



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 24, 1990

Michael A. Nemeroff
Sidley & Austin
1722 Eye Street, N.W.
Washington, D.C. 20006

RE: AOR 1990-14

Dear Mr. Nemeroff:

This refers to your letter dated July 6, 1990, requesting an advisory opinion on behalf of American Telephone & Telegraph Company and its subsidiary, AT&T Communications, Inc. (hereinafter referred to collectively as "AT&T"), concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the provision of 900 line telephone services to promote candidates and political committees.

On August 23, 1990, the Commission, after reviewing a draft opinion from the Office of General Counsel ("OGC"), voted to refer the opinion back to OGC with the direction that certain additional information be obtained from the requestor. Accordingly, this Office requests that you provide responses to the questions set out below.

- (1) Describe the timing involved in the purchase of receivables by the local exchange carrier and receipt of funds by AT&T, and the subsequent transmission of those funds. State whether payments are made to AT&T before or after the callers have paid their bills and whether AT&T passes on such payments before or after the callers have paid their bills.
- (2) State whether any sanctions are applied to callers for nonpayment of a valid 900 line charge. Describe such sanctions, the circumstances in which such sanctions would occur, and the likelihood that such sanctions would be applied.
- (3) State whether a service bureau or political committee is joining in your request for an advisory opinion.
- (4) Clarify what you mean by your representation that there will still be numbers for which a caller's name and address cannot be identified. State whether or not

there are records of names and addresses, with a local exchange carrier or other telephone company, that correspond to each telephone number.

You are welcome to provide documentation with respect to your responses to the above questions.

Upon receipt of your responses to the above questions, this Office and the Commission will give further consideration to your request. If you have any questions concerning this letter or the advisory opinion process, please contact the undersigned.

Sincerely,

Lawrence M. Noble
General Counsel

BY:

N. Bradley Litchfield JML
N. Bradley Litchfield
Associate General Counsel

66 8246

RECEIVED
FEDERAL ELECTION COMMISSION

SIDLEY AUSTIN LLP
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

ONE FIRST NATIONAL PLAZA
CHICAGO, ILLINOIS 60603
312: 553-7000 FAX: 312-553-7012

2049 CENTURY PARK EAST
LOS ANGELES, CALIFORNIA 90067
213: 553-8100 FAX: 213-556-6544

875 THIRD AVENUE
NEW YORK, NEW YORK 10022
212: 418-2100 FAX: 212-418-2165

1722 EYE STREET, N.W.
WASHINGTON, D.C. 20006
TELEPHONE 202: 429-4000
TELEX 89-463
FACSIMILE 202: 429-6144

15 KING WILLIAM STREET
LONDON, EC4N 7SA, ENGLAND
441: 621-1616 FAX: 441-626-7937

5 SHENTON WAY
SINGAPORE 0106
65: 224-3000 FAX: 65-224-0530

ASSOCIATED OFFICE:

HASHIDATE LAW OFFICE
IMPERIAL TOWER, 7TH FLOOR
1-1, UCHISAIWAICHO 1-CHOME
CHITODA-KU, TOKYO 100 JAPAN
03-504-3800 FAX: 03-504-1009

Michael A. Nemeroff
(202) 429-4235

October 16, 1990

Chairperson Lee Ann Elliott
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: AOR 1990-14

Supplement To
AOR 1990-14

Dear Chairperson Elliott:

We are responding to a letter requesting additional information concerning the above-captioned AOR received from Associate General Counsel N. Bradley Litchfield. We will respond to Mr. Litchfield's questions; however, we first wish to reiterate strongly our dissatisfaction with the draft AO presented to the Commission at the meeting on August 23, 1990. The draft AO fails to answer the third and fourth questions, which are the most important of AT&T's AOR. The third question asks whether AT&T has any obligation under FECA if it remits funds from a caller which a political committee is prohibited from accepting. The purpose of this question is to determine whether AT&T will comply with FECA if it follows its usual and normal billing and collections procedures at its usual and normal charge. The fourth question asks "If AT&T's customer, the telephone service bureau, and its political committee customers comply with AT&T's MultiQuest[®] guidelines, will they be in compliance with FECA?" The purpose of this question and AT&T's guidelines is to determine what telephone service bureaus and political committees must do to comply with FECA.¹

¹ There is one minor correction to AT&T's MultiQuest[®] guidelines that should be noted. The guideline as written requires the Sponsor (i.e. the telephone service bureau) to forward AT&T's Call Detail Report to the political committee within two days of receipt. This appears unnecessarily inflexible, and we are planning to change the guidelines to a "prompt" forwarding of the Report unless the Commission objects.

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF THE CLERK
90 OCT 17 AM 11:03

Chairperson Lee Ann Elliott
October 17, 1990
Page 2

The AOR raises the important question of whether 900 telephone service may be employed to raise political contributions. We believe this technology provides the opportunity to increase substantially the number of small contributors to Federal candidates. This serves important policy goals favored by the Congress and the Commission. Without a clear Commission opinion as to whether AT&T's usual and normal practices comply with the Act, and whether compliance with its guidelines by political committees and service bureaus will also satisfy the Act, the telecommunications industry is unlikely to offer 900 service to political candidates. The policies that favor small contributions should encourage the Commission to answer to AT&T's questions. This will require a major revision of the staff's draft AO which simply failed to respond to these questions.

The Commission's letter raised the following four questions to which we shall respond:

QUESTION 1. Describe the timing involved in the purchase of receivables by the local exchange carrier and receipt of funds by AT&T, and the subsequent transmission of those funds. State whether payments are made to AT&T before or after AT&T passes on such payments before or after the callers have paid their bills.

RESPONSE. There is no uniform practice with respect to the issues raised in this question. However, it is generally true that callers who have used AT&T's 900 service are billed and pay the local exchange carrier ("LEC") for such service before the LEC provides these funds to AT&T.

There are approximately 1400 LECs, and AT&T has a billing and collection contract for purposes of 900 service with virtually all of these companies. The billing and collections practices under these contracts vary. AT&T has reviewed its practices with the larger LECs which include the Bell Operating Companies and certain major independent telephone companies. For these companies, the contracts also vary. It is generally the case, however, that these companies send bills for telephone service (including 900 service) to their customers on 10 to 22 days per month. The number of days on which bills are sent depends on the number of customers and each company's billing practices. Generally, the LEC receives payment from its customers in 30 days or less. These LECs generally follow a practice of forwarding 900 service funds to AT&T in about 30 to 50 days from the time the LEC sends out its bills. The practice followed by each LEC is controlled by its contract; however, funds are normally not forwarded to AT&T until the LEC has received them from its customers.

Chairperson Lee Ann Elliott
October 17, 1990
Page 3

Because AT&T is not required to forward funds to its customer, the telephone service bureau, in less than 90 days and normally takes about 60 days to forward such funds, it is even more unlikely that funds are forwarded to a political committee before the LEC's customer has paid its telephone bill. As noted in AT&T's AOR, the bad debt reserve maintained under AT&T's Premium Billing Contract is sufficient to cover all funds advanced to a political committee and not paid by the LEC's customers.

QUESTION 2. State whether any sanctions are applied to callers for nonpayment of a valid 900 line charge. Describe such sanctions, the circumstances in which such sanctions would occur, and the likelihood that such sanctions would be applied.

RESPONSE. Under AT&T's billing contract with the LECs, each LEC is authorized to impose a late charge on the unpaid portion of AT&T's bill. AT&T cannot generalize about the likelihood of LECs imposing such sanctions although AT&T believes that they are utilized. AT&T is prohibited by the FCC from refusing to serve callers for nonpayment of a valid 900 service charge. In the Matter of AT&T 900 Dial-It Services and Third Party Billing and Collection Services, File No. ENF-BB-05 (April 4, 1989), the Commission stated:

"Further, we instruct AT&T to take adequate steps to ensure that communications services to callers are not disconnected for failure to pay Premium Billing charges."

As noted in AT&T's AOR, AT&T makes a good-faith effort to collect 900 service charges from callers. AT&T, however, may not disconnect customers who fail to pay for such service.

QUESTION 3. State whether a service bureau or political committee is joining in your request for an advisory opinion.

RESPONSE. We have been instructed by Call Interactive, a joint venture of FDR Interactive Technologies Corporation (a subsidiary of American Express Information Services Corporation) and AT&T Interactive Services, Inc., to represent to the Commission that Call Interactive joins AT&T in requesting an advisory opinion from the Commission and specifically requests that the Commission respond to AT&T's fourth question: "If AT&T's customer, the telephone service bureau, and its political committee customer comply with AT&T's MultiQuest[®] guidelines, will they be in compliance with FECA?" Call Interactive is a telephone service bureau and will submit its own letter that will describe its services and request a response from the Commission concerning issues that relate to its business.

Chairperson Lee Ann Elliott
October 17, 1990
Page 4

QUESTION 4. Clarify what you mean by your representation that there will still be numbers for which a caller's name and address cannot be identified. State whether or not there are records of names and addresses, with a local exchange carrier or other telephone company, that correspond to each telephone number.

RESPONSE. There are two circumstances in which it will be impossible for a telephone service bureau, or its political committee customer, to identify the name and address of the caller from whom funds are received. First, such information will not be available from areas that do not have Automatic Number Identification ("ANI"). For calls from such areas, AT&T will receive funds but not the telephone number of the callers. Without the telephone numbers, it is not possible to identify the source of a 900 service call. AT&T has no right under its contracts with the LECs to require a LEC to search its records and identify callers who have made calls to a 900 service telephone number used for political fundraising. Moreover, AT&T believes that even if its contracts could be renegotiated, it would be impossible to require the LECs to provide such information at any reasonable charge.

Second, such information also will not be available for certain telephone numbers obtained by AT&T from ANI served areas. While each LEC undoubtedly will have records listing the name and address of each LEC customer, AT&T does not have access to these records. Moreover, AT&T could not require LECs to provide such information for customers who have unlisted telephone numbers. If the name and address of such callers is not otherwise available to vendors who specialize in converting telephone numbers to caller names and addresses, there would be no way to identify these callers.

We believe that the appropriate way to comply with FECA in these circumstances is to require the political committee that uses 900 service to refuse to accept funds for Federal election purposes when the caller cannot be identified or the committee believes that acceptance of the funds would not comply with FECA. It is our belief that the responsibility for making this decision belongs to the committee's treasurer. Thus, the treasurer should decide which services offered by AT&T and the telephone service bureau to identify callers should be purchased to comply with FECA. In that way, the treasurer can balance the cost of such services to achieve broader compliance against the possibility that funds will have to be refused because the caller cannot be identified.

Chairperson Lee Ann Elliott
October 17, 1990
Page 5

We hope this letter fully responds to your questions.
If you require any additional information, please do not hesitate
to contact us.

Sincerely,

A handwritten signature in cursive script that reads "Michael Nemeroff". The signature is written in black ink and is positioned above the typed name.

Michael A. Nemeroff

Enclosure

cc: N. Bradley Litchfield, Esq.