

Paul E. Sullivan, Esq.
Attorney-at-Law

The Singletary Mansion
1565 The Alameda
San Jose, CA 95126

FEDERAL ELECTION COMMISSION

JAN 5 2 15 PM '95

January 5, 1995

N. Bradley Litchfield, Esq.
General Counsel's Office
Federal Election Commission
999 E Street, NW
Washington, D. C. 20463

Attn.: John Levin, Esq.

RE: AOR 1994-33

Dear Mr. Levin:

Supplement To
AOR 1994-33

JAN 6 11 56 AM '95

FEDERAL ELECTION COMMISSION
OFFICE OF THE GENERAL COUNSEL

This letter constitutes a response to an inquiry which you and Mr. Litchfield presented to me several weeks ago pertaining to the factual scenario of the above referenced AOR as described in past correspondence and in telephone conversations.

A. Issue of Inquiry

It is my understanding that the issue which is of concern involves a situation in which an individual makes a purchase of time on the calling card and yet declines to have any of the purchase price directed to the PAC as a contribution. You state it appears the individual who purchases a certain amount of calling time and directs a percentage of that purchase price as a contribution to the PAC receives the same amount of calling time as the individual who makes an identical amount of time buying yet declines to direct a percentage of his purchase price as a contribution to the federal PAC.

By way of example, John Smith, who is a member of the XYZ Association, decides to purchase \$100 worth of air time on his XYZ Association calling card. For purposes of this example, let us assume that the price per minute which VITEL negotiated with the XYZ Association was \$.50 per minute. As noted in past correspondence, this negotiated per minute rate would cover any and all overhead service expenses and subcontractor expenses associated with VITEL operating the XYZ Association's calling card program. Mr. Smith then would be offered the opportunity by the operator to direct up to 10% of his purchase price as a contribution to the XYZ Association's federal PAC. Mr. Smith agrees and 10%, (i.e. \$10) of the \$100 debited to Mr. Smith's credit card is earmarked as a contribution to the XYZ Association's federal PAC

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from Mr. Smith. Under this model, Mr. Smith has made a \$10 contribution to the federal PAC and received 200 minutes of air time for the payment of \$100.

In the second situation, Mr. Jones, also a member of the XYZ Association, similarly decides to make a \$100 purchase of air time on his XYZ Association calling card. Based on the same factual scenario set out above pertaining to Mr. Smith, Mr. Jones is asked by the operator if he desires to make a voluntary contribution up to 10% of his purchase price as a political contribution to the XYZ Association's federal PAC. In this model, Mr. Jones declines to make the solicited contribution. He therefore is in a position of having paid \$100 for the purchase of 200 minutes of air time but has not made a contribution to the PAC.

As noted above, the \$.50 per minute charge which VITEL invoices to the XYZ Association for each minute of air time purchased, includes all expenses and profit for VITEL. The question you posed was in the event a person declines to make the PAC contribution, who is the beneficiary of that windfall; specifically the \$10 as set out in the model involving Mr. Jones. The alternative question which you posed is whether the individual who elects to make the PAC contribution would receive the same number of air time minutes as the individual who declined to make the contribution to the PAC.

As structured in this advisory opinion request, since Mr. Jones elected not to make the PAC contribution, that \$10 would be remitted to VITEL as part of the \$100 which Mr. Jones paid for the purchase of the 200 minutes of air time. VITEL is the ultimate recipient of whatever funds not directed to the XYZ Association's federal PAC.

B. Discussion and Response

I have discussed the ramifications of that procedure with my client in light of the several discussions which we have had on the issue. VITEL appreciates the issue and the concern expressed by your office. In an attempt to clarify the issue and to structure it in a fashion which I believe is in accordance with the Federal Election's Regulations and the Federal Election Campaign Act of 1971, as amended, VITEL would hereby tender the following supplemental facts to the pending advisory opinion requests in the above referenced matter.

In the event an individual elects to make a voluntary contribution to the federal committee, the amount of that contribution would be quantified as a percentage of the air time purchased. The contributor would be given the opportunity to designate up to a certain percent of his purchase price as a contribution to the federal PAC. In that case, however, the amount of air minutes which are purchased, would be reduced by the same percentage as the percentage of the purchase price designated as a contribution to the PAC.

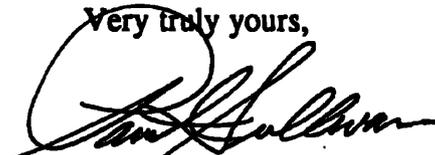
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For example, if an individual paid \$100 to purchase 200 minutes of air time, and elected to make a 10% contribution to the PAC, then \$10 of the \$100 purchase would be earmarked as a contribution to the federal PAC. However, the minutes of air time purchased with the \$100 would be reduced by a corresponding 10%, thereby providing the association member with 180 minutes rather than 200 minutes for his \$100 purchase.

Alternatively, if an individual under that same factual scenario declines to elect to make the voluntary contribution to the federal PAC, the \$100 would purchase 200 minutes of air time. Therefore, in both models, both individuals are paying the same \$.50 per minute for the amount of air time which is actually provided to them for their purchase price. This provides assurances that the contribution, if any, made to the federal PAC is from the individual's funds and cannot, be or be viewed as contributed by VITEL, the association, or any of the subsidiary vendors.

I trust this clarifies the point of inquiry by the Commission. Should you have further questions or need of clarification, please contact me at your earliest convenience. VITEL is most anxious to secure an opinion from the Commission at its earliest opportunity. I appreciate the time which has been consumed in this matter and the several questions in follow-up submitted by the Commission to clarify various points. However, it would be most appreciated if this matter could be expedited and calendered for the Commission's review at the earliest opportunity. I will provide whatever additional assistance is necessary to clarify any outstanding issues at the earliest date possible.

Very truly yours,



Paul E. Sullivan