC to make a contribution to a political committee, the application would process the contribution request. An application can be developed and/or hosted by a content provider or a separate application provider.

3. Connection Aggregators

Applications must be connected to wireless service providers' networks in order to receive and process text messages by CSC. Connection aggregators have authorized connections to multiple wireless networks and maintain the security, technical, and service level requirements of each wireless network. The connection aggregators serve as the intermediary between the content/application providers and the wireless service providers.

4. Wireless Service Providers

Referred to by many names (e.g., wireless carriers, mobile operators, wireless networks), wireless service providers are the companies from which wireless subscribers purchase their mobile phone service and send text messages by CSC.

Proposed Regulation

The proposed regulation is composed of five subparts, the three most relevant to these comments are:

1. The contributor of a text message contribution will be the wireless user subscribed to the phone number from which the text message contribution originates. Proposed 2 Cal. Code Regs. § 18421.31(c).
2. Text message contributions are considered received on the date a connection aggregator receives the funds. *Id.* § 18421.31(b).



Fair Political Practices Commission

October 11, 2011

Page 3

3. A political committee that receives a text message contribution must record, and potentially report:

- (a) identifying information about the contributor,
- (b) the amount of the contribution,
- (c) the date the contribution is received,
- (d) the transaction fees associated with the contribution, and
- (e) the identity of each entity to which a transaction fee was paid.

Id. § 18421.31(d) (citing recordkeeping obligations of § 18401(a)), (c).

These requirements will, however, pose significant compliance challenges to a political committee that accepts contributions by text message. There is no uniform protocol between connection aggregators and content providers regarding the collection and sharing of the above-described information. A political committee will only be able to collect and record this information if: (1) it is available to the connection aggregator, and (2) the connection aggregator's contract with the political committee accommodates sharing of this information.

With regard to the first point, it is important to note that identifying information about the contributor, i.e., the wireless subscriber, will not be available to political committees. Privacy laws and business practices prevent wireless service providers from sharing wireless subscriber information with third parties. Accordingly, political committees will be unable to obtain and record who is contributing to them by text message.¹

Federal Law

The Notice states that "it is the political committees that have a duty to comply with the ... recordkeeping and reporting requirements" and the proposed "regulation is not imposing any new duties or regulatory burden on ... wireless carriers or

¹ With regard to "family plans" and the large number of employers who provide wireless phones to their employees, the wireless service provider will know the billing name and address associated with the account holder, but most likely will not know the identity of the persons associated with the underlying phone numbers. Even if the wireless service providers could share what information they have, the proposed regulation – which defines the contributor as "the person who is subscribed to the cell phone number that texted in the contribution," proposed 2 Cal. Code Regs. § 18421.31(e) – does not clearly address this issue.



Fair Political Practices Commission

October 11, 2011

Page 4

vendors." However, current federal campaign finance law will impose such duties and burden even if the proposed regulation does not.

For example, federal law prohibits contributions by foreign nationals "in connection with a Federal, State, or local election." 2 U.S.C. § 441e (emphasis added). When CTIA received an advisory opinion from the Federal Election Commission ("FEC") regarding the permissibility of text message contributions for federal political committees, the FEC concluded that wireless service providers did not have an adequate "safeguard against the prohibitions on contributions from foreign nationals." See FEC Advisory Op. 2010-23 at 9 (Nov. 19, 2010). The FEC concluded that wireless service providers would be required to collect and report "information raising questions as to the legality of a contribution" (e.g., a foreign address of a wireless subscriber) to the recipient of any text message contribution. *Id.*

Wireless service providers do not have the capability to comply with this requirement that, as just explained, applies to federal, state, and local fundraising by text message. Accordingly, the current federal requirements will undoubtedly prevent wireless service providers from offering text message political contribution services to federal, state, or local political committees notwithstanding the proposed regulation.

I trust the Commission will find this information useful in its consideration of the proposed rule. Thank you for the opportunity to participate in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Caleb P. Burns".

Caleb P. Burns

Counsel to CTIA-The Wireless Association