



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

January 28, 2000

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1999-33

Rahn Porter, Treasurer  
MediaOne PAC  
188 Inverness Drive West  
Englewood, CO 80112

Dear Mr. Porter:

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

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

On October 1, 1999, the PAC discovered that one of MediaOne’s regional payroll offices had been collecting employee payroll deductions on a monthly basis since January 1998 and holding these funds in a general ledger account. The region had not been converted to the new centralized payroll system until the fall of 1999 and operated on a separate stand alone payroll system. The holding of the contributions was detected when

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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.

the regional office converted to the new system, and the PAC received year-to-date PAC contribution information on 20 employees from the region. The funds were not received into the PAC account and were not reported in the PAC's monthly reports to the Commission. The total of funds collected and not reported from January 1998 to August 1999 was \$7,983. You ask the Commission whether the PAC may "deposit the funds in [the] PAC account and report them appropriately on [your] monthly FEC reports."

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

When an individual's contributions aggregate in excess of \$200 for the calendar year, the SSF must disclose the date of receipt for the contribution that brings the total amount above \$200, along with the identification of the contributor and his aggregate year-to-date total. 2 U.S.C. §434(b)(3)(A); 11 CFR 104.3(a)(4)(i). The identification of the contributor is her name, address, occupation, and name of employer. 2 U.S.C. §431(13)(A); 11 CFR 100.12. An SSF receiving contributions through payroll deduction, however, does not need to separately itemize each contribution received from the contributor during that reporting period. Instead, for the reporting period in which the \$200 aggregate amount has been exceeded and for each succeeding reporting period in that year, it may report the aggregate amount received from the contributor through payroll deduction during the reporting period, the identification of the individual, and a statement of the amount deducted per pay period. 11 CFR 104.8(b). In addition, the SSF must report the totals of the contributions received and the amounts that were itemized and unitemized. 2 U.S.C. §434(b)(2)(A); 11 CFR 104.3(a)(2)(i). The foregoing

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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.

information is required to be disclosed in the reports covering the period in which the contributions were received. See 2 U.S.C. §434(a)(4); 11 CFR 104.5(c).

In this situation, the contributions were made by the donors on each date that the funds were withheld from salary payments made to them. See 11 CFR 110.1(b)(6) [contribution shall be considered to be made when contributor relinquishes control over contribution].<sup>4</sup> The contributions of the 20 employees were, in effect, also received by the collecting agent and, hence, by the committee on that date. You have explained that such contributions were not transmitted to the PAC's treasurer (you) in a timely manner.

In a recent opinion, the Commission examined a situation where a deferred transmittal of PAC contributions was allowed because of a previous legal bar to the transmittal. Advisory Opinion 1998-25.<sup>5</sup> The situation you present is distinguishable because the ability to transmit the contributions was entirely under the control of MediaOne or its regional office. The Commission concludes, therefore, that MediaOne must take some remedial action in connection with the PAC's receipt and deposit of the contributions in question.

As PAC treasurer, you may receive and deposit the delayed funds into the PAC's account at this time. Upon doing so, the PAC must amend each of the previous reports covering the periods of these payroll deductions in order to reflect the dates of receipt of the contributions. Each report shall be amended in accordance with the disclosure provisions discussed above.<sup>6</sup> Thus, each of the amended reports shall include revised totals on the summary page and detailed summary page, and the Schedule A of each report naming a contributor should be amended.<sup>7</sup> Each amended report should also be accompanied by a short statement which explains why the report is being amended (including the reasons for the late disclosure) and which makes reference to this advisory opinion. The required amendments should be filed with the Commission within 30 days after the receipt of this opinion.

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<sup>4</sup> A contributor relinquishes control over the contribution when it is delivered by the contributor to the political committee or to an agent of the political committee. 11 CFR 110.1(b)(6).

<sup>5</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.

<sup>6</sup> It appears that 20 reports will need to be amended, since the PAC is a monthly filer and the underlying contributions were made in reporting periods that span 20 report filing dates.

<sup>7</sup> You may follow the procedures set out in 11 CFR 104.8(b) for contributions aggregating in excess of \$200 in the calendar year, and the amounts in excess of \$200 should be included in the itemized totals on the detailed summary page. In addition, if the amount deducted in a particular pay period varied from the usual amount, the Schedule A should indicate how many pay periods and the amount deducted in each of those periods. For an illustration of reporting by SSFs under 11 CFR 104.8(b), refer to the Commission's publication, *Campaign Guide for Corporations and Labor Organizations*, on page 32.

This opinion does not consider whether issues raised by the past activity of the corporation should be addressed in an enforcement 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. Moreover, the remedial action prescribed in this advisory opinion is based on the factual situation presented. The relevant facts are that MediaOne PAC discovered the error and asked for the Commission’s guidance in a timely manner, that the mistake appears inadvertent, and that the amounts at issue are not large. The remedial action proposed should not be viewed as a precedent for any other situation entailing a delayed transmittal of contributed funds, particularly a delay addressed in a Commission enforcement proceeding that would be conducted under 2 U.S.C. §437g and 11 CFR Part 111.

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

Sincerely,

(signed)

Darryl R. Wold  
Chairman

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