



FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 9, 1993

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1993-18

Alan E. Siegel, Senior Attorney
Southwestern Bell Corporation
175 E. Houston
12th Floor
San Antonio, TX 78205

Dear Mr. Siegel:

This responds to your letter dated September 3, 1993, as supplemented by your letter dated October 22, 1993, on behalf of the Southwestern Bell Corporation ("SBC") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the provision of information to corporate employees about how to volunteer for specific political campaigns.

SBC is an international telecommunications holding company with almost one million shareholders. Its subsidiaries employ over 59,000 employees.^{1/} You state that SBC subsidiaries actively encourage all their employees to be involved in their communities, including political and legislative activities, "i.e., to be politically informed, to vote, to stay abreast of legislative issues and to express their opinions to elected officials."

As part of this effort, SBC and its subsidiaries propose to initiate a program to encourage employees and retirees to volunteer to serve as campaign workers for candidates of their choice in both Federal and non-Federal elections and to "facilitate the involvement of volunteers in campaigns." This is considered to be in the company's best interest by increasing the personnel's community involvement and political awareness and by "open[ing] channels of communication for the expression of company views to lawmakers."

SBC companies propose to facilitate the volunteer involvement in three ways. They are:

(1) Early in the campaign season, an SBC company would send questionnaires to all candidates campaigning for a particular elected position to determine how employees and retirees wishing to volunteer can best help out, whom they should contact to work in the campaign, when they are needed, and the telephone number and address of the candidate's campaign office. The SBC company would publish this information about all candidates for a particular elected position either in company prepared bulletins, which is the normal means for communicating local or regional information to SBC company employees, or in another written form of communication such as a poster, flier, memorandum, or electronic mail. SBC companies maintain close ties to retirees. They often attend company functions and receive a monthly publication designed especially for them. This publication would contain the above-described information for them.

(2) An SBC company would set up a candidate information booth in company locations where information on all candidates' campaign offices will be available. For each candidate, the booth would contain some or all of the following data - the candidate's name, party affiliation, office sought, telephone number and address of headquarters, name of a contact person at headquarters, the type of volunteer help needed, and when the help is needed. Company prepared posters and other written communications would encourage employees to work for their choice of candidates, with no bias or preference shown to any candidate. The booth would not contain campaign literature prepared by any candidate or candidate's campaign committee.

(3) When a candidate speaks to employees on a non-partisan basis at company locations, a company representative will announce whom to contact if employees wish to volunteer for the candidate speaking. All candidates for a particular elected position would be given the same opportunity to appear before employees.

Any one of these three options may be used by itself or in combination with one or both of the other options. All expenses related to these activities would be paid for by SBC companies. Planning and coordination of these activities would be performed entirely by SBC company employees on company time and would involve the use of company supplies and materials.

You note that names of employees who might be willing to volunteer in a campaign will not be provided to candidates by SBC personnel and that it will be up to the individual to volunteer his or her services. In addition, SBC companies will not permit employees to take time off the job with pay to work in a campaign. Employees may, however, use their accrued vacation days or designated holidays (which is paid time off and which the employee may use as he or she chooses) to work in a campaign.

Finally, you state that, when encouraging employees to volunteer for the candidates of their choice, the SBC companies will not take any action which would have the effect of promoting one candidate or campaign over another; there will be no express or implied advocacy. Furthermore, you explain that the companies "have no immediate plans to communicate on a partisan basis with members of the restricted class," although a future decision to make such communications is possible.

You request an advisory opinion as to whether the above-described program, entailing communications with employees and retirees, is permissible with respect to Federal candidacies under the Act.

The Act prohibits contributions and expenditures by a corporation in connection with a Federal election. 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, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value ... to any candidate, campaign committee, or political party, or organization," in connection with any Federal election. 2 U.S.C. 441b(b)(2); 11 CFR 114.1(a)(1). See 2 U.S.C. 431(8)(A)(i) and (9)(A)(i); 11 CFR 100.7(a)(1) and 100.8(a)(1). The phrase "anything of value" includes goods or services provided without charge, or at less than the usual and normal charge. 11 CFR 100.7(a)((1)(iii)(A) and 100.8(a)(1)(iv)(A).

Commission regulations specifically address disbursements by corporations for partisan communications and for nonpartisan communications. The regulations provide that certain communications by a corporation may not be made to the general public, but may be made to stockholders and specific classes of employees, and their families. Communications that comply with these regulations will avoid treatment as a corporate contribution or expenditure. 2 U.S.C. 441b(b)(2)(A) and (B); 11 CFR 114.1(a)(2)(x), 114.3, and 114.4.

Partisan Communications

A corporation may make partisan communications to its stockholders and executive or administrative personnel and their families, i.e., its restricted class. 2 U.S.C. 441b(b)(2)(A); 11 CFR 114.3(a)(1) and 114.1(c). As long as the corporation complies with certain parameters set out in the regulations, such communications will avoid treatment as prohibited contributions. A permitted communication includes the distribution of printed material of a partisan nature as long as it is produced at the corporation's expense and constitutes a communication of the corporation's views rather than a partial or complete reproduction of any broadcast, transcript or tape of any materials produced by the candidate or his campaign. 11 CFR 114.3(c)(1). See Advisory Opinions 1987-29 and 1982-2.^{2/}

The printed materials, which are produced by the corporation and not by any campaign, do no more than inform as to the candidates' names, party affiliations, the campaign committees' locations, phone numbers, and contact persons, and information on what type of help is needed and when it is needed. These types of information and the materials used fall well within the information that may be conveyed to the restricted class. See, for example, Advisory Opinion 1987-29 (corporation permitted to distribute candidate advocacy messages, including contribution solicitations, in support of those candidates to its restricted class).

Based on the foregoing, the proposed communications are permissible when conveyed to the restricted class, i.e., executive and administrative personnel of SBC companies, their stockholders, and the families of such persons.^{3/} A retiree or non-executive or non-administrative employee is included in the restricted class only if he or she qualifies as a stockholder under Commission regulations. 11 CFR 114.1(c)(2)(iii). See also 11 CFR 114.6(a) (excluding non-stockholder retirees from the group of non-executive and non-administrative employees eligible

to receive twice-yearly written solicitations for contributions to an SSF). A stockholder means "a person who has a vested beneficial interest in stock, has the power to direct how that stock should be voted, if it is voting stock, and has the right to receive dividends." 11 CFR 114.1(h). See Advisory Opinions 1988-36, 1988-19, and opinions cited therein.

Nonpartisan Communications to Other Employees and Their Families

Rather than providing this information for only one candidate or for certain preferred candidates running for a particular Federal office, the SBC companies will be providing the information with respect to all candidates for a particular office.

Commission regulations provide that a corporation may make nonpartisan communications to its restricted class as well as its other employees and their families. 11 CFR 114.4(a)(1)(i). Included in such communications are nonpartisan candidate and political party appearances on corporate premises or at a meeting, convention, or other function of the corporation. These communications must meet a number of conditions: (a) If a House or Senate candidate, or a candidate's representative, is permitted to address or meet employees, then all candidates for the seat who request to appear must be given the same opportunity. (b) A corporation, its stockholders, its employees, or its SSF may make no effort, either oral or written, to solicit or direct or control contributions by members of the audience to any candidate or political party in conjunction with any candidate or party representative appearance under this section. (c) A corporation, its stockholders, its employees, or its SSF may not, in conjunction with any candidate or political party representative appearance under this section, endorse, support or oppose any candidate, group of candidates, or political party. 11 CFR 114.4(a)(2)(i), (iv), and (v).^{4/}

Your proposal contains elements that resemble the safeguards set out in nonpartisan candidate appearance communications. The SBC companies will gather information from all candidates and make it available to corporate employees.^{5/} Although conveying information as to how and when a volunteer can best help out in a campaign may provide some assistance to the campaign, such information, along with the other elementary information to be conveyed, may also be provided as part of the above-described non-partisan communications. Based on the foregoing, the proposed communications may also be made to employees of the SBC companies and their families, as well as the restricted class. In approving your proposal for employees outside the restricted class and their families, the Commission conditions its opinion on the assumption that, when implementing the program, no SBC companies and no SBC separate segregated fund will, either in written communications to employees outside of the restricted class or at the information booths or in the posters, attempt to solicit contributions or direct or control volunteers to any candidate or party, or endorse or support or oppose any candidate, group of candidates, or political party. 11 CFR 114.4(a)(2)(iv) and (v). These candidate support activities by corporate personnel must also be barred during appearances by candidates for the particular seat. See Federal Election Commission Regulations, Explanation and Justification, House Document No. 95-44, at 105-106 (1977) (explaining the two subsections).^{6/}

Nonpartisan Communications to the General Public

Commission regulations also provide for nonpartisan communications to the general public. These are specific types of information, including nonpartisan voter registration and get-out-the-vote information, distribution of registration or voting materials produced by official election administrators, voting records not prepared for the purpose of influencing an election, voter guides, and nonpartisan candidate debates. 11 CFR 114.4(b), (c), and (e). None of these specialized activities are analogous to the kinds of information that the SBC companies propose to convey. In particular, the inclusion of information about candidate needs for campaign assistance do not fall within the scope of voter guides as contemplated by the Commission's regulations. Retirees who are not shareholders or in the families of employees or shareholders in the SBC companies are not identified in Commission regulations as members of the corporation's restricted class or the larger employee class who may attend nonpartisan candidate events sponsored by the corporation. The Commission concludes, therefore, that your proposed program may not be made available to such retirees and steps should be taken to assure that the information is not distributed to them. Otherwise, your proposed activity will result in a prohibited, in-kind corporate contribution to the candidates involved. See Advisory Opinion 1986-37.^{7/}

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)

Scott E. Thomas
Chairman

Enclosures (AOs 1991-3, 1988-36, 1988-19, 1987-29, 1986-37, and 1982-2)

Endnotes

1/ The largest of SBC's subsidiaries is Southwestern Bell Telephone Company, which provides local exchange service in Arkansas, Kansas, Missouri, Oklahoma, and Texas.

2/ Also included as permitted communications are partisan candidate and political party appearances whereby a corporation may allow a candidate or party representative to address the restricted class at a corporate gathering, as long as no more than a small number of persons outside the class, i.e., those necessary to administer the meeting, limited invited guests, and news media, are in attendance. 11 CFR 114.3(c)(2).

3/ The restricted class of a corporation also includes the restricted class of its subsidiaries, branches, divisions, and affiliates. See 11 CFR 114.5(g)(1); see also Advisory Opinion 1991-3, n. 1, and Federal Election Commission Regulations, Explanation and Justification, House Document No. 95-44, at 108 (1977) (i.e., that the corporation's restricted class for partisan communications is the same as that for solicitation to an SSF).

4/ Other conditions for such nonpartisan appearances are as follows: (1) If a Presidential or Vice Presidential candidate, or a candidate's representative, appears, all candidates seeking a major party nomination or who are on the general election ballot in enough states to win a majority of electoral votes must be given the same opportunity. (2) If a political party representative appears, representatives of all parties which had a candidate on the last general election ballot or which are actively engaged in placing or will have a candidate on the next general election ballot must be given the same opportunity. 11 CFR 114.4(a)(2)(ii) and (iii).

5/ With respect to House and Senate candidates, the Commission construes the phrase "all candidates" to mean all candidates appearing on the ballot for a particular office. See Explanation and Justification, Nonpartisan Communications by Corporations and Labor Organizations, 48 Fed. Reg. 50502, at 50504 (November 2, 1983) (discussion of 11 CFR 114.4(b)(2)). See also, by analogy, 11 CFR 114.4(a)(2)(iii). With respect to Presidential or Vice Presidential candidates, see 11 CFR 114.4(a)(2)(ii).

6/ The cited Explanation and Justification states:

The Commission recognizes that, for example, the separate segregated fund of a corporation may have contributed to one of the candidates or the corporation may have sent a partisan communication endorsing one of the candidates prior to the appearances of all the candidates for that seat. However, since the group addressed by the candidates consists of employees outside the partisan communication exemption, the corporation may not make any endorsement of any of the candidates in conjunction with the appearances under this section If the audience consists of both executive and administrative personnel and other employees who are not stockholders or other employees who are not stockholders or employees who are not members, the nonpartisan requirements of this section override the right to make partisan communications to the more limited group. Clearly, the separate segregated fund of a corporation or labor organization may not make a contribution to any of the candidates at the time of the appearances; the corporation or labor organization or its separate segregated fund may not endorse one of the candidates at the time of such appearances.

7/ The Commission also notes that your activity involves contact and consultation with campaign personnel of the candidates who are included in the program, and the receipt by the SBC companies of information as to the volunteer needs of each campaign. The Commission cautions that the prior consultation and receipt of such information will compromise the ability of an SSF of the SBC companies to make independent expenditures on behalf of these campaigns. See 11 CFR 109.1(a) and (b)(4)(i)(A). Similarly, because of the contact and consultation with respect to volunteer needs, the conclusions of this opinion are not affected by the Supreme Court opinion in Federal Election Commission v. Massachusetts Citizens for Life ("MCFL"), 479 U.S. 238 (1986).