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AOR 1999-03

February 9, 1999

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OFFICE OF GENERAL
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43 PM '99

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20463

Re: Request for Advisory Opinion regarding use of digital signature by employee within restricted class to authorize payroll deductions

Dear Mr. Noble,

I am requesting an advisory opinion from the Federal Election Commission (the "Commission") concerning application of the Federal Election Campaign Act of 1971, as amended, (the "Act") and Commission regulations regarding the use of digital signatures by employees within the restricted class to authorize payroll deductions. This request is submitted on behalf of The Microsoft Corporate Political Action Committee (the "PAC"), Seattle, Washington.

ISSUE AND BACKGROUND

Microsoft currently solicits funds for its PAC from employees within the restricted class, as defined at 11 CFR § 114.1(j), in accordance with the Act and Commission regulations. Microsoft does not presently have a payroll deduction system for its PAC; however, Microsoft plans to develop such a system to facilitate contributions by employees within the restricted class. As part of this system, Microsoft plans to allow employees in the restricted class to

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authorize payroll deductions either by electronic signature or by traditional written signature before the deductions are made.

Based on the above facts, please advise me on the following issue: Does the use of an electronic signature by an employee within the restricted class authorizing payroll deductions constitute written authorization by that employee for such deductions to be made?

ARGUMENTS IN SUPPORT

In support of our position that electronic signatures should constitute a valid form of written authorization for payroll deductions, we offer the following three considerations.

FEC Recognizes Electronic Signatures on Electronic FEC Reports

A political committee, such as Microsoft's PAC, may elect to file its FEC reports with the Commission in electronic format provided certain requirements are met. 11 CFR § 104.18(a). The political committee's treasurer or any other person who has the responsibility to file FEC reports for the political committee may verify the report "by submitting a digitized copy of the signed certification as a separate file in the electronic submission." 11 CFR § 104.18(e). The Commission regulations further state that such an electronic verification "shall be treated for all purposes (including penalties of perjury) in the same manner as a verification by signature on a report submitted *in a paper format*." 11 CFR § 104.18(e) (emphasis added). Furthermore, a digitized version of certain schedules and forms requiring a special signature that may accompany an FEC report in electronic format can be submitted as a separate file in the electronic submission to the Commission. 11 CFR § 104.18(f).

Electronic signatures on documents *stored* by a political committee, such as a form authorizing employee payroll deductions, should have the same legal effect as electronic signatures on reports *filed* with the Commission, which the Commission already considers the legal equivalent of a written signature on a report in paper format.

Congress has Mandated Agency Use and Acceptance of Digital Signatures

The Commission's acceptance of electronic forms and electronic signatures on those forms will reduce paperwork, will considerably decrease the costs of copying, mailing, filing and storing forms submitted to it, and will better assure the authenticity of those forms. In fact, last year, Congress mandated that the Office of Management and Budget (OMB) develop procedures for the use and acceptance of electronic signatures by Federal agencies, including the Commission. See Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Pub. L. No. 105-277, Title XVII (enacted Oct. 21, 1998).

Within the next five years, the Commission generally will be required to allow businesses to maintain, submit, or disclose information in electronic form, and to allow businesses to use and itself accept electronic signatures on those forms. As enacted into law, the Congressional



mandate further provides that electronic signatures used in accordance with the OMB procedures "shall not be denied legal effect, validity, or enforceability because such records are in electronic form." Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Pub. L. No. 105-277, Title XVII, Section 1707 (enacted Oct. 21, 1998).

Electronic Signatures are Secure and Used for Many Purposes by Microsoft

Microsoft's current use of electronic signatures for other company-wide purposes demonstrates that the use of this form of personal signature is very secure and protects employee privacy. For example, Microsoft employees currently use electronic signatures to access their own employee stock options, to access and keep track of on-line time and absence reporting, and to access and complete on-line benefit enrollment, and to authorize payroll deductions for charitable activity such as the United Way Pledge Drive .

The security of Microsoft's electronic signatures is guaranteed (1) by requiring employees to change their passwords once every two months, (2) by not allowing employees to reuse old passwords, (3) by requiring employees to protect their passwords from disclosure, and (4) by securing access to their computer workstations when they are away from their desks.

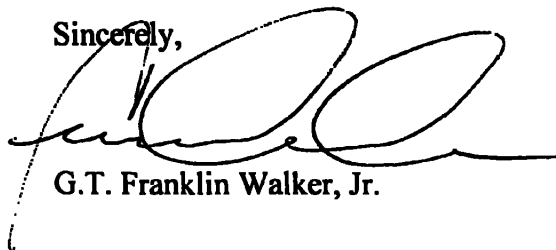
In addition to these normal precautions, the PAC will institute the following confirmatory process: Upon receiving a payroll deduction form by e-mail, the PAC will send an e-mail message in reply to give each employee notice of receipt and to request final confirmation of the employee's intention to participate in the payroll deduction program.

CONCLUSION

Based on the facts discussed in this letter, I request an advisory opinion from the Commission on whether an electronic signature by an employee within the restricted class constitutes valid written authorization for the PAC to deduct monies from an employee's payroll account to the same extent as a written signature by that same employee.

Please contact me if you require additional information.

Sincerely,



G.T. Franklin Walker, Jr.

