



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 8, 1988

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1988-28

Paul E. Suplizio
4012 Moss Place
Alexandria, VA 22304

Dear Mr. Suplizio:

This responds to your letter dated June 7, 1988 requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the use of candidate teleprograms to promote political messages.

You state that Tele/900 Inc., incorporated in California "and doing business as Teleline, plans to provide a service that allows presidential campaign committees and the Republican or the Democratic National Committees to communicate messages to the public through a limited number of nationwide telephone channels. The public may listen to the messages, called teleprograms, by accessing American Telephone and Telegraph Company's ("AT&T") DIAL-IT 900 Information Service ("900 service"). AT&T's 900 service permits simultaneous connection by many callers to a sponsored information or polling program. Sponsors of information programs provide the announcement transmitted to callers and pay telephone companies tarified rates for establishing the service and for each call made to that service. In addition to the tarified rates, sponsors are liable for charges associated with minimum call volumes. Separate from the tariff, AT&T offers a premium billing contract, whereby AT&T includes on the AT&T telephone bill the charges the sponsor chooses to bill callers for its teleprograms. These charges are not AT&T charges. Therefore, if a caller refuses to pay the charges, it will not affect the caller's telephone service.

You explain that Teleline's agreement with AT&T to utilize the 900 service treats Teleline the same as other sponsors of information programs. Teleline must pay all AT&T tarified charges for the establishment of and the calls to the 900 service. Accordingly, neither callers nor message producers are liable to AT&T. Moreover, AT&T will offer the same premium billing contract to Teleline for political messages as it has with Teleline for non-political messages. The agreement

for non-political messages requires Teleline to charge a caller no more than \$2.00 for the first minute and \$.35 for each minute thereafter.

You indicate that Teleline currently packages and sells non-political teleprograms to the public through AT&T's 900 service. Teleline in association with a sponsor advertises, markets, and publicizes the teleprogram and in some situations pays a royalty to the sponsor based on call volume. When a sponsor pays the majority of the advertising, marketing, and public relations costs, Teleline pays a significantly increased fee to that sponsor.

You state that candidates and political committees have expressed interest in purchasing their own 900 service directly from AT&T, acting as both producer and distributor of their own messages. AT&T, however, cannot offer candidates or committees this option during the 1988 election cycle, because AT&T has already leased all of its information channels. Therefore, Teleline proposes to offer candidates 900 service through Teleline's access.

You explain that under Teleline's proposed arrangement, candidates must produce their messages and include a tagline in their existing advertising to promote the 900 service to callers willing to pay to access the teleprograms. Teleline, on the other hand, will be solely liable for AT&T tariff charges for the 900 service and solely liable for the charges on AT&T's premium billing contract.

You indicate that Teleline seeks an advisory opinion regarding two alternative contractual arrangements which you describe as Case One and Case Two. Under Case One, Teleline will not remit any royalty to the candidate from the revenue Teleline earns from the calls made to the teleprograms. Therefore, Teleline will retain all monies from calls that exceed AT&T's tariffs and charges. Under Case Two, Teleline will remit to the candidate a royalty based on a percentage of the revenue generated from each call after Teleline has received enough revenue to pay AT&T's tariffs and charges. This royalty represents the standard royalty Teleline offers non-political message producers. Therefore, you ask whether under both of these cases the candidate or party committee would receive a contribution from AT&T,* Teleline, and the callers.

Contribution From Teleline

The Act prohibits a corporation from making any contribution or expenditure in connection with any Federal election to any political office. 2 U.S.C. 441b(a), 11 CFR 114.2(b). The term "contribution or expenditure" is defined to include "any direct or indirect payment, loan, advance, deposit or gift of money, or services, or anything of value...to any candidate... [or] campaign committee...in connection with any [Federal] election...." 2 U.S.C. 441b(b)(2), 11 CFR 114.1(a)(1).

The Commission concludes that the facts as presented would result in a prohibited corporate contribution under the Act and regulations. Given this conclusion, the Commission does not reach the question as to whether payments by callers to a teleprogram would represent contributions under the Act.

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 yours,

(signed)

Thomas J. Josefiak
Chairman for the Federal Election Commission

*/ The Act authorizes the Commission to issue an advisory opinion in response to a "complete written request" from any person with respect to a specific transaction or activity by the requesting person. 2 U.S.C. 437f(a). Commission regulations explain that requests on behalf of a requesting person, such as a corporation, must be made by an "authorized agent of such person." 11 CFR 112.1(a). Because you are requesting an advisory opinion on behalf of Teleline and not AT&T, this opinion does not address the relationship between AT&T and a candidate or committee. The Commission notes, however, that AT&T has apparently received the usual and normal charge from Teleline for access to the 900 service.