

December 8, 1999

**NOTICE AO DRAFT COMMENT PROCEDURES**

The Commission has approved a revision in its advisory opinion procedures that permits the submission of written public comments on draft advisory opinions when proposed by the Office of General Counsel and scheduled for a future Commission agenda.

Today, DRAFT ADVISORY OPINION 1999-33 is available for public comments under this procedure. It was requested by Rahn Porter on behalf of MediaOne PAC. The draft may be obtained from the Public Disclosure Division of the Commission.

Proposed Advisory Opinion 1999-33 will be on the Commission's agenda for its public meeting of Thursday December 16, 1999.

Please note the following requirements for submitting comments:

- 1) Comments must be submitted in writing to the Commission Secretary with a duplicate copy to the Office of General Counsel. Comments in legible and complete form may be submitted by fax machine to the Secretary at (202) 208-3333 and to OGC at (202) 219-3923.
- 2) The deadline for the submission of comments is 12:00 noon (EST) on December 15, 1999.
- 3) No comments will be accepted or considered if received after the deadline. Late comments will be rejected and returned to the commenter. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case by case basis in special circumstances.
- 4) All comments timely received will be distributed to the Commission and the Office of General Counsel. They will also be made available to the public at the Commission's Public Disclosure Division.



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

December 8, 1999

**MEMORANDUM**

TO: The Commission

THROUGH: James A. Pehrkon  
Staff Director

FROM: Lawrence M. Noble   
General Counsel

N. Bradley Litchfield   
Associate General Counsel

Jonathan M. Levin  
Senior Attorney

Subject: Draft AO 1999-33

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for December 16, 1999.

Attachment

ES.04.107.1538

1 ADVISORY OPINION 1999-33

2

3 Rahn Porter, Treasurer  
4 MediaOne PAC  
5 188 Inverness Drive West  
6 Englewood, CO 80112

**DRAFT**

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8 Dear Mr. Porter:

9 This responds to your letter dated October 28, 1999, on behalf of MediaOne PAC,  
10 requesting an advisory opinion concerning the application of the Federal Election  
11 Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the  
12 collection of contributions by payroll deduction.

13 MediaOne PAC ("the PAC") is the separate segregated fund ("SSF") of  
14 MediaOne Group ("MediaOne"), and is registered with the Commission as a  
15 multicandidate committee.<sup>1</sup> In January 1998, MediaOne instituted a payroll deduction  
16 system for contributions by "eligible employees" to the PAC.<sup>2</sup> You state that payroll  
17 deduction for PAC contributions was instituted because a majority of the company was  
18 on a centralized payroll system.

19 On October 1, 1999, the PAC discovered that one of MediaOne's regional payroll  
20 offices had been collecting employee payroll deductions on a monthly basis since January  
21 1998 and holding these funds in a general ledger account. The region had not been  
22 converted to the new centralized payroll system until the fall of 1999 and operated on a  
23 separate stand alone payroll system. The holding of the contributions was detected when  
24 the regional office converted to the new system, and the PAC received year-to-date PAC  
25 contribution information on 20 employees from the region. The funds were not received  
26 into the PAC account and were not reported in the PAC's monthly reports to the  
27 Commission. The total of funds collected and not reported from January 1998 to August  
28 1999 was \$7,983. You ask the Commission whether the PAC may "deposit the funds in  
29 [the] PAC account and report them appropriately on [your] monthly FEC reports."

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<sup>1</sup> MediaOne PAC (formerly named Continental Cablevision, Inc. PAC) filed its statement of organization with the Commission on March 17, 1993. It qualified as a multicandidate committee in 1994.

<sup>2</sup> The Commission understands your reference to "eligible employees" to mean those employees who would qualify as members of the restricted class of MediaOne. See footnote 3.

EST. 201.4N.53

1 Commission regulations provide that when a corporation raises funds for its SSF,  
2 it may collect such funds and forward them to the SSF<sup>3</sup> without incurring an obligation to  
3 register and report. 11 CFR 102.6(b)(2). It is thereby acting as a collecting agent. See  
4 11 CFR 102.6(b)(1).<sup>3</sup> By definition, a collecting agent may include such entities as the  
5 connected organization of the SSF and a branch or local unit of the connected  
6 organization. 11 CFR 102.6(b)(1)(ii) and (iii). When a collecting agent receives  
7 contributions that are not made by check payable to the SSF, one of its options is to  
8 deposit the contributions into its treasury and keep separate records of such deposits.  
9 That is essentially what occurred when the deducted amounts were kept by the regional  
10 office in the general ledger account. 11 CFR 102.6(c)(4)(ii)(B). However, the collecting  
11 agent has certain obligations with respect to the transmittal of such contributions. An  
12 individual's contribution of \$50 or less shall be forwarded to the SSF within 30 days of  
13 the collecting agent's receipt. 11 CFR 102.6(c)(4) and 102.8(b)(1); 2 U.S.C.  
14 §432(b)(2)(A). If the contribution exceeds \$50, the collecting agent must forward the  
15 contribution within 10 days of its receipt, along with the name and address of the  
16 contributor and the date of receipt of the contribution. For contributions over \$200, the  
17 contributor's occupation and employer must also be forwarded with the contribution. 11  
18 CFR 102.6(c)(4) and (5) and 102.8(b)(2); 2 U.S.C. §432(b)(2)(B).

19 The contributions of the 20 employees were, in effect, received by the collecting  
20 agent on the date of the payroll deduction. You have explained that such contributions  
21 were not transmitted to the PAC in a timely manner. In a recent opinion, the Commission  
22 examined a situation where a deferred transmittal of PAC contributions was allowed.<sup>4</sup>

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<sup>3</sup> Commission regulations permit a corporation to use a payroll deduction system for soliciting and collecting voluntary contributions from its restricted class to the corporation's SSF. See 11 CFR 114.5(k)(1) and 114.1(f); see also 11 CFR 114.1(j), 114.5(g)(1), and Advisory Opinions 1999-3 and 1996-10.

<sup>4</sup> In Advisory Opinion 1998-25, an intermediate unit of a labor union, which was a collecting agent for the union's SSF, had held the contributions of union members in an escrow account for periods well exceeding 30 (or 10) days. Contributions received over an 18 month period were placed and held in the account without transmittal because a Federal monitor, performing his duty pursuant to authority granted by a Federal court, had ordered that the members' contributions not be forwarded to the SSF without his authorization. The Commission concluded that, under the circumstances presented, the contributions could be forwarded after the ban was lifted.

1           The situation you present is distinguishable because the ability to transmit the  
2 contributions was entirely under the control of MediaOne or its regional office. There  
3 was no legal impediment to the transmittal, and the administrative circumstances under  
4 which the contributions were retained in the general ledger account were created entirely  
5 by the corporation or its regional office. The Commission concludes, therefore, that  
6 MediaOne must refund the contributions to the individual employees. This should be  
7 done by drawing on the general ledger account and issuing refunds by check or other  
8 similar means (e.g., electronic funds transfer) to the 20 employees.

9           The Commission's conclusion would not preclude MediaOne from re-soliciting  
10 the employee for a new contribution, in the amount of the refund, after the refund is made  
11 or in a letter sent simultaneously with the refund check.<sup>5</sup> A re-solicitation letter with a  
12 refund should explain the underlying circumstances so that the employee is aware of the  
13 nature of the check and why he is receiving a refund of a political contribution. In  
14 addition, any re-solicitation must comply with the voluntariness requirements of 11 CFR  
15 114.5(a)(1)-(5). For example, MediaOne may suggest that the employee contribute the  
16 amount that was refunded, but must also explain that the employee may contribute more  
17 or less than that amount. Moreover, the re-solicitation must inform the employee that the  
18 company will not favor or disadvantage anyone by reason of the amount of the  
19 contribution or her decision not to contribute, and that there will be no reprisal for any  
20 refusal to contribute. 11 CFR 114.5(a)(2), (4), and (5).<sup>6</sup>

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<sup>5</sup> This would not permit an option whereby the employee would not actually receive the refunded amount. In addition, if refunds were made using a method other than paper checks, this would not permit the employee to assign control of the refund amount back to the company or PAC.

<sup>6</sup> This opinion does not consider whether issues raised by the past activity of the corporation should be addressed in another context by the Commission. See 2 U.S.C. §437g; 11 CFR Part 111. Advisory opinions address specific transactions or activity that the requester "plans to undertake or is presently undertaking and intends to undertake in the future." 11 CFR 112.1(b). They do not address past activity, except to the extent past activity is proposed to continue or recur.

1           This response constitutes an advisory opinion concerning the application of the  
2 Act and Commission regulations to the specific transaction or activity set forth in your  
3 request. See 2 U.S.C. §437f.

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Sincerely,

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Scott E. Thomas  
Chairman

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Enclosures (AOs 1999-3, 1998-25, and 1996-10)

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