MEMORANDUM

TO: The Commission
FROM: Lawrence H. Norton, General Counsel
       Rosemary C. Smith, Associate General Counsel
       J. Duane Pugh, Acting Assistant General Counsel
       Anthony Buckley, Attorney

Subject: Draft AO 2006-27

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for October 18, 2006.

Attachment
ADVISORY OPINION 2006-27

Ms. Cynthia Czuchaj
Prime Choice Entertainment
1845 S. El Molino
San Marino, CA 91108

Dear Ms. Czuchaj:

We are responding to your advisory opinion request on behalf of Prime Choice Entertainment ("Prime Choice") concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to Prime Choice’s planned website. Prime Choice plans to offer website viewers an opportunity to view commercials sponsored by certain corporations. In exchange for the viewers answering questions about commercials, Prime Choice would contribute funds from these corporations to political party committees as directed by the viewers.

The Commission concludes that Prime Choice may not carry out its plan without violating the Act and Commission regulations.

Background

The facts presented in this advisory opinion are based on your letters received on July 31 and August 22, 2006.

Prime Choice is a for-profit corporation that would operate a website located at http://www.yourtimecounts.org. This website would operate as follows: An individual accessing the website would choose a commercial to view on that website and either a national political party committee or a nonprofit organization to receive a contribution or donation. The individual will not be permitted to receive any payment under any circumstances. After the individual views the commercial and answers a question, the commercial’s corporate sponsor will forward a 25-cent payment to Prime Choice. Prime
Choice will keep ten percent of the payment as its share, and forward the remaining 90 percent to the political committee or other recipient selected by the individual.

**Question Presented**

*May Prime Choice forward funds it receives from corporations to national political party committees?*

**Legal Analysis and Conclusions**

No, Prime Choice may not forward any funds it receives from corporations to national political party committees.

The Act provides that, “[a] national committee of a political party (including a national congressional campaign committee of a political party) may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of this Act.” 2 U.S.C. 441i(a)(1).

The Act specifically prohibits any corporation from making a contribution or expenditure in connection with any Federal election. See 2 U.S.C. 441b(a). A “contribution” includes “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.” 2 U.S.C. 431(8)(A)(i); see also 2 U.S.C. 441b(b)(2). “Anything of value” is considered to include all in-kind contributions, including the provision of goods or services without charge. 11 CFR 100.52(d)(1).

A “commercial vendor” is any person “providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services.” 11 CFR 116.1(c). Commission regulations permit
a commercial vendor to provide goods or services to political committees in the ordinary

course of business and at the usual and normal charge. See 11 CFR 114.2(f)(1).

A business model such as yours is permissible only under certain conditions.

First, to avoid prohibited corporate contributions, any funds given to a political

committee must be the personal funds of individuals, not corporate funds. See Advisory

Opinions 2006-8 (Brooks), 2004-19 (DollarVote), 2003-16 (Providian National Bank),

and 2002-7 (Careau).

Your proposal would not result in personal funds of individuals being used to

make contributions. Your website viewers would not have the option of keeping the

payments for viewing ads for themselves. Without that option, the funds would remain

the corporate sponsors' funds and would never become the personal funds of the

individuals. Providing these funds to national party committees would result in corporate

contributions in violation of 2 U.S.C. 441b.

Second, if a corporation such as Prime Choice were to operate as a commercial

vendor, it must meet three conditions to avoid an impermissible corporate contribution.

First, the commercial vendor must be compensated for the costs it incurs in processing

and forwarding contributions to the political committees. Specifically, either individual

contributors or the recipient political committees must reimburse the commercial vendor

for its costs. Second, the funds from individuals must be placed in a separate merchant

account and not commingled with corporate treasury funds. Third, contributors must

attest to the legality of their contributions and provide certain identifying information,

which the commercial vendor must then forward to the recipient political committees.

See Advisory Opinions 2006-8 (Brooks), 2004-19 (DollarVote), and 2002-7 (Careau).
Your proposed business model does not contemplate either the contributors or the recipient political committees reimbursing Prime Choice for its transmittal costs. Nor would it prevent the commingling of contributions with Prime Choice’s corporate funds. Finally, under your proposal, Prime Choice would not collect or provide information to the recipient national party committees about individual contributors to allow those committees to meet their reporting obligations under the Act.

Thus, Prime Choice’s business model fails to take any of the steps necessary to act as a commercial vendor in its dealings with the national party committees. As a result, if Prime Choice were to proceed, forwarding any funds to these political committees would result in impermissible corporate contributions by Prime Choice to these committees.¹

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity.

Sincerely,

Michael E. Toner
Chairman


¹ Because Prime Choice would not contribute to candidates, the Commission’s conduit regulations at 11 CFR 110.6 are not applicable to your proposal.