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FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 18, 2000

AGENDA ITEM
For Meeting of: 5-25-00

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrson
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Jonathan M. Levin
Senior Attorney

Subject: Draft AO 2000-07

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for May 25, 2000.

Attachment

ADVISORY OPINION 2000-07

Jonathan B. Newton
Baker & McKenzie
2300 Trammell Crow Center
2001 Ross Avenue
Dallas, Texas 75201

Dear Mr. Newton:

This responds to your letter dated April 12, 2000, on behalf of Alcatel USA, Inc. ("Alcatel USA" or "the company"), requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations to messages to employees with respect to the company's separate segregated fund ("SSF").

Alcatel USA is a Delaware corporation and its principal place of business is in the United States. The company has an SSF, Alcatel USA, Inc. PAC ("Alcatel PAC" or "the PAC"), which filed its statement of organization with the Commission in 1987 and is qualified as a multicandidate committee.¹ You state that the PAC is funded entirely by contributions from stockholders, Alcatel USA's executive and administrative personnel, and the families of such persons. Your request asks about the permissibility of an intranet vehicle for information about Alcatel PAC that would entail messages to employees beyond the restricted class. You also ask about the permissibility of the use of an electronic mail mailing list for messages to the restricted class.

Proposed activity

Alcatel USA has developed a new intranet web site called the AUSA Government Relations Web Site ("the government relations site") which is available only to the employees of Alcatel USA. On this site, the company will post information regarding: (1) the status of regulatory and legislative activities of interest to the company and its employees; (2) contact information for the elected representatives in both the House and

¹ The PAC originally filed under the name DSC Communications Corporation PAC, reflecting the name of Alcatel USA's predecessor. In 1998, an amended statement of organization was filed to report the change to the present name.

1 the Senate for locales where the company has a presence; (3) information on the activities
2 of the company's government relations office; and (4) general information on
3 Washington D.C. and Federal agencies. Alcatel USA will also post the following
4 message on the site:

5 Alcatel USA, Inc. supports the operation of the Alcatel USA, Inc.
6 Political Action Committee ("the Alcatel PAC") as authorized by, and in
7 accordance with, federal law. Under applicable law, participation in the
8 Alcatel PAC is limited to only those Alcatel USA employees who hold
9 high-level administrative, executive or managerial responsibilities in the
10 U.S.² The Alcatel PAC funds are used to make contributions to candidates
11 for federal office. Under applicable law, the amounts that may be
12 contributed to and by a PAC are limited, and steps must be taken to ensure
13 that employee contributions to the PAC are strictly voluntary and without
14 coercion. The Executive Committee of the Alcatel PAC decides what
15 federal candidates merit consideration for contributions. Employees
16 desiring additional information on their eligibility or about the activities of
17 the Alcatel PAC may contact Alcatel USA Political Action Committee,
18 1100 Coit Road, Plano, TX 75075, Attention: [name, phone number and
19 e-mail address of Alcatel PAC official].
20

21 In addition to the above paragraph, the government relations site will provide a
22 link to a separate web site specifically for Alcatel PAC (the "PAC site"). The link will
23 take readers to a web page that requests a password before access will be granted to the
24 PAC site. This page will contain the following messages, set off in contrasting type and
25 within a border:

26 Federal law prohibits the Alcatel USA Political Action Committee
27 from soliciting donations from other than stockholders, executive and
28 administrative personnel and the families of such individuals. Any
29 contribution received from any other person will be returned to the donor.
30

31 Employees desiring additional information on their eligibility to
32 participate or about the activities of the Alcatel PAC may contact Alcatel
33 USA Political Action Committee, 1000 Coit Road, Plano, TX 75075,
34 Attention: [name, phone number and e-mail address of Alcatel PAC
35 official].
36

² The Commission notes that the PAC may also solicit contributions from the families of executive and administrative personnel of Alcatel USA, and may solicit contributions from the individual stockholders of Alcatel USA, and the families of such stockholders. The PAC may not, however, solicit contributions from any foreign national. See footnote 4 and citations therein.

1 When an employee contacts the Alcatel PAC for additional information, the
2 individual's eligibility will be determined before any additional information is provided.
3 If, in response to a request for information, an individual is determined to be outside of
4 the restricted class, such person will be referred to the Federal Election Commission for
5 any information on file and publicly available. A member of Alcatel USA's restricted
6 class will be provided with further information, including access to the PAC site. A
7 separate and unique password will be provided to the member of the restricted class in
8 order to access the PAC site. The PAC site will contain information about the activities
9 of Alcatel PAC, including discussion of the aims and philosophy of the PAC, the
10 candidates it endorses, and the legislation it supports.

11 Alcatel PAC also proposes to institute an electronic mail mailing list (the
12 "ListServe") to which only members of the restricted class will belong. After an
13 employee contacts Alcatel PAC for additional information, and her eligibility is
14 confirmed, she will be invited to participate in the ListServe. The employee will be free
15 to decline such participation. The ListServe will consist of the e-mail addresses of
16 solicitable members only. The PAC will use the ListServe to send e-mail messages to
17 those persons containing solicitations for contributions to Alcatel PAC and information
18 about the PAC's activities, including discussion of the aims and philosophy of the PAC,
19 the candidates it endorses, and the legislation it supports.

20 Since the government relations site is accessible to all of the employees of Alcatel
21 USA, the quoted messages will be available to more than just a *de minimus* number of
22 persons outside the restricted class. You therefore ask whether the messages that can be
23 viewed prior to a request by an employee for further information constitute a solicitation.
24 You also ask whether the PAC may institute the List Serve proposal.

25 ***Legal Analysis***

26 As an exception to the general prohibition on corporate contributions and
27 expenditures, the Act and Commission regulations permit a corporation, or its separate
28 segregated fund, to solicit voluntary contributions to such a fund at any time from its
29 "restricted class." The restricted class consists of the corporation's executive and
30 administrative personnel, its stockholders, and the families of such persons. 2 U.S.C.

1 §441b(b)(4)(A)(i), 11 CFR 114.1(c) and 114.5(g)(1);³ *see also* 2 U.S.C. §441b(b)(4)(B),
2 11 CFR 114.6 (prescribing conditions under which other employees may be solicited
3 twice yearly in writing). In order for Alcatel USA to implement the proposed activities,
4 they must be permissible under 2 U.S.C. §441b(b)(4)(A)(i).⁴

5 The issue of whether a corporate communication constitutes a solicitation for
6 contributions to the corporation's SSF is not specifically addressed in the Act or
7 Commission regulations. The Commission has addressed the issue in specific advisory
8 opinions where it has reviewed the particular language of a communication and analyzed
9 whether the language does, in fact, solicit participation. Specifically, the Commission has
10 determined whether the language or information provided would either encourage readers
11 to support an SSF's activities or facilitate making contributions to the SSF. *See, e.g.*,
12 Advisory Opinions 1999-6, 1991-3, 1988-2, 1983-38, 1982-65, 1980-65, 1979-66, and
13 1979-13.

14 One of these opinions addressed communications with features similar to the
15 company's message on the government relations site. Advisory Opinion 1983-38
16 considered an article in a corporation's monthly newsletter announcing the formation of
17 an SSF and stating that it would solicit funds only from high-level corporate employees,
18 that the funds would be used to make contributions to Federal candidates, that amounts
19 contributed to and by the SSF would be limited under Federal law, that steps must be-
20 taken to ensure that employee contributions are strictly voluntary and without coercion,

³ The Commission has, under limited circumstances, applied the Act to permit the distribution of solicitation messages in journals, magazines, or newsletters outside the restricted class. The message must include an explicit caveat stating that contributions will be screened and those from persons who are not solicitable will be returned; the declared return or refund policy must be implemented by the SSF; and both the actual number and the percentage of unsolicitable persons must be incidental or *de minimus*, as compared to the entire circulation of the publication. *See* Advisory Opinion 1999-6 and opinions cited therein. The Commission considers a corporate intranet web site as very similar to a newsletter that a corporation would send to its employees. As already indicated, the quoted messages will be available to more than a *de minimus* number of employees outside the restricted class.

⁴ The Commission notes that Alcatel USA is a subsidiary of Alcatel, a French company. Under 2 U.S.C. §441e and 11 CFR 110.4(a), it is unlawful for a foreign national to make a contribution in connection with any Federal or non-Federal election. Moreover, foreign nationals may not be solicited for contributions. Thus, Alcatel USA's restricted class may not include the foreign national employees or stockholders of Alcatel USA or of any of its affiliated companies. *See* 11 CFR 110.4(a)(2); *see also* Advisory Opinions 1999-28 and 1982-34. The Commission also notes that Alcatel USA is required to administer Alcatel PAC in accordance with the requirements of 11 CFR 110.4(a)(3), which prohibits foreign national participation. *See, e.g.*, Advisory Opinion 1995-15.

1 and that a committee of corporate employees would decide which candidates the SSF
2 would support. The Commission noted that, while the proposed article "may engender
3 some inquiries" about the SSF from readers who are not solicitable, it did nothing to
4 encourage or facilitate participation, did not praise employees for contributing, and did
5 not inform the reader that unsolicited contributions from employees outside the restricted
6 class would be accepted. Advisory Opinion 1983-38.

7 Other opinions have examined situations where certain information about the
8 PAC was made available in newsletters or by other means, such as totals of contributions
9 made and received in the past, the number of past recipient candidates, and the
10 identification of such candidates. See Advisory Opinions 1988-2, 1982-65, 1979-66, and
11 1979-13. The mere statement of such information without further language of
12 encouragement has not been construed to be a solicitation. However, the Commission
13 concluded that solicitation would occur where a newsletter stated the amounts raised and
14 spent by the SSF, the methods used by the SSF to determine its contribution recipients,
15 and the number of employees participating in the past year, and contained a quotation
16 from the fund's chairman commending the enthusiasm of those employees. Advisory
17 Opinion 1979-13.

18 The paragraph that appears on the government relations site refers to the fact that
19 Alcatel USA supports Alcatel PAC, and it describes generally the functions of any
20 corporate SSF and the laws applicable to its operations. It is similar to the language
21 addressed in Advisory Opinion 1983-38 and determined not to be a solicitation.
22 Although the paragraph also states that employees desiring additional information on
23 their eligibility or about the PAC's activities may contact the PAC (and this is repeated on
24 the web page introducing the PAC site), such a statement merely conveys information
25 that might engender inquiry; it is not an encouragement to contribute. In addition,
26 the web page introducing the PAC site discourages attempts to contribute by stating that
27 contributions received from persons outside the restricted class will be returned.

28 The Commission concludes, therefore, that the messages on the government
29 relations site and the web page introducing the PAC site do not, either separately or taken

1 together, constitute a solicitation. Alcatel USA may post those messages on the described
2 web site locations for viewing by employees in or outside the restricted class.

3 Your brief description of the content of the messages on the PAC site after the
4 introductory web page indicates that viewers who qualify for access to the PAC site will
5 likely receive PAC contribution solicitations once they enter the site. By providing a
6 separate and unique password only to persons in the restricted class and by limiting
7 access to those password holders only, Alcatel USA would ensure that solicitations for
8 contributions to the PAC would comply with the restrictions of 2 U.S.C.

9 §441b(b)(4)(A)(i) and 11 CFR 114.5(g). The Commission concludes that Alcatel USA's
10 proposal for posting messages on its intranet web sites is permissible under the Act.

11 As indicated above, those employees who have contacted the PAC for additional
12 information and are determined to be part of the restricted class will be invited to
13 participate in ListServe, which will be used to send SSF solicitations and other
14 communications to those employees. As already explained, solicitations for contributions
15 to the PAC may be sent at any time to persons within the restricted class. Moreover, the
16 Act and Commission regulations exempt from the definition of "contribution or
17 expenditure" any communication by a corporation to its restricted class. 2 U.S.C.
18 §441b(b)(2)(A); 11 CFR 114.3(a). The use of electronic mail for SSF solicitations and
19 other communications to the restricted class is permissible under the Act. See Advisory
20 Opinion 1995-33.

21 This response constitutes an advisory opinion concerning the application of the
22 Act and Commission regulations to the specific transaction or activity set forth in your
23 request. See 2 U.S.C. §437f.

24 Sincerely,

25
26
27 Darryl R. Wold
28 Chairman
29

30 Enclosures (AOs 1999-28, 1999-6, 1995-33, 1995-15, 1991-3, 1988-2, 1983-38, 1982-65,
31 1982-34, 1980-65, 1979-66, and 1979-13)
32

