



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 30, 1987

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1987-27

Phillip R. Marx, Esq.
Bell Atlantic Corporation
1600 Market Street
Philadelphia, PA 19103

Dear Mr. Marx:

This responds to your letter of August 18, 1987, as supplemented by letters of September 2 and 16, 1987, requesting an advisory opinion on behalf of Bell Atlantic Corporation ("Bell Atlantic") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the coordination of various telephone services on a national basis for 1988 presidential campaigns.

Bell Atlantic states that it is in the business of providing local exchange¹ and exchange access² telephone service. These services, regulated by the Federal Communications Commission ("FCC") and state authorities, are furnished pursuant to tariffs filed by Bell Atlantic with regulatory authorities. The tariffs are designed to recover all costs involved in providing telephone service, including the processing of service orders, billing and collections, as well as a return on investment. Bell Atlantic indicates that no additional or separate charge is imposed on any customer whose service needs and billing arrangements require more attention than another customer. This extra attention would include the services of an account executive assigned by Bell Atlantic to that customer.

Bell Atlantic explains that presidential campaigns present to the telephone companies a unique combination of subscriber characteristics, often requiring heavy, non-traditional use of local exchange and exchange access services. Bell Atlantic indicates that this non-traditional use of telephone services places the company in a financially risky position. For example, presidential committees request service installation within days of placement of a service order which effectively eliminates the ability of the telephone company to qualify the person placing the order as an authorized user, or to obtain adequate advance deposit for telephone usage. The

committees also have a need for heavy telephone usage over a very short period, for example the month before a primary, without further need for service thus negating the traditional penalty associated with unpaid telephone bills, the denial of further service. Bell Atlantic asserts that questionable ordering authorizations, potentially inadequate account security and the lack of meaningful deterrent to non-payment, make presidential campaign accounts the riskiest handled by Bell Atlantic.³

In an attempt to meet the needs of the presidential campaigns, as well as reduce the financial risk to Bell Atlantic and the other six regional telephone companies, the companies propose entering into a Reciprocal Agreement and a National Payment Agreement ("NPA").⁴ Bell Atlantic states that the purpose of the Reciprocal Agreement is to establish centralized controls over the priority of telecommunication services to presidential candidates to ensure adequate security and timely payment for services rendered. See Reciprocal Election Service Agreement, at 26.⁵ Under the Reciprocal Agreement, Bell Atlantic would contract with all interested telephone companies ("Participating Companies") that provide local exchange and exchange access service. The agreement would require the participating company chosen by the candidate, usually the company located within the candidate's campaign headquarters region, to provide a national campaign coordinator ("NCC") to centralize and service all of the candidate's local and exchange access needs. On behalf of the candidate, the NCC would, among other things, coordinate requests for local exchange services with all other participating companies; obtain adequate security from the campaign for all service orders; and consolidate bills from all participating companies for presentation to the campaign.⁶ The NCC would be supervised by the telephone company furnishing the NCC. Bell Atlantic states that the NCC will not offer suggestions or provide any consulting services to the presidential candidate(s). The NCC will not, for example, be involved in equipment recommendations and orders, or in the selection of a long-distance carrier. All services provided by the NCC will be in relation to providing local exchange and exchange access for the presidential campaigns.

As previously stated, costs and profits for all services provided by Bell Atlantic, as well as other participating companies, are designed to be recovered pursuant to tariffs authorized by regulatory agencies. No separate tariff currently exists which permits Bell Atlantic to separately charge a candidate for the services provided outside of the Bell Atlantic region.⁷ In return for the services of an NCC, the candidate must agree to the NPA and all of the restrictions contained therein. The NCC program will be available to any candidate who agrees to the terms of the NPA. Under the NPA, the candidate would submit to certain conditions not traditionally imposed on customers of the participating companies. The candidate must agree that all requests for service be placed only by specified agents of the candidate with the NCC to reduce the possibility of unauthorized requests; to provide the amount of financial security requested by the NCC (generally letters of credit); and to be subject to consolidated bills submitted at least three times a month with payment made within 10 days of submission.

This request raises the issue of whether the NCC services provided to a presidential candidate by Bell Atlantic, or any other participating company, are contributions under the Act. The Act prohibits a corporation from making a contribution or expenditure in connection with any Federal election. 2 U.S.C. 441b(a). The term "contribution or expenditure" is defined to include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any

services, or anything of value ... to any candidate, [or] campaign committee ... in connection with any [Federal] election... ." 2 U.S.C. 441b(b)(2). See also 11 CFR 114.1(a)(1). In addition, the Commission's regulations, describing the term "anything of value", state that if goods or services are provided at less than the usual and normal charge, the difference between the usual and normal charge and the amount actually charged the political committee would constitute an in-kind contribution from the seller. 11 CFR 100.7(a)(1)(iii); see also Advisory Opinions 1987-2, 1986-22 and 1985-28.

Bell Atlantic contends that the NPA and Reciprocal Agreement are not "services," to a presidential campaign or in the alternative, if the activities do constitute services, that Bell Atlantic will receive fair compensation from the candidates for the services rendered. The Commission concludes that while Bell Atlantic's activities are "services" to the presidential campaign, Bell Atlantic will be adequately compensated for the services pursuant to the NPA and the Reciprocal Agreement.

Bell Atlantic states that the NCC will place service orders for the candidate with all participating companies throughout the country, companies that are, as a result of the MFJ, separate and distinct companies from Bell Atlantic. In addition, the NCC will coordinate requests for payment security and consolidate all billings from participating companies on behalf of the candidate. These billing coordination and consolidation services will also be performed with respect to billings generated by long distance carriers selected by the candidates, but not affiliated with Bell Atlantic. These are clearly "services" of value to a presidential campaign.

Bell Atlantic will operate the NCC program, which originated in response to financial losses suffered by the telephone companies from non-payment of bills by presidential candidates, on a non-partisan basis with any candidate who agrees to the NPA eligible to participate. In return for centralizing service for the candidate's local and exchange access needs, the candidate must agree to terms that are more stringent than a regular telephone customer. These terms, the restrictions on authorized ordering agents, the providing of full security and three times a month billing, constitute adequate compensation for the NCC services. These restrictions on the campaign are more stringent in several respects than those provided for in FCC regulations. See 47 CFR Part 64, Subpart H. The terms of the NPA enable the telephone company to significantly reduce the financial risks inherent in providing service to presidential campaigns. In addition, these services are, given the circumstances presented, comparable to those normally provided by Bell Atlantic to its customers within its region. See Advisory Opinions 1987-24, 1986-22, 1982-30 and 1978-45. As mentioned, Bell Atlantic, in the course of its regular services to customers, provides account executives to high volume customers without additional charge to those customers. Therefore, it would be permissible for Bell Atlantic to provide the services of NCC personnel to a presidential candidate in the specific factual circumstances discussed herein. See 2 U.S.C. 437f(c) and 11 CFR 112.5.

The Commission expresses no view as to possible ramifications of the NPA, or the Reciprocal Agreement, on the Modification of Final Judgment because such issues are outside its jurisdiction.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely,

(signed)

Thomas J. Josefiak
Vice Chairman for the Federal Election Commission

Enclosures (AOs 1987-24, 1987-2, 1986-22, 1985-28, 1982-30 and 1978-45).

1/ "Local exchange service" is defined as telephone calls originating and terminating within an exchange area.

2/ "Exchange access" is defined as the connection between the customer's telephone line and the long-distance carrier selected by the customer.

3/ In support of this contention, Bell Atlantic states that collection efforts are still underway with respect to candidates from the 1968 presidential campaign.

4/ Under the terms of the Modification of Final Judgment ("MFJ") agreed to by American Telephone & Telegraph Company and the Department of Justice on August 28, 1982, as amended, there are now seven regional, unaffiliated and separate companies providing local exchange or exchange access services nationwide. Bell Atlantic is one such company.

5/ Bell Atlantic states that an arrangement similar to the NPA and the Reciprocal Agreement has been used in presidential campaigns since the problems encountered by the telephone companies in 1968.

6/ For a complete list of the duties of the NCC, see the National Campaign Coordinator's Job Description, at 6-7.

7/ As part of the Reciprocal Agreement, each participating company that designates an NCC will bear its own costs of furnishing NCC services.