



State of Washington PUBLIC DISCLOSURE COMMISSION

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TO: Members, Public Disclosure Commission
FROM: Nancy Krier, General Counsel
DATE: May 16, 2013
SUBJECT: Interpretation 00-02, *Guidelines for Internet Contributions* and
Interpretation 95-05, *Fundraising Through 900 Telephone Numbers*
- May 22, 2013 Meeting

Agenda Item

The May 22 agenda includes discussion of possible draft revisions to Interpretation 00-02, *Guidelines for Internet Contributions*. The proposal would combine Interpretation 00-02 with Interpretation 95-05 (*Fundraising Through 900 Telephone Numbers*). The proposal would also (1) make the two interpretations consistent regarding treatment of transaction fees, and (2) include a reference to contributions made by new technologies such as text message contributions, explaining they must comply with current laws and rules.

Background

As discussed at Commission meetings in 2012 – 2013, nonprofit organizations are finding success in allowing persons to make donations via wireless telephone text messages. This fundraising model is expanding to political campaigns. Some jurisdictions have adopted procedures to enable text message contributions for political campaign fundraising. The Commission has been studying the possibility for Washington campaigns.

Two PDC interpretations address contributions made by what in the past was considered newer mechanisms: Interpretation 95-05, *Fundraising Through 900 Telephone Numbers*, and Interpretation 00-02, *Guidelines for Internet Contributions*. The Commission has discussed possibly combining and standardizing these interpretations, and perhaps adding procedures for text message contributions. As previously discussed, the interpretations are not consistent on how transaction or processing fees are to be handled. See enclosed chart.¹

Over the past year, the Commission has reviewed:

- Information concerning laws and rules applicable to text message campaign contributions in Washington;

¹ Staff has also noted that Interpretation 95-05 addresses the timing restriction for contributions during the legislative session freeze, but 00-02 does not.

- Information from the FEC and several states (Maryland, California and Texas) about what they require for text message contributions;
- Information from guest speakers, including from the wireless industry, and from other stakeholders.

One stakeholder suggested in June 2012 that the Commission should provide guidance on text message contributions since there is a large interest in this topic. He suggested that Interpretation 95-05 (1-900 numbers) could be easily applied to text message contributions.

In this process, staff has noted that if the Commission wishes to proceed, one option could include drafting amendments to a current interpretation, or drafting a new interpretation.

Draft Amendments to Interpretation 00-02

At this point, staff suggests the Commission consider:

- Using Interpretation 00-02 as the vehicle for providing future guidance and update it;
- Making the guidance consistent for processing contributions made over the Internet and contributions made via 1-900 telephone numbers;
- Explaining those same procedures can be used for campaign contributions made via text message or other technologies, pending changes in the law or rules;
- Explaining the Commission can revisit its approach if the laws or rules change; and,
- Repealing Interpretation 95-05 because 00-02 will supersede it.

The enclosed draft amendments to Interpretation 00-02 include those steps.

In suggesting this approach, staff recognizes that current mobile phone and text message industry practices may not easily accommodate the requirements in current Washington law (such as enabling the recipient campaign to obtain contributor names and addresses, or where applicable, occupation and employer information). However, unless or until future legislation provides different requirements, the current laws and rules apply and Commission guidance is necessarily constrained by those requirements.

Therefore, the enclosed draft proposes “if you build it they will come.” This means the draft explains that a campaign in Washington can receive text message contributions, so long as they can be processed like contributions made over the Internet or via 1-900 numbers, and so long as current laws and rules are satisfied. If the laws or rules change in the future, or new technologies present new contribution processing methods that should be considered, the Commission can revisit its guidance.

Next Steps

Staff suggests a preliminary discussion of this approach occur at the May 22 meeting. If the Commission concurs in the approach, staff could conduct additional stakeholder outreach and place this item on the June 27 Commission agenda for action.

The Commission may also wish to consider whether to pursue agency request legislation on this topic to modernize relevant laws to increase the likelihood that carriers will offer text message contribution programs to political campaigns in Washington State.

FYI

You may recall the FEC has issued several advisory opinions on text message contributions. The FEC is now considering rulemaking. On April 25, 2013, the FEC approved an *Advance Notice of Proposed Rulemaking on Technological Modernization*. The FEC website describes that in publishing this notice:

[The FEC] is seeking comment on possible updates to its regulations to address electronic transactions and other technological advances. Among other things, the Commission is considering whether to revise its regulations to reflect electronic transactions made by debit cards, credit cards, gift cards, Internet-based payment processing and online banking. A rulemaking could also address the receipt, deposit, accounting, recordkeeping, reporting, redesignation and reattribution of electronic transactions, as well as matching funds, conduit activity and contributions made via text message. The Commission is also considering whether to eliminate references to outmoded technologies such as telegrams and fax machines.

Thus, there may be more information forthcoming from the FEC on technological developments related to processing campaign contributions. This information may assist the Commission in the future.

Enclosures: Draft Amendments to Interpretation 00-02
Current Interpretation 00-02
Current Interpretation 95-05
Summary Chart

**Draft Amendments to
Interpretation 00-02**

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Draft Amendments for Discussion May 2013

PDC Interpretation

APPROVAL DATE:	June 29, 2000	NUMBER:	00-02
STATUS:	New June 29, 2000; Revised May 26, 2011; Revised XXXX, 2013	SUPERSEDES:	None; 95-02
REFERENCES:	RCW 42.17.020(14) RCW 42.17.060 RCW 42.17.065 RCW 42.17.080 RCW 42.17.090 RCW 42.17A.005 RCW 42.17A.220 RCW 42.17A.225 RCW 42.17A.235 RCW 42.17A.240 RCW 42.17A.475 RCW 42.17A.560	APPROVED BY:	The Commission

GUIDELINES FOR INTERNET CONTRIBUTIONS MADE OVER THE INTERNET, VIA 1-900 TELEPHONE NUMBERS, AND USING OTHER TECHNOLOGIES

Introduction

This interpretation is intended to provide guidance on contributions made via the Internet, 1-900 telephone numbers, and by other technologies.

Nothing in this interpretation is to be construed as permitting other than full compliance with the provisions of RCW 42.17A RCW and 390 WAC, including proper identification of contributors when required and the other provisions in the laws and rules. These guidelines are not a substitute for the provisions of RCW 42.17A and Title 390 WAC. Rather, the guidelines are designed to assist filers in complying with their legal obligations. The law and rules are always controlling in the event of any conflict with or omission in the guidelines.

The Commission may examine this interpretation and revise it as the laws or rules change, or as technological developments result in new methods for making campaign contributions.

Contributions Made Over the Internet or Via 1-900 Telephone Numbers

Candidates and political committees are subject to the following guidelines when accepting and reporting contributions made over the Internet **or via 1-900 telephone numbers (1-900 numbers)**.

- ~~1. Individuals or political committees must use their own credit or debit cards to make contributions over the Internet. Employees or officers of businesses, unions or other entities may not use corporate cards issued in their name to make personal contributions. A corporation may make a contribution over the Internet using its corporate credit or debit card.~~
1. A contribution is considered **made** on the date the contributor sends the electronic confirmation **over the Internet** authorizing the expenditure, **or the date the telephone call is placed by the contributor to the 1-900 number**.
2. A contribution is **received** on the date when the candidate, treasurer, deputy treasurer, campaign manager, campaign chairperson or similarly situated campaign official receives notice of the contribution, **obtains possession of the contribution, or the contribution becomes available for use by the campaign, whichever occurs first. WAC 390-05-215. Example: The date a campaign receives notice from its online vendor that a credit card transaction occurred is the date of receipt.**
3. A candidate or political committee must treat the **full amount** of a donor's contribution as the contributed amount, even though the candidate or political committee may receive a lesser amount because of transaction fees. A notation explaining why the contributions reported do not equal with the bank deposit is to be kept as part of the candidate's or political committee's books of account.
4. All contributions must be deposited into the candidate's or political committee's bank account within five days of receipt by the candidate or political committee.
5. A separate Cash Receipts/Monetary Contributions report (PDC form C-3) for each bank deposit of contributions made over the Internet **or by a 1-900 number** must be filed with the Commission.
6. Transaction fees paid to vendors for web-based **or 1-900 number** contribution services are to be reported on a Schedule A to the C-4 Report in compliance with [chapter 42.17A RCW](#).
7. When a contribution is made by credit card or debit card over the Internet **or via a 1-900 number** the term "written instrument" as used in [RCW 42.17.740 RCW](#)

42.17A.475 includes any electronic record of the transaction created and transmitted by the cardholder or any record created and transmitted to the recipient candidate or political committee by the telephone carrier. These records must be preserved by the recipient candidate or political committee for five calendar years in compliance with RCW 42.17.065(7) or .080(5) RCW 42.17A.225 and RCW 42.17A.235.

8. For the purposes of RCW 42.17.065 RCW 42.17A.225 and RCW 42.17.080 RCW 42.17A.235, the following information concerning persons who contribute over the Internet or via a 1-900 number must be kept by candidates and political committees as part of the books of account and be available for audit and/or inspection of records.

- Name of Contributor
- Address of Contributor
- Date Contribution Received
- Amount Contributed
- Employer/Occupation (If required by WAC 390-16-034)

9. Although the credit card company or telephone carrier will receive payment from contributors making contributions (prior to forwarding the funds to the recipient political committee or candidate), the company or carrier is not an intermediary or conduit for the contribution any more than a post office would be for a mailed contribution.

10. Individuals or political committees must use their own credit or debit cards to make contributions over the Internet or via 1-900 numbers. Employees or officers of businesses, unions or other entities may not use corporate cards issued in their name to make personal contributions. A corporation may make a contribution over the Internet or via a 1-900 number using its corporate credit or debit card.

11. The legislative session freeze provisions in RCW 42.17A.560 apply to contributions made over the Internet and via 1-900 numbers.

- The legislative session freeze period begins 30 days before a regular session and again on the first day of a special session. It ends upon adjournment of each session. During that period, if the state official/candidate or anyone employed by or acting on the candidate's behalf receives contributions generated by the Internet or 1-900 numbers, the contributions must be returned.

- RCW 42.17A.560 does not exempt from its timing restriction contributions made over the Internet or 1-900 numbers prior to the beginning of the legislative session freeze period, but later received by the campaign. However, a contribution received through the U.S. mail after the 30th day before a regular legislative session may be accepted if the contribution is postmarked prior to the 30th day before the session.
- Distribution of ads seeking such contributions for state officials during the legislative session freeze would constitute impermissible solicitation of a contribution; therefore, such ads including website solicitations must be discontinued during the freeze.

These guidelines are not a substitute for the provisions of chapters [42.17A RCW](#) and [390 WAC](#). Rather, the guidelines are designed to assist filers in complying with their legal obligations. The law and rules are always controlling in the event of any conflict with or omission in the guidelines.

Contributions Made Via Other Technologies

The Commission recognizes technologies are developing quickly and campaigns may become interested in using new methods for processing contributions which are not specifically addressed above. For example, the Commission has become aware there may be interest by Washington campaigns in receiving contributions made via text messages on mobile phones.

However, campaigns must still satisfy current laws at RCW 42.17A and current rules in Title 390 WAC when they receive and report contributions, no matter which method is used to process the contribution. Among other things, those current laws provide for timely disclosure of contribution amounts and contributor information, timing restrictions for contributions to state officials during the legislative session freeze, and other provisions.

At this time, the Commission has determined that the provisions in this Interpretation that explain how contributions are processed over the Internet or via 1-900 numbers in a manner consistent with RCW 42.17A and Title 390 WAC will also apply to contributions processed via text messages and other technologies.

As noted in the introduction, the Commission may revisit this guidance in the future as technologies develop, or if the laws change.

Current Interpretations

95-05 and 00-02

RCW 42.17 was recodified to RCW 42.17A effective January 1, 2012 (see the [recodification cross-reference table](#)). For this interpretation see:
 RCW 42.17.020(14) = 42.17A.005(13)
 RCW 42.17.710 = 42.17A.560

PDC Interpretation

APPROVAL DATE:	October 24, 1995	NUMBER:	95-05
STATUS:	New	SUPERSEDES:	None
REFERENCES:	RCW 42.17.	APPROVED BY:	The Commission
SEE ALSO:			

Fund Raising Through 900 Telephone Numbers

The utilization of 900 numbers as a campaign fund raising mechanism in Washington State is a recent occurrence. This interpretation is intended to provide initial guidance. As campaigns and the Commission develop more experience with this fund raising method, additional advice will be provided as warranted.

Nothing in this interpretation is to be construed as permitting other than full compliance with the provisions of 42.17. RCW and 390 WAC, including proper identification of contributors when required, the restrictions regarding contributions from out-of-state businesses, and the other limitations and stipulations in the law and administrative rules.

1) Is the amount of a contribution donated using a 900 number the net amount the campaign actually receives from the transaction?

Yes. Even though the contributor will pay the telephone carrier several dollars in excess of the contribution amount to transmit the donation, this excess is analogous to postage costs and the amount of the contribution is the amount actually received by the campaign.

2) Is the date the contribution is received the date the campaign receives the lump sum check from the telephone carrier?

Yes. Although the telephone carrier will receive payment from donors making 900 number contributions prior to forwarding the funds to the campaign, the carrier is not an intermediary or conduit for the contribution any more than a post office would be for a mailed contribution. And, according to WAC 390-05-215, a contribution is received when the contribution comes into the possession of the campaign, or the campaign is informed of the contribution, or it is available for

use, whichever occurs first.

- 3) Is the date the contribution is made the date the telephone call to the 900 number is placed?

Yes. The telephone call triggers an obligation to pay the telephone carrier the amount designated by the caller (plus service charge). According to the definition of contribution in RCW 42.17.020(14), this pledge constitutes a contribution and this donation can reasonably be said to have occurred on the date of the call. (Note, however, that pledges may not be redeemed during the legislative session freeze period by those subject to the prohibition in RCW 42.17.710.)

- 4) During the legislative session freeze period, when state officials and persons acting on their behalf are prohibited from accepting or soliciting contributions, are callers prohibited from making contributions to such state officials/candidates using the 900 telephone number?

Yes. During the session freeze period, the 900 number should be discontinued as of the first day of the freeze period or carry a message that until 30 days after the regular session (or, if applicable, during a special session of the legislature), contributions may not be solicited or accepted.

- 5) During the legislative session freeze period, if the state official/candidate or anyone employed by or acting on the candidate's behalf receives any contributions, including contributions generated by the 900 number, must the contributions be returned?

Yes. RCW 42.17.710 does not exempt from the prohibition donations made prior to the beginning of the legislation session freeze period.

- 6) During the legislative session freeze period, is the state official/candidate or anyone employed by or acting on the candidate's behalf prohibited from distributing any advertisements of the 900 number?

Yes. Distribution of ads would constitute impermissible solicitation of a contribution.

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RCW 42.17 was recodified to RCW 42.17A effective January 1, 2012 (see the recodification cross-reference table). For this interpretation see:
RCW 42.17.020(14) = 42.17A.005(12) RCW 42.17.090 = 42.17A.240
RCW 42.17.060 = 42.17A.220 RCW 42.17.740 = 42.17A.475
RCW 42.17.065 = 42.17.225 / .065(7) = .225(7)
RCW 42.17.080 = 42.17A.235 / .080(5) = .235(8) or (5)

PDC Interpretation

APPROVAL DATE:	June 29, 2000	NUMBER:	00-02
STATUS:	New June 29, 2000 Revised May 26, 2011	SUPERSEDES:	None
REFERENCES:	<u>RCW 42.17.020(14)</u> <u>RCW 42.17.060</u> <u>RCW 42.17.065</u> <u>RCW 42.17.080</u> <u>RCW 42.17.090</u>	APPROVED BY:	The Commission

GUIDELINES FOR INTERNET CONTRIBUTIONS

Candidates and political committees are subject to the following guidelines when accepting and reporting contributions made over the Internet.

1. Individuals or political committees must use their own credit or debit cards to make contributions over the Internet. Employees or officers of businesses, unions or other entities may not use corporate cards issued in their name to make personal contributions. A corporation may make a contribution over the Internet using its corporate credit or debit card.
2. A contribution is considered made on the date the contributor sends the electronic confirmation authorizing the expenditure.
3. A contribution is received on the date when the candidate, treasurer, deputy treasurer, campaign manager, campaign chairperson or similarly situated campaign official receives notice of the contribution.
4. A candidate or political committee must treat the full amount of a donor's contribution as the contributed amount, even though the candidate or political committee may receive a lesser amount because of transaction fees. A notation explaining why the contributions reported do not equal with the bank deposit is to be kept as part of the candidate's or political committee's books of account.
5. All contributions must be deposited into the candidate's or political committee's bank account within five days of receipt by the candidate or political committee.
6. A separate Cash Receipts/Monetary Contributions report (PDC form C-3) for each bank deposit of contributions made over the Internet must be filed with the Commission.

7. Transaction fees paid to vendors for web-based contribution services are to be reported on a Schedule A to the C-4 Report in compliance with chapter 42.17 RCW.
8. When a contribution is made by credit card or debit card over the Internet the term "written instrument" as used in RCW 42.17.740 includes any electronic record of the transaction created and transmitted by the cardholder. These records must be preserved by the recipient candidate or political committee for five calendar years in compliance with RCW 42.17.065(7) or .080(5).
9. For the purposes of RCW 42.17.065 and RCW 42.17.080, the following information concerning persons who contribute over the Internet must be kept by candidates and political committees as part of the books of account and be available for audit and/or inspection of records.
 - Name of Contributor
 - Address of Contributor
 - Date Contribution Received
 - Amount Contributed
 - Employer/Occupation (If required by WAC 390-16-034)

These guidelines are not a substitute for the provisions of chapters 42.17 RCW and 390 WAC. Rather, the guidelines are designed to assist filers in complying with their legal obligations. The law and rules are always controlling in the event of any conflict with or omission in the guidelines.

Chart

Text Message Contributions

Washington Laws/Rules

RE QUESTION # 1:

Declaration of policy at RCW 42.17A.005:

- “Political campaign contributions are to be fully disclosed”;
- “The concept of attempting to increase financial participation by individual contributors” is supported by Congress and “as a consequence it is desirable to have state legislation;” and,
- “Small contributions by individual contributors are to be encouraged,” and “not requiring the reporting of small contributions may tend to encourage such contributions.”

RE QUESTIONS # 2, # 3

RCW 42.17A requires:

- Contributions must be **deposited** w/in 5 business days of **receipt**.
- **No bundling** by non-individuals.
- **Contributor information** must be collected (for all contributions except for a limited amount of anonymous contributions) & disclosed (name, address for contributions >\$25, occupation & employer for contributions > \$100).
- There are requirements for **reporting** contributions, pledges, maintaining records.
- Many contributions must be by **“written instrument.”**

Questions

1. Does the Commission want to consider addressing contributions made via wireless telephone text messages?



← See declaration of policy at RCW 42.17A.005.

2. If the answer to # 1 is yes, does the Commission want to take a similar approach it used for addressing contributions made through telephone 1-900 numbers or the Internet, to the extent possible?

↓ See these interpretations, and RCW 42.17A provisions summarized at left.←



Interpretation 95-05 (Contributions can be made via 1-900 numbers):

- The **net amount** of the contribution is the net amount the campaign actually receives after the transaction.
- The date the contribution is **“made”** is the date the telephone call is placed; it is **“received”** is when the campaign receives the lump sum check from the carrier.
- The telephone carrier acts in some ways like a post office – it is **not “bundling”** contributions.
- All requirements of RCW 42.17 and Title 390 WAC must be satisfied.



Interpretation 00-02 (Contributions can be made via the Internet using debit or credit cards):

- The contribution is the **full amount donated**, even though transaction fees may be assessed. Transaction fees paid to vendors are reported on a C-4 report.
- A contribution is **“made”** when contributor sends electronic confirmation authorizing the expenditure; a contribution is **“received”** on date campaign receives notice of the contribution.
- All contributions must be **deposited** within 5 days of receipt.
- Contributions made over the Internet with a credit or debit card are made with a **“written instrument.”**
- **Names and addresses** of contributors must be obtained, plus occupation/employer where required.
- All requirements of RCW 42.17 and Title 390 WAC must be satisfied.

3. If the answer to # 1 is yes, does the Commission also wish to consider procedures being implemented by the FEC, to the extent possible within Washington’s laws and rules?



↓The FEC:

- Allows **2 methods** to contribute via mobile phones: (1) by a text message to and from the recipient, to a code registered to a campaign; or (2) by providing a mobile phone number to a committee’s website in lieu of a credit card number & the contributor receives a text message with a PIN # & enters it into the committee’s website.
- Requires a **contributor to confirm** it intends to engage in the transaction & certify eligibility to contribute.
- **Limits contributions to \$10-\$20/transaction** and \$50/month per phone (per campaign).
- Requires contributions (minus processing fees) to be **sent to campaign** within 10 days of **receipt**, through a “factoring” process with the carrier equivalent to an extension of credit.
- Provides that **no contributor names/addresses associated with a mobile phone are provided to the political candidate or committee for contributions less than \$50/month**, per current FEC law. However, committees will have access to a gateway where the tally of contributions is maintained, allowing committees to identify phone numbers with contribution totals of \$200+ (the FEC reporting threshold).