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AOR 1990-14
PARTIAL WITHDRAWAL
+ COMMENTS

December 7, 1990

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RECEIVED
FEDERAL ELECTION COMMISSION
5500 NODM

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

Re: AOR 1990-14

Dear Chairperson Elliott:

We have reviewed the draft advisory opinion in the above-captioned matter which will be considered at the Commission's meeting on December 11, 1990. We are primarily concerned with the response to question three because the draft fails to address AT&T's principal concern directly. Moreover, there has been no significant change in this respect from the August draft.

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FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

After reviewing the August draft we urged that the opinion include language confirming that AT&T will comply with the Federal Election Campaign Act if it follows its usual and normal billing and collection procedures. The draft opinion then and now seems to imply that this is the case; however, there is absolutely no analysis of this issue as it relates to 2 U.S.C. § 441b and the definition of contribution in the Commission's regulations. We urge that the following language be included after the sentence ending with the words "normal charges" at page 13, line 28 in the current draft and that the next sentence become the first sentence of the next paragraph:

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"As a general matter, AT&T is principally obligated to follow its usual and normal billing and collection procedures at its usual and normal charges. The Federal Election Campaign Act prohibits corporations from making any contribution for Federal election purposes. 2 U.S.C. § 441b. Regulations of the Commission define a contribution to include 'anything of value made by any person for the purpose of influencing any election for Federal office.' 11 C.F.R. § 100.7(a)(1). However, 'anything of value' does not include goods or services which are provided at their usual and normal charges. 11 C.F.R. § 100.7(a)(1)(iii)(A). Thus, as long as AT&T, or any other company providing service to AT&T in connection with its MultiQuest[®] service, provides its usual and normal services at its usual and normal charges it will, in most circumstances, not have made a prohibited corporate contribution. There are, however, some circumstances (as explained below) in which the character of the MultiQuest[®] service could lead to prohibited contributions by AT&T unless it takes steps to avoid them."

We also suggest adding new language at page 16, line 24 after the words "discussed above" which would state as follows:

"Therefore, AT&T should take steps to avoid such contributions. For example, AT&T could monitor political contribution programs more closely than other programs and could refuse to remit funds to its customer if it appears that because of a campaign event (as suggested above) callers may refuse to make payments in excess of the bad debt allowance. AT&T could also increase the standard charge or require a deposit or payment from the service bureau to cover such a contingency."

In addition, we request that AT&T be permitted to withdraw question four from its advisory opinion request. This question sought clarification of the responsibilities of telephone service bureaus that deal with AT&T to provide 900 service to political committees. The staff's draft response is largely based upon the policies expressed in AO 1990-1. AT&T is concerned, however, that AO 1990-1 is based on facts that do not represent how most service bureaus function. Moreover, the opinion assumes that certain information is available concerning callers using 900 service when such information is not available.

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On December 5, 1990, Call Interactive filed an advisory opinion request that raises these issues directly. We believe that the Commission can better deal with questions concerning telephone service bureaus in the context of this request than in AT&T's request. Therefore, we urge that the Commission not respond to AT&T's question four.

Very truly yours,



Michael A. Nemeroff

cc: Vice Chairman John Warren McGarry
Commissioner Thomas J. Josefiak
Commissioner Danny Lee McDonald
Ex Officio Member Walter J. Stewart
Ex Officio Member Donald K. Anderson
N. Bradley Litchfield, Esq.